No. 24-CV-0759

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

MASSACHUSETTS AVENUE HEIGHTS CITIZENS ASSOCIATION,

APPELLANT,

v.

D.C. BOARD OF ZONING ADJUSTMENT,

APPELLEE.

On Appeal from the Superior Court for the District of Columbia, Civil Division in Case No. 2023-CAB-002455 (Honorable Carl E. Ross, Judge)

CORRECTED APPELLANT'S BRIEF

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Dated: January 16~~3~~, 2025

RULE 28(a)(2) DISCLOSURE STATEMENT

Pursuant to D.C. App. R. 28(a)(2), Appellant Massachusetts Avenue Heights Citizens Association states that the following parties and counsel were involved in this matter in the D.C. Superior Court or the appellate proceeding:

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I. JURISDICTIONAL STATEMENT

Appellant Massachusetts Avenue Heights Citizens Association ("MAHCA") appeals an order (the "Order") from the D.C. Superior Court that summarily disposed of all issues and claims with respect to all parties for case 2023-CAB-002455. This Court has jurisdiction over MAHCA's appeal. D.C. Code § 11-721(a)(1). The Superior Court had jurisdiction over MAHCA's petition for review of a decision (the "Decision") by Appellee D.C. Board of Zoning Adjustment ("BZA")[1] in a "non-contested" case. *See R.O. v. Dep't of Youth Rehab. Servs.*, 199 A.3d 1160, 1165 (D.C. 2019); *see also U.S. v. D.C. Bd. of Zoning Adjustment*, 644 A.2d 995, 999 n.9 (D.C. 1994); D.C. Code § 11-921(a)(6).

II. STATEMENT OF THE ISSUES[2]

A. Whether the Trial Court and FMBZA erred as a matter of law by determining that the District Elements of the Comprehensive Plan for the National Capital (the "Comprehensive Plan," or "Plan"),[3] which define a municipal interest

[1] When making determinations regarding the location of chanceries in the District, the BZA sits as the Foreign Missions Board of Zoning Adjustment (the "FMBZA" or "Board"). *See* D.C. Code § 6-1306(i)(2).

[2] At the time of filing, MAHCA has not received a response from the Office of the Attorney General regarding the Joint Appendix. Should the Joint Appendix in any way inconvenience the Board, MAHCA will cooperate in ensuring the Board has adequate time to file the record and respond to this Brief.

[3] References to individual D.C. regulations are cited as "D.C. Mun. Regs." followed by the applicable title, subtitle, and section. Subsequent uses of the term

in preventing chanceries from locating in essentially residential areas, can be disregarded in ascertaining whether a chancery seeking to locate in a residential neighborhood will serve the municipal interest.

B. Whether the FMBZA erred as a matter of law in holding that it was unable to include conditions that would protect MAHCA's residential integrity in its Decision, when (1) the FMBZA has included such conditions in its previous decisions on chancery applications locating in residential neighborhoods and (2) such conditions are required by the Comprehensive Plan.

III. STATEMENT OF THE CASE

This is a case of first impression. MAHCA contends that the Comprehensive Plan asserts a municipal interest in preventing chanceries from locating in predominantly residential areas and protecting the residential character of those areas, which the Board, pursuant to the Foreign Missions Act ("FMA"), must analyze when reviewing the merits of a chancery application. The Board's Decision, and the Superior Court's Order upholding it, violate the FMA by relying on a determination of the municipal interest that failed to implement the Comprehensive Plan (and Congress' legislative purpose in enacting the FMA).

"Comprehensive Plan" refer to policies regarding the location of chanceries in the District, specifically D.C. Mun. Regs. 10.A §§ 318.10–.11 detailed *infra* pp. 9–10.> Those policies and relevant legislative history are attached as Exhibits D and E in the Addendum.

A. Procedural History

On March 1, 2023, the FMBZA voted to not disapprove the application (the "Application") of the Embassy of the Republic of Kosovo (the "Applicant") to locate a chancery (the "Chancery") at 3612 Massachusetts Avenue, N.W. (the "Property") in Square 1931 (the "Square") in the Massachusetts Avenue Heights Neighborhood (the "Neighborhood"). The Property is bounded by Massachusetts Ave, NW (the "Avenue"), a single-family residence facing the Avenue (which the Property does not face) that abuts the Property to the south, and 36th Place, NW (the only street offering access to the Property and on which are located only single-family residences). ~~single family residences on either side facing Massachusetts Avenue, NW, by a block of exclusively single family residences directly across 36th Street, NW (which is the only street offering access to the Property), and exclusively single family residences across the alley connecting 36th Street, NW and 36th Place, NW.~~ The Square is 86.25% residential use and 13.75% religious use (which is used by a long-established synagogue), and the Neighborhood is a low-density residential neighborhood in an R-1-B zone consisting of primarily ~~single family~~single-family residential properties along narrow local streets and containing no offices or chanceries.

The Decision first found that the Square and its Neighborhood did not serve mostly residential uses because the Property was "adjacent" to non-institutional uses

located beyond the Square and Neighborhood and across Massachusetts Avenue (the "Avenue")—a four lane arterial[4] that bounds the Neighborhood. That determination violated the Comprehensive Plan and therefore the municipal interest.[5] The Board then held that the proposed Chancery served the "municipal interest" by relying solely on a report by the District's Office of Planning ("OP") that contravened both the Home Rule Act and the Comprehensive Plan. *See infra* p. 10 note 10. Finally, the Board declined to include conditions to protect the Neighborhood and Square's residential character in its Decision approving the Application, opining that it did not possess the power to issue such conditions, and, even if it did, then it could not enforce those conditions. In the Decision, the Board addressed neither the municipal interest stated in the Comprehensive Plan nor Congress' legislative intent to prohibit chanceries from locating in essentially residential areas—which both weighed against approving the Application.

On April 18, 2023, MAHCA asked the Superior Court to review the Decision. In its briefing before the Superior Court, MAHCA argued the Board (1) erred as a

[4] The District classifies the Avenue as a "Principal Arterial." *District of Columbia Functional Classification Map*, DISTRICT DEPARTMENT OF TRANSPORTATION, accessible at https://ddot.dc.gov/sites/default/files/dc/sites/ddot/publication/attachments/FunctionalClass_2016.pdf (last accessed Jan. 13, 2025).

[5] If this determination did not involve the municipal interest, then the Board violated the Zoning Regulations by construing them in a manner that violated the Comprehensive Plan. *Infra* p. 36 note 32.

matter of law in determining that the Chancery served the municipal interest by relying on an OP report that unlawfully ignored and contravened the Comprehensive Plan, (2) acted arbitrarily and capriciously and violated the municipal interest stated in the Comprehensive Plan in its mixed-use determination, and (3) erred in deciding that it could not condition its approval of the Application.

In its July 19, 2024 Order, the Superior Court rejected MAHCA's arguments. Misconstruing MAHCA's argument, the Superior Court dismissed the Comprehensive Plan's role in deciding the municipal interest because the Comprehensive Plan is not named as one of the six substantive criteria in D.C. Code § 6-1306(d) (the "FMA Criteria") that the FMA requires the Board to consider when rendering a chancery decision. JA 112–13. The Superior Court justified the Board's reliance on OP's unlawful failure to implement the Comprehensive Plan, explaining that MAHCA's purported failure to show how "the Board's reliance on the Office of Planning's recommendation was in any way contrary to the *law*" excused the Board from any wrongdoing. ~~Order at~~JA 115 (emphasis in original). The Superior Court did not address MAHCA's arguments regarding the Board's conditioning power. MAHCA appealed the Order on August 20, 2024.

B. Law Governing the Location of Chanceries in the District

Given the many statutes and regulations governing a FMBZA proceeding on a chancery application, MAHCA sets forth the relevant law to assist the Court's understanding of the facts and the case.

1. The Foreign Missions Act[6]

In 1982, the U.S. Congress enacted the FMA. The FMA amended the D.C. Code to provide a regulatory process that would govern "[t]he location, replacement, or expansion of chanceries in the District of Columbia." D.C. Code § 6-1306(a). This process was "specifically designed to accommodate the competing **local** and federal concerns in the District of Columbia." *Embassy of the People's Republic of Benin v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 310, 319 (D.C. 1987) (emphasis added); *see also U.S. v. D.C. Bd. of Zoning Adjustment*, 644 A.2d at 997 (FMA "was intended to create a mechanism to assure the protection of the interest of the United States, while giving due consideration to **local** concerns") (emphasis added); H. R. Rep. No. 97-693, at 41 (1982) (Conf. Rep.) ("Section 206(d) sets forth the criteria to be applied in the determination of chancery issues, which are intended to balance the **municipal** and Federal interests.") (emphasis added).

[6] The FMA and relevant portions of its legislative history are attached as Exhibits A–C in the Addendum for the Court's review.

The FMA states that "[a] chancery shall be permitted to locate as a matter of right in any area which is zoned commercial, industrial, waterfront, or mixed-use (CR)." D.C. Code § 6-1306(b)(1). A chancery is also allowed to locate in a low-density residential neighborhood "determined on the basis of existing uses, which includes office or institutional uses, . . . subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with [the FMA Criteria]." D.C. Code § 6-1306(b)(2)(B). Congress explained that the FMA "will not permit chanceries to be located in any area which is **essentially a residential area**." H. R. Rep. No. 97-693, at 41 (1982) (Conf. Rep.) (emphasis added); *see also* S. Rep. No. 97-329, pt. 3, at 14 (1982) (Senate report on the FMA explaining that "areas in which the Foreign Missions Commission determines current uses are entirely residential would not become available for chancery use").

"[T]he FMA provides the exclusive procedure available for consideration of [a chancery] application." *Benin*, 534 A.2d at 319. It specifies that "any determination concerning the location of a chancery under subsection (b)(2) of this section, or concerning an appeal of an administrative decision with respect to a chancery based in whole or in part upon any zoning regulation or map, shall be based solely on the following criteria:" (1) the United States' international obligations, (2) historic preservation, (3) parking requirements, (4) the extent to which the area is capable of being adequately protected, (5) the municipal interest, as determined by

the Mayor of the District of Columbia,[7] and (6) the federal interest, as determined by the Secretary of State. D.C. Code § 6-1306(d).

2. The Comprehensive Plan

The Comprehensive Plan expresses the District's municipal interest in not locating chanceries in low-density residential neighborhoods. Formed through an "exhaustive process of research, analysis, and review" that includes substantial "citizen involvement," D.C. Code § 1-306.01(a)(1), its purposes are to, *inter alia*, "[d]efine the requirements and aspirations of District residents," "*[g]uide executive and legislative decisions on matters affecting the District and its citizens*," and "*[a]ssist in the conservation, stabilization, and improvement of each neighborhood and community in the District*," D.C. Code §§ 1-306.01(b)(1), (2), (6) (emphasis added).

Under the Home Rule Act of 1973, the Mayor is "responsible for the ***preparation*** and ***implementation*** of the District's elements of the comprehensive plan for the National Capital." D.C. Code § 1-204.23(a) (emphasis added).[8] The Mayor has since delegated these responsibilities to OP. Mayor's Order 83-25 (Jan.

[7] The Mayor delegated this determination to the Office of Planning. *See* Mayor's Order 83-106 (Apr. 28, 1983) (attached as Exhibit H) ~~(JA 607)~~.

[8] *See also Tenley & Cleveland Park Emergency Comm. v. D.C. Bd. of Zoning Adjustment*, 550 A.2d 331, 335 (D.C. 1988) (explaining that the Home Rule Act "vested the Mayor with [this] responsibility"); D.C. Code § 1-204.22 ("The Mayor shall be responsible for the proper execution of all laws relating to the District").

3, 1983) (attached as Exhibit G) ~~(JA 605)~~ ("The Director of Planning shall . . . (a) **Prepare**, refine and **implement** the District ~~e~~Elements of the Comprehensive Plan for the National Capital.") (emphasis added). OP submits the elements or amendments to the D.C. Council for "adoption by act." D.C. Code § 1-204.23(b); *Cummins v. D.C. Zoning Comm'n*, 229 A.3d 768, 771 (D.C. 2020) (explaining that the Comprehensive Plan is a "legislative enactment"). The National Capital Planning Commission (the "NCPC") and Congress also review the Comprehensive Plan. D.C. Code § 1-204.23(b), (c).

The Comprehensive Plan's mandates[9] regarding chanceries are in the Land Use Element—the "cornerstone of the Comprehensive Plan," D.C. Mun. Regs. 10.A § 300.1, which "should be given greater weight than other elements," D.C. Mun. Regs. 10.A § 300.3. Policy LU-3.4.1 protects low-density residential neighborhoods from chancery encroachment:

> Encourage foreign missions to locate their chancery facilities where adjacent existing and proposed land uses are compatible (i.e., office, commercial, and mixed-use), taking special care to protect the integrity of residential areas. Discourage the location of new chanceries in any area that is essentially a residential use area to the extent consistent with the Foreign Missions Act.

[9] Although the Comprehensive Plan uses the term "Policy" to describe the District's municipal interest in protecting low-density residential neighborhoods from chancery encroachment, these policies are binding because they create affirmative actions that OP must, by law, ***implement*** and may not choose to disregard. *See* D.C. Code § 1-204.23(a).

D.C. Mun. Regs. 10.A § 318.10. Policy LU-3.4.2 creates target areas for new chanceries to prevent applications in residential areas:

> Encourage the development of new chancery facilities in locations where they would support neighborhood revitalization and economic development goals, particularly in federal enclaves and east of 16th Street NW. Work with the Department of State, the NCPC, and other organizations to encourage foreign missions to locate in these areas.

D.C. Mun. Regs. 10.A § 318.11.

The Home Rule Act requires OP to "implement" the Comprehensive Plan, so OP must adhere to the Comprehensive Plan's mandate against locating chanceries in low-density residential neighborhoods when it determines whether a proposed chancery is in the municipal interest.[10] *See* D.C. Code § 1-204.23(a). Because OP is "responsible" for the "proper execution" of the Comprehensive Plan's implementation, *see* D.C. Code § 1-204.22, it may not ignore the Comprehensive Plan during a chancery proceeding—which is the precise occasion when the Plan and the protections it affords the District's citizens and neighborhoods are most applicable.[11]

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[10] Thus, when OP fails to implement the Comprehensive Plan, it violates the Home Rule Act. Likewise, any application of D.C.'s zoning regulations under D.C. Mun. Regs. 11.X §§ 200–205 and D.C. Mun. Regs. 11.Y § 301 that violates the Comprehensive Plan also violates the Home Rule Act. *Infra* p. 13~~2~~ note 14, 36 note 32.

[11] It is well-established in the law that an executive officer may not disregard affirmative duties placed on it by the law. *Cf. Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 166 (1803) ("But when the legislature proceeds to impose on that officer other

There is no conflict between the FMA and the Comprehensive Plan. The Plan's long-standing[12] mandates translate the FMA's legislative intent to prevent chanceries from locating in any part of the District that is "essentially a residential area," H. R. Rep. No. 97-693, at 41 (1982) (Conf. Rep.), into binding law. Moreover, in allowing the Plan's passage into law, the NCPC found that the Comprehensive Plan is "consistent with" the FMA and the municipal interest and "reflect[s] the policy of" the FMA. D.C. Code § 6-1306(e)(1) ("[r]egulations, proceedings, and other actions of the [NCPC] . . . affecting the location, replacement, or expansion of chanceries shall be consistent with this section (including the criteria set out in subsection (d) of this section) and shall reflect the policy of this chapter").

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duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others."); *U.S. v. Lee*, 106 U.S. 196, 220 (1882) ("No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it."); *Nat'l Treasury Emps. Union v. Nixon*, 492 F.2d 587, 604 (D.C. Cir. 1974) (President's "constitutional duty" to "take Care that the Laws be faithfully executed" does not "permit the President to refrain from executing laws duly enacted by the Congress as those laws are construed by the judiciary").

[12] These mandates have been in effect in some form for twenty-five years. The 1998 amendments to the Comprehensive Plan included "a newly adopted provision concerning chanceries" that "sets forth policies in support of the residential neighborhood objectives," specifically a policy to discourage the location of chanceries in essentially residential areas. Report of the Council of the District of Columbia, Committee of the Whole, on Bill 13-108, the "Comprehensive Plan Technical Corrections and Response to NCPC Recommendations, and Closing of a Public Alley in Square 1189, S.O. 98-150, Act of 1999," at 5 (March 16, 1999).

3. The District's Zoning Regulations

In 2016, the District amended its zoning regulations (the "Zoning Regulations") regarding chanceries to clarify when a foreign mission, pursuant to D.C. Code § 6-1306(b)(2)(B), may file an application to locate a chancery in a low-density residential neighborhood.[13] Before applying the FMA Criteria, the Board must "determine whether the proposed location is in a mixed-use area determined on the basis of existing uses, which includes office and institutional uses." D.C. Mun. Regs. 11.X § 201.3. "[T]he 'area' shall be the area that the [FMBZA] determines most accurately depicts the existing mix of uses adjacent to the proposed location of the chancery." D.C. Mun. Regs. 11.X § 201.4. If an applicant wishes the FMBZA to consider an area outside of the residential square in which the property is located, then the applicant must include "a statement . . . explaining the basis for using ~~that~~ the area, which shall not be based solely on previous Board action for another location." D.C. Mun. Regs. 11.Y § 301.7. "An area shall be considered to be a mixed-use area if as of the date of the application more than fifty percent (50%) of the zoned land within the area is devoted to uses other than residential uses." D.C. Mun. Regs. 11.X § 201.5. If the FMBZA finds that the area is not a "mixed-use area," then it will disapprove the application. D.C. Mun. Regs. 11.X § 201.7. If the FMBZA

[13] The Zoning Regulations pertaining to the location of chanceries within the District are found at D.C. Mun. Regs. 11.X §§ 200–205 and D.C. Mun. Regs. 11.Y § 301, which are attached as Exhibit F in the Addendum for the Court's review.

finds that the area is a "mixed-use area," then it will determine the merits of the application based on the FMA Criteria. D.C. Mun. Reg. 11.X § 201.6.[14]

IV. STATEMENT OF THE FACTS

A. The Evidentiary Record Before the FMBZA

On September 9, 2022, the Applicant filed its Application with the FMBZA for an exception to the Neighborhood's residential zoning to transform "a single-family dwelling" into "a chancery with 6 offices and seven employees" at 3612 Massachusetts Avenue, N.W. JA 117, 119. The Property is in Square 1931 and in the "***unique residential neighborhood***," JA 323 (emphasis added), of Massachusetts Avenue Heights, ***which has no office or chancery uses and is located entirely in an R-1-B zone***,[15] JA 171, 305. ***Wisconsin Avenue, Massachusetts Avenue, Garfield Street, Observatory Circle, and Calvert Street form the boundaries of the Neighborhood.*** JA 167, 171, 286, 305.

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[14] The "mixed-use determination" is only found in the Zoning Regulations—not the FMA. Should the Board argue that the "mixed-use determination" does not involve the municipal interest (and therefore the Comprehensive Plan), OP must still "implement" the Comprehensive Plan in its interpretation of the Zoning Regulations, D.C. Code § 1-204.23(a), and the Board may not interpret the Zoning Regulations in a manner that is inconsistent with the Comprehensive Plan, *infra* p. 36 note 32.

[15] The purpose of R-1-B zones is to "[p]rotect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes" and "[s]tabilize the residential areas and promote a suitable environment for family life." *Zoning Handbook, Residential (R) Zones*, D.C. OFF. OF ZONING https://handbook.dcoz.dc.gov/pages/e58b30edc820470eae47d762776c350a#R-1B (last accessed Jan. 13, 2025).

The Application sought a purported "mixed-use determination" (the "First Determination") that included the Property, four other residential addresses in the Square, and two religious institutions located on the other side of the Avenue—the entire National Cathedral (the "Cathedral")[16] and the Saint Sophia Greek Orthodox Cathedral ("Saint Sophia"). JA 145–147. The Applicant contended the inclusion of the Cathedral and Saint Sophia was warranted ***only because those buildings "dominate[] the sight lines from the Property and surrounding squares.***" JA 139 (emphasis added).

On November 9, 2022, the Applicant filed its ~~first~~ "updated" mixed-use area determination (the "Second Determination") that included the entire Square, Saint Sophia, the Embassy of Liberia (located as a matter of right on the other side of the Avenue), and limited its inclusion of the Cathedral's grounds to the St. Albans School ("St. Albans"). JA 161, 163–166; *see also* JA 346 (including boundary lines that are not present on JA 163). It believed this "mixed-use area" was "appropriate" because the Property "is virtually in the center" of the Applicant's self-defined "mixed-use" area. JA 161.

The local Advisory Neighborhood Commission ("ANC 3C") opposed the Application in its resolution filed with the Board on November 14, 2022. JA 167–173. ANC 3C argued that the Applicant's proposed mixed-use area did not

[16] The Cathedral comprised 95% of the "mixed-use area" in the First Determination.

accurately reflect the properties adjacent to the Property because (1) the Avenue provides no direct access to the Property,[17] (2) the Avenue is insulated from the Property by private fencing and landscaping, and (3) the Neighborhood is subject to the Comprehensive Plan's protections against chancery encroachment. JA 167–68. ANC 3C argued that the Square was the most appropriate area for the Board to consider. JA 168. An overwhelming majority (86.25%)[18] of the properties within the Square were for residential use, so ANC 3C asked the Board to disapprove the Application. *Id.* ~~JA 168.~~

On December 21, 2022, the Applicant filed its ~~second~~ "updated statement" in support of the Second Determination ~~"updated" mixed-use area statement.~~, JA 174. That statement ~~which~~ included a new mixed-use area determination (the "Third Determination") that "modified the formatting of the map and property list," JA 174, to exclude~~d~~ three federally owned reservations[19] included in the Second Determination, JA 189–190 ~~190~~. The Applicant asserted that this was the most accurate representation of the area at issue because (1) it places the Property, which is located "on the very northeast edge of [the Square]," close to the center; (2) the

[17] The only entrance to and exit from the Property is through 36th Place NW, a street consisting entirely of residential homes. JA 167, 327, 473:15–17.
[18] The other 13.75% is Temple Micah—a long-established synagogue that is for religious use. JA 170, 191.
[19] These reservations are local parks (including Bryce Park and Bishop Aimilianos Laloussis Park) that buffer the Neighborhood. *See* JA 287, 312, 351.

properties on the other side of the Avenue are "visible" from the Property;[20] and (3) the Applicant believed "one would not ***feel*** as if they were exclusively in a single-family residential neighborhood, but rather a relatively busy cross-section with a mix of residential and institutional uses." JA 180–181 (emphasis added).

OP filed its determination of the municipal interest on December 29, 2022.[21] OP asserted that the municipal interest is "synonymous with the District's regulatory requirements, including the zoning regulations, public space requirements,[22] and historic preservation." JA 254. Ignoring the legislative policy of the FMA, the requirements of the Comprehensive Plan, and its responsibility to implement the Plan under the Home Rule Act, OP asserted that the municipal interest only required it to determine whether the Application (1) satisfied the Zoning Regulations' procedures regarding the mixed-use determination, (2) "should not be detrimental to

[20] Notably, the Applicant's sight in the Second and Third Determinations grew to include properties that were not included in the First Determination.

[21] In describing the "Surrounding Neighborhood Character," OP ignored the overwhelmingly residential character of the Neighborhood: "The property is located within two [] half blocks north of the Naval Observatory, and obliquely opposite the National Cathedral across Massachusetts Avenue NW, which is a corridor with a mix of single-family detached homes, embassies, foreign missions, religious institutions, and the Naval Observatory." JA 253.

[22] On December 30, 2022, the District Department of Transportation ("DDOT") submitted an initial report requesting the FMBZA to not act on the Application until the Applicant engaged with DDOT to resolve several public space violations on the Property. JA 250–252. DDOT issued a second report on February 10, 2023, describing the Applicant's plan to correct the issues and recommending approval of the Application. JA 316–317.

the zoning regulations," and (3) violated any public space requirements. JA 254–257. Whether under the Zoning Regulations or the FMA, *see supra* p. 13~~2~~ note 14, to determine whether the Applicant sought to locate a chancery in a "mixed-use area," OP had to interpret the meaning of the word "adjacent" in a manner that implemented the Comprehensive Plan. Using Merriam Webster, it ignored the Zoning Regulations and defined "adjacent" as "*not distant or having a common end point or border immediately proceeding [sic] or following*." JA 255 (emphasis in original).[23]

OP opined that the Property was in a "mixed-use area" because there were several chanceries that were "'not distant' and/or share the common corridor of Massachusetts Avenue" and "within a short walking distance" from the Property. JA 255; *but see* JA 526:3–9 (ANC 3C testimony that these chanceries were at least one-third mile from the Property). OP then concluded that the Application would further serve the municipal interest because it "would not be detrimental to the public good, and would not be contemplated to bring substantial harm to the privacy and use of enjoyment of neighboring property," JA 257, despite substantial local opposition to

[23] The Zoning Regulations (the source of the "mixed-use determination") require undefined terms to be given their meaning in Webster's Unabridged Dictionary—not Merriam Webster's Dictionary. D.C. Mun. Regs. 11.B § 100.1(g). The Webster's Unabridged Dictionary definition is: "a : not distant or far off : nearby but not touching. b : having a common border: living nearby or sitting or standing relatively near or close together." *Adjacent*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED (2002).

the Application, *supra* pp. 14–15; *infra* pp. 18–21. OP did not (1) consider residential properties outside of the Square but within the Neighborhood; (2) use Webster's Unabridged Dictionary to define the term "adjacent"; or (3) implement the Comprehensive Plan's mandates in evaluating the Application or assessing what uses were "adjacent."

From January 9, 2023, through February 15, 2023, direct neighbors of the Property and affected residents of the Neighborhood filed written statements in opposition. In total, twenty-three neighbors filed twenty-two statements opposing the Applicant's proposed chancery. MAHCA and an affected neighbor sought party status in opposition, JA 229–242, a request the FMBZA denied, JA 433:11–13. Five neighbors explained that locating the Chancery in the Square and Neighborhood would violate the Comprehensive Plan's mandates. JA 279 (Frances Francis), 288 (Robert McDiarmid), 376–377 & 514:2–10 (Edward Strohbehn), 390 (Jeffrey Maletta), 391 & 394 (Ann McMaster). The D.C. Councilmember for Ward 3 also noted his opposition to the Application, describing the dangerous precedent a favorable decision could create for the integrity of low-density residential neighborhoods. JA 418–420.

MAHCA offered comments in opposition on February 14, 2023. JA 321–350. It explained that the Applicant's reliance on the Cathedral's grounds (and any property across the Avenue) was "inappropriate" because the Avenue bounds—

rather than connects—the Property and the Cathedral. JA 326; *see also* JA 293 (former ANC representative explaining that the Avenue "bounds and separates rather than unifies the land in question"); JA 396 (pictures showing difference in proximity to the Property between residences in the Square and properties across the Avenue). The Neighborhood's overwhelming residential use and the uses on the other side of the Avenue are not "even remotely similar." JA 328; *compare* JA 368, 397 *with* JA 133–134, 363–367.

MACHA further explained that the Cathedral was not adjacent to the Property because there was "no access to the grounds of [the] National Cathedral from a place that is even remotely adjacent to Square 1931," with the nearest entrance being over one-third mile away. JA 327; *see also* JA 210 (picture showing nearest entrance); JA 312 (picture showing lack of direct entrance at the intersection). MAHCA clarified that the Property and its entrance is oriented toward the Neighborhood. JA 327; *see also* JA 204–206 (pictures showing lack of direct access to the Avenue from the Property).

MAHCA criticized the Applicant's exclusion of ***all*** properties in Square 1933—a residential square directly next to and accessible from the Square—and the Applicant's inclusion of "non-residential use properties ***that are over 3 to 4.5 times further away from the proposed site than properties in Square 1933***." JA 329 (emphasis in original). St. Albans was over one-third of a mile from the Property

while the nearest residential property in Square 1933 was 384 feet away and the farthest property was only 1,0234 feet away. JA 328–329; *see also* JA 339, 343–344. MAHCA observed that this exclusion undermined the Applicant's argument that the Property was in the "center" of its proposed mixed-use area. JA 328. If the FMBZA decided not to disapprove the Application, MAHCA asked the Board to allow it to discuss "reasonable mitigation measures" with the Applicant that the Board should include in the Decision to "ensure harmony between the chancery and low-density residential neighborhood." *See* JA 338.

The Board held its public hearing on February 15, 2023. The Applicant explained that its metric to determine the area most accurately depicting the existing mix of uses adjacent to the Property was the following: "When standing on the property and looking around, we asked ourselves what is nearby or adjacent, that is how we picked these uses." JA 457:10–12; *see also* JA 457:24–458:1 ("[T]his is not simply a view, it's the domination of the sightlines from the property, showing the proximity to the use."). For the first time, the Applicant represented that it, like OP, "thought of Massachusetts Avenue as a connector rather than a boundary." JA 455:18–19.

ANC 3C testified that the Applicant's proposed mixed-use area was absurd because the Applicant "proposes basing a mixed use finding on properties that are across wide arterial roads and parks and up to a quarter mile away, [while] at the

same time it excludes single-family residential properties [in Square 1933] that are closer just half a block away to [sic] the subject parcel." JA 473:22–25. ANC 3C further observed that

> the Applicant's own photos make quite clear the separation and distance of the property from the institutions to the north and east across a four-lane arterial road, two medium sized parks, and a pocket park, and even [the fact that] St. Albans []is separated . . . by . . . a small ravine that requires any vehicle or pedestrian access to go nearly all the way to Wisconsin Avenue or all the way to Fulton Street even to access the property.

JA 475:5–12. Thus, ANC 3C concluded that the Applicant based its "oddly shaped area" on "cherry-pick[ed]" properties across the Avenue that were not truly adjacent to the Property. *See* JA 473:20–21. It also emphasized that approving the Application would "lead to a result that clearly would be contrary to [LU-3.4.1.] in the comprehensive plan and the policies underlying the Foreign Missions Act," JA 476:11–15, because foreign missions would be able to use the Cathedral's extensive grounds to locate in low-density neighborhoods with no chanceries, JA 475:13–476:11.

At the close of the public hearing, the FMBZA asked that the Applicant and ANC 3C ~~be allowed to~~ submit information on their discussions regarding mitigation conditions. JA 402. The Applicant listed several conditions it was "amenable to . . . being included in the final O~~o~~rder." JA 405. MAHCA asserted that inclusion of these conditions would "fulfill the purpose of [the] Comprehensive Plan . . . to take

special care to protect the integrity of residential areas." JA 417 (internal quotation marks ~~citation~~ omitted).[24] The FMBZA had imposed all but one of MAHCA's proposed conditions in past decisions granting the location of chanceries in other low-density residential neighborhoods. JA 411. MAHCA also noted that, even though the Applicant is "amenable" to many of its proposed conditions, the Applicant "has refused to agree to conditions that address the most significant impacts on the adjacent neighbors and the neighborhood, of the type that the FMBZA has included in other chancery cases." JA 412.

B. The FMBZA's Decision

The FMBZA held a public hearing announcing its Decision on March 1, 2023. It issued a written Decision on March 9, 2023. The Board concluded that the "relevant area" was "Square 1931 and portions of Squares 1940, 1942, and 1944, as

[24] MAHCA proposed that the Board limit disruptions to neighbors' daily activities and residential life by conditioning (1) the number of parking spaces reserved for diplomatic parking, (2) the number of on-site vehicles, (3) the number of chancery officials and employees on-site, (4) chancery hours of operation and permissible functions (with exceptions for emergencies), and (5) the number and size of chancery events and activities. It also proposed conditions to maintain the Property's residential appearance through (1) limiting the height of fencing around the Property and maintaining landscaping in front of such fencing, (2) prohibiting installation of additional exterior lighting, towers, or antennae without prior approval, (3) prohibiting installation of visible exterior security cameras and large signage on 36th Place NW, and (4) adding pedestrian gate access from Massachusetts Avenue NW. MAHCA requested that a chancery liaison meet regularly with it and ANC 3C to ensure proper communication and respect for the Neighborhood. JA 411–417.

shown in Exhibit 20A." JA 422.[25] It stated that it "generally concurred" with the Applicant's Third Determination aside from disagreeing "in two respects": (1) the Embassy of Liberia was a "residential use" rather than a "chancery use"; and (2) the Applicant "did not include three federally owned reservations adjacent to the Subject Property in its calculations," but those properties (local [Neighborhood parks)] must be included since they are "adjacent" and for "non-residential use." JA 422–423. Since 76.6% of this area was for non-residential use, the Board concluded that the Application sought to locate in a "mixed-use area." JA 424.

In the Board's view, the area proposed by ANC 3C, members of the Neighborhood, MAHCA, and the D.C. Councilmember for Ward 3—Square 1931—was "overly narrow in this case, as it would not take into account the presence of religious, institutional, and educational uses that also describe the existing mix of uses adjacent to the proposed chancery location." JA 423. The FMBZA asserted that the Property's status as a "corner lot" placed it "in proximity to a number of non-residential uses along Massachusetts Avenue, N.W." *Id*. Thus, the Board "concur[red] with OP" that properties "adjacent to the proposed location" include

[25] The Board believed that, in determining the relevant mixed-use area, it could look beyond Square 1931 since the Applicant "provided the required statement, explaining that Square 1931 and portions of Squares 1942 and 1944 across Massachusetts Avenue, N.W. from the Subject Property most accurately depict that the surrounding area contains a mix of religious uses, educational uses, and detached dwellings." JA 422.

those that are "'not distant' and/or share the common corridor of Massachusetts Avenue."[26] ~~JA 423~~*Id*. It believed a "more expansive" interpretation of "adjacent" was "appropriate," which could include "properties located across streets or alleys from a proposed chancery location." ~~JA 423~~*Id*.[27] The Board rejected MAHCA's argument that the Avenue "provided a natural boundary line" and found "no grounds" for accepting MAHCA's claim that the entrance to the Property was relevant to the mixed-use determination. JA 423–424.

The Board also concluded that the Application satisfied the FMA Criteria. JA 424–426.[28] It deferred entirely to OP's report to find that the Application was in the

[26] The Board gave only lip service to the definition of "adjacent" found in Webster's Unabridged Dictionary by identifying the correct definition in a footnote but choosing instead to rely on OP's expansive definition derived from Merriam Webster's Dictionary. *Compare* JA 423 *with* JA 423 n.5.

[27] The Board's concern that "a narrow definition would disqualify almost every square in the R-1B zone in the District" demonstrates that the Decision was intentionally unwilling to abide by the Comprehensive Plan's definition of the municipal interest, Congress' purpose in enacting the FMA, or the Plan's binding effect on Zoning Regulations. *See* JA 555:19–20.

[28] The Board determined that the Application satisfied the FMA Criteria other than the municipal interest. The Board asserted that the Department of State's letter satisfied the international obligations, protection, and federal interest considerations. JA 424–26; *see also* JA 260–61. Since OP did not state that the Property was either a historical landmark or located in a historic district, the FMBZA concluded that the historic preservation consideration was satisfied. JA 424. Regarding the parking criterion, it was "not persuaded by ~~the~~ testimony in opposition to the application asserting that the intensity of the proposed chancery use would adversely affect traffic and parking in the area" because the Property had two parking spaces and was within walking distance of public transportation, and the Applicant was expecting to have few employees and limited consular-type visitors at the Property. JA 425.

municipal interest: "OP found that the Subject Property is within a mixed-use area consistent with Subtitle X §§ 201.3—201.7 and that the project would not be detrimental to the public good and would not be contemplated to bring substantial harm to the privacy of use and enjoyment of neighboring property." *See* JA 425–426. D.C. Code § 1-309.10(d) required the Board to give "great weight" to the issues and concerns raised by ANC 3C. The Board was not persuaded by ANC 3C's claims regarding the mixed-use determination for the reasons explained *supra* pp. 22–24.[29]

The Board declined to adopt any conditions to protect the Neighborhood's residential character because "the Office of Planning determined that approval of the application will be in the municipal interest without recommending any conditions and that the Board's decision must be based solely on the six criteria listed in the Foreign Missions Act." JA 426 n.7. Instead, the Board "encourage[d]" the Applicant to "continue to cooperate with ANC 3C and interested neighbors on issues that may arise relating to the chancery use at the Subject Property" and noted that "the Applicant responded favorably to [many of MAHCA's proposed] measures." JA 427. The Board explained at the public hearing that it would not include conditions because it purportedly could not "enforce" them. JA 559:19–561:25.

[29] The Board did not give ***any*** "weight" to ANC 3C's contentions (which were supported by the written comments and testimony of many neighbors) that approval of the Application would violate the municipal interest stated in the Comprehensive Plan.

C. The Superior Court Proceedings

On April 18, 2023, MAHCA filed a petition for review of the Decision in the D.C. Superior Court, contending that the Board erred as a matter of law in determining the relevant mixed-use area. JA 5. MAHCA explained in its briefing that the Board's determination of the municipal interest requires compliance with the Comprehensive Plan's mandates, and the Board erred as a matter of law by relying on an unlawful OP report that did not analyze their applicability to the Application. JA 50, 91–95. MAHCA also challenged the Board's definition, interpretation, and application of the term "adjacent," which violated the municipal interest and the Zoning Regulations by ignoring the Comprehensive Plan's "special care" requirement. JA 44–49, 95–100. Finally, MAHCA asserted that the Board unlawfully determined that it could not condition its Decision to protect MAHCA's residential character. JA 51, 100–1.

The FMBZA responded by asserting that the Comprehensive Plan is neither "binding" on the Board nor one of the FMA Criteria. JA 78–81. It also contended that MAHCA's "alternative" reading of the term "adjacent" could not overcome the Board's interpretation even though it considered neither the Comprehensive Plan nor the dictionary definition required by the Zoning Regulations. JA 75–77. The Board contended it could not condition its Decision because it did not have the legal

authority to do so and, even if it had the authority, the Applicant agreed to many (but not all) of MAHCA's proposed conditions. JA 82.

In its Order, the Superior Court held that (1) the Comprehensive Plan does not bind the Board because it is not one of the FMA Criteria, JA 112–13; (2) the Board's definition of "adjacent" was not bound by the Comprehensive Plan and was also supported by substantial evidence, JA 113–15; and (3) the Board's determination of the municipal interest was not arbitrary or capricious because MAHCA "fail[ed] to further explain how the Board's reliance on [OP]'s recommendation was in any way contrary to the *law* or demonstrate *how* the Comprehensive Plan has any bearing on the FMA," JA 115 (emphasis in original). The Superior Court did not address MAHCA's arguments regarding the Board's failure to include conditions in the Decision. MAHCA timely appealed the Superior Court's Order.

V. STANDARD OF REVIEW

"[This Court] review[s] agency decisions on appeal from the Superior Court the same way we review administrative appeals that come to us directly." *R.O.,* 199 A.3d at 1166 (quoting *Dupree v. D.C. Dep't of Corr.*, 132 A.3d 150, 154 (D.C. 2016)). Thus, "in the final analysis," this Court is reviewing the FMBZA's Decision rather than the Superior Court's Order. *See Settlemire v. D.C. Off. of Emp. Appeals*, 898 A.2d 902, 905 n.4 (D.C. 2006) (citing *Raphael v. Okyiri*, 740 A.2d 935, 945 (D.C. 1999)).

"In reviewing a [FM]BZA decision, [this Court] must determine '(1) whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether conclusions legally sufficient to support the decision flow rationally from the findings.'" *Economides v. D.C. Bd. of Zoning Adjustment*, 954 A.2d 427, 433 (D.C. 2008) (quoting *Mendelson v. D.C. Bd. of Zoning Adjustment*, 645 A.2d 1090, 1094 (D.C. 1994)). "[W]here the agency's final decision rests on a question of law, the reviewing court has the greater expertise, and the agency decision is therefore accorded less deference." *Economides*, 954 A.2d at 433 (quoting *Saah v. D.C. Bd. of Zoning Adjustment*, 433 A.2d 1114, 1116 (D.C. 1981)); *see also Georgetown Univ. v. D.C. Dep't of Emp. Servs.*, 971 A.2d 909, 915 (D.C. 2009) (This Court does not "not affirm an administrative determination which reflects a misconception of the relevant law or a faulty application of the law.") (quoting *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 759 (D.C. 2008)).

VI. SUMMARY OF ARGUMENT

As a matter of law, the FMBZA erred by determining that the Application was in the municipal interest without even considering the Comprehensive Plan (which shows that the Application is ***not*** in the municipal interest). The Comprehensive Plan expresses a municipal interest that governs ***all*** chancery applications seeking to locate in low-density residential neighborhoods, and OP is required by the Home

Rule Act to implement that municipal interest. Thus, OP may not ignore the Comprehensive Plan. If the Board determines that a chancery application fulfills the municipal interest based on OP's failure to implement the Plan, then the Board errs as a matter of law because the FMA requires the Board to take into account the municipal interest, lawfully determined, and does not permit the Board to rely on unlawful determinations of that interest. Additionally, where the FMA does not govern, the Board errs as a matter of law by applying the Zoning Regulations in a manner that contravenes the Comprehensive Plan.

If the Board was correct that the Chancery serves the municipal interest, then the Board erred as a matter of law by determining that it could not condition the Decision to protect the Neighborhood's residential character. The FMA and the BZA's enabling statute enable the Board to condition its approval of a chancery application to protect a neighborhood's residential character, and the State Department considers those conditions to be enforceable. For the Board's approval of the Application to remain in the municipal interest, it had to condition its approval on the Applicant's adherence to many conditions that would protect the Neighborhood's residential integrity. Its failure to do so means that the Chancery no longer serves the municipal interest.

VII. ARGUMENT

A. The Board Erred as a Matter of Law by Determining that the Chancery Serves the Municipal Interest and is in a Mixed-Use Area while Disregarding the Comprehensive Plan.

The Superior Court held that this Court's decisions in *Benin* and *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, 530 A.2d 1163 (D.C. 1987) prohibits MAHCA's reliance on the Comprehensive Plan because the Plan is not one of the FMA Criteria. JA 112–13. Neither case supports the Superior Court's argument because neither case analyzed the relationship between the FMA's municipal interest consideration and the Comprehensive Plan—the legal issue at the heart of MAHCA's argument.

In *Benin*, the Embassy of the Republic of Benin sought to locate a 38-foot-tall communications antennae tower in a residential neighborhood—a request the BZA (not the FMBZA) denied by considering only D.C. zoning law governing special exceptions. *Benin*, 534 A.2d at 313. The *Benin* court held that the BZA erred as a matter of law by not treating the application "as a FMA case" and applying *solely* the FMA Criteria in its capacity as the FMBZA. *Id.* at 318. Similarly, the *Dupont* court held that the FMA "establishesd the procedures through which zoning decisions concerning chanceries are to be made" and "preempt[s] any otherwise applicable [procedural] zoning regulations." *Dupont*, 530 A.2d at 1167.

MAHCA does not dispute that the FMA provides the "exclusive procedure" used to make determinations regarding the merits of a chancery application that seeks to locate in a low-density residential neighborhood. *Benin*, 534 A.2d at 318. Instead, MAHCA argues that a proper consideration of the municipal interest as prescribed by the FMA (and, if the municipal interest does not govern the Board's mixed-use determination, proper application of the Zoning Regulations) requires consideration of the Comprehensive Plan. JA 91–95. And if the Board relies on a determination of the municipal interest that contravenes the Comprehensive Plan, then the Board has committed an error of law.

Under the FMA, the Board must consider the FMA Criteria when making its Decision whether to not disapprove the Application. D.C. Code § 6-1306(d). One of the FMA Criteria is the municipal interest. D.C. Code § 6-1306(d)(5); Mayor's Order 83-106 (Apr. 28, 1983) ~~(JA 607)~~. When determining whether a chancery serves the municipal interest, OP must ensure that locating the chancery in a low-density residential neighborhood will satisfy the Comprehensive Plan. *Supra* p. 10.

OP, in contravention of the Home Rule Act, *see supra* p. 10 note 10, disregarded the Comprehensive Plan and asserted that the municipal interest is "synonymous with the District's regulatory requirements, including the zoning regulations, public space requirements, and historic preservation." JA 254. Under that definition, OP considered only whether the Application complied with the

Zoning Regulations regarding the Board's mixed-use determination, ~~was~~ was "not [] detrimental" to the purpose of the Zoning Regulations, would not harm the "public good," and did not violate the District's public space requirements. JA 254–255, 257. OP answered all these questions in the affirmative, so it approved of the Application.[30] OP's faulty understanding of the municipal interest led it to make conclusions that were contrary to the Comprehensive Plan.

At the outset, OP failed to implement the Comprehensive Plan's mandate to "[e]ncourage the development of new chancery facilities in locations where they would support neighborhood revitalization and economic development goals, particularly in federal enclaves and east of 16th Street NW." D.C. Mun. Regs. 10.A § 318.11. This mandate alone should have led OP to find that the Chancery is not in the municipal interest because the Neighborhood is at least 20 blocks ***west*** of 16th Street NW and needs neither "neighborhood revitalization" nor "economic development."

[30] Even under OP's own definition of the municipal interest, which it defined as "synonymous with" the District's "regulatory requirements," OP erred by not implementing the Comprehensive Plan—a regulatory requirement that bears directly on the Application and with which all Zoning Regulations must be consistent. D.C. Code § 6-641.02. Moreover, OP cannot claim that locating a Chancery in the Neighborhood is "not detrimental" to the purpose of the Zoning Regulations without "ensuring compliance with the Comprehensive Plan." *Cf. Youngblood v. D.C. Bd. of Zoning Adjustment*, 262 A.3d 228, 242 (D.C. 2021).

OP also created a definition of "adjacent" that violates the Comprehensive Plan. When analyzing "the existing mix of uses ***adjacent*** to the proposed location of the chancery," D.C. Mun. Regs. 11.X § 201.4 (emphasis added), OP looked for chanceries that were beyond the Square and Neighborhood and over one-third mile from the Property. JA 255, 526:3–9. OP supported its decision by claiming that the word "adjacent" means "'not distant' and/or share the common corridor of Massachusetts Avenue." JA 255. But in implementing the Comprehensive Plan's mandates, OP must "[e]ncourage foreign missions to locate their chancery facilitiesies where ***adjacent*** existing and proposed land uses are compatible (i.e., office, commercial, and mixed-use)" and "[d]iscourage the location of new chanceries in any area that is essentially a residential use area." D.C. Mun. Regs. 10.A § 318.10 (emphasis added). The Plan also requires OP to "tak[e] special care to protect the integrity of residential areas." *Id.*

It is indisputable that the Property is in a Neighborhood that is "essentially a residential use area," *see supra* p. 13, which required OP to encourage the Applicant to locate its Chancery to a more suitable location by recommending the Board to disapprove the Application,. *See supra* p. 10. The Square is 86.25% residential, with the other 13.75% being devoted to a long-standing religious use (i.e., not "office, commercial, and mixed-use"). JA 167. Square 1933—the nearest square to the Square, includes ***only*** residential properties, some of which are no more than **384**

feet from the Property. JA 328–329. That is substantially more "adjacent" than non-residential properties over one-third mile (or 1,760 feet) away. And the Neighborhood at large has only ***one*** commercial use, and that use is located at the opposite corner of the Neighborhood from the Property, on Wisconsin Avenue, NW.[31] JA 171. To be consistent with the Home Rule Act, OP's determination of the municipal interest must implement the Comprehensive Plan's mandates regarding the residential character of the Square and the surrounding Neighborhood.

Yet OP determined that the Application supported the municipal interest and recommended that the Board allow the Chancery to undermine the Neighborhood's residential integrity. By doing so, it allowed the Board to introduce a definition of "adjacent" into its precedent that eviscerates the Comprehensive Plan and fails to take "special care" to protect the residential integrity of other neighborhoods. JA 423 (Board "concurs" with OP's definition "for purposes of making a determination . . . as to whether a low- to medium-density residential zone should be considered a 'mixed-use area'"). As ANC 3C identified at the February 15, 2023, public hearing,

[31] OP also deemed the Cathedral, St. Albans, and St. Sophia to be "adjacent" to the Pproperty even though they are not a part of the Neighborhood. *Supra* pp. 18–20. But even if the Comprehensive Plan allowed OP to determine that the Cathedral, St. Albans, and St. Sophia were "adjacent" to the Property, OP cannot "encourage" the Applicant to locate its Chancery at the Property. The properties across the Avenue are for religious or institutional use and therefore not "compatible" with a chancery because, unlike the Applicant's Chancery, they may locate as a matter-of-right in the R-1-B zone. *See* D.C. Mun. Regs. 11.U § 202.1(lk) ("institutional" and "religious-based uses" may locate in an R-1-B zone as a matter-of-right).

OP and the Board's definition would open swaths of low-density residential neighborhoods to future chancery encroachment. *Supra* p. 21. OP's definition means a chancery applicant need only create an artfully drawn map that transforms a residential neighborhood into a "mixed-use area" (which is purportedly suitable for its chancery) to be in the municipal interest. *See*, *e.g.*, JA 190. This result would be especially harmful to the integrity of neighborhoods that are in the vicinity of the Cathedral's extensive grounds or within a third of a mile of any chancery. *Supra* p. 21.

The Board adopted OP's finding, concluding that the Application was in the municipal interest because the Applicant sought to locate its Chancery "within a mixed-use area consistent with Subtitle X §§ 201.3 - 201.7 and that the project would not be detrimental to the public good and would not be contemplated to bring substantial harm to the privacy of use and enjoyment of neighboring property." JA 425. The Board did not explain in the Decision how the Chancery satisfied the municipal interest stated in the Comprehensive Plan. The Superior Court (without any citation to law) created a rationale for the Board. It erroneously found that "the Board's reliance on the Office of Planning's recommendation" was correct because it "was [not] in any way contrary to the *law*." JA 115 (emphasis in original).

The Superior Court erred as a matter of law. The Board cannot rely on a determination of the municipal interest that violates the Comprehensive Plan

because such reliance would violate the FMA. *Cf. Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 448 (4th Cir. 1996) (holding that agency's "reliance" on study's "inflated estimate of the Project's recreation benefits violated NEPA because it impaired fair consideration of the Project's adverse environmental effects"). Such a reliance would be an affront to the FMA's goals to "accommodate the competing **local** and federal concerns in the District of Columbia," *Benin*, 534 A.2d at 319 (emphasis added), and prohibit chanceries from being "located in any area which is **essentially a residential area**." H. R. Rep. No. 97-693, at 41 (1982) (Conf. Rep.) (emphasis added). Moreover, the Comprehensive Plan's mandates are of the utmost importance to the Board's determination because they directly represent the "aspirations of District residents" to prevent foreign missions from locating chanceries in essentially residential areas like the Neighborhood. *See* D.C. Code § 1-306.01(b)(1). The Board's adoption of OP's unlawful determination of the municipal interest is an error of law that this Court must reverse.[32]

[32] If the Board's "mixed-use determination" does not require consideration of the municipal interest, then the Board still erred as a matter of law by not considering the Comprehensive Plan. The Board's reliance on OP's definition of "adjacent" for its "mixed-use determination" created a lasting rule under the Zoning Regulations that contravenes the Comprehensive Plan. *Supra* pp. 34–35. Since the Zoning Enabling Act prescribes that the Zoning Regulations must "not be inconsistent" with the Comprehensive Plan, D.C. Code § 6-641.02; D.C. Mun. Regs. 11.A § 101.2, the Board's definition exceeds its statutory authority, D.C. Code § 6-641.07(e) ("The Board of Adjustment **shall not** have the power to amend any regulation or map.") (emphasis added).

B. The Board Erred as a Matter of Law by Holding That It Could Not Condition the Decision

If the Court finds that the Board correctly held that the Chancery serves the municipal interest, then MAHCA challenges the Board's failure to include conditions in its Decision. Inexplicably, the Superior Court did not decide this issue in its Order. MAHCA respectfully requests this Court to rule on the merits of this issue given that (1) MAHCA and the FMBZA fully briefed this issue in the Superior Court, (2) remand to the Superior Court would be unnecessary given that this case is a review of legal errors in a FMBZA Decision and involves a factual record that was developed fully before the FMBZA, and (3) failure to rule on this issue would further exacerbate any decision upholding the FMBZA's failure to lawfully determine the municipal interest in light of the Comprehensive Plan and other governing authority, causing irreparable injury to the Neighborhood's residential integrity and therefore MAHCA. *Cf. Long v. U.S.*, 312 A.3d 1247, 1258 (D.C. 2024) (explaining that this Court has "discretion" to decide any "issue [that] was not raised in or decided by the trial court" even if it was "raised for the first time on appeal") (internal citation omitted).

In its Decision, the Board argued that it declined to adopt MACHA's proposed conditions because "the Office of Planning determined that approval of the application will be in the municipal interest without recommending any conditions and that the Board's decision must be based solely on the six criteria listed in the

Foreign Missions Act." JA 426 n.7; *see also* JA 82 ("[I]t is questionable whether the Board could even impose the conditions [MAHCA] seeks . . ."). At the public hearing, the Board revealed that its true concern was that it would not have jurisdiction to enforce any conditions it imposed. JA 559:19–561:25. The Board's explanation defiesy the law.[33]

The Board can include conditions in the Decision. The BZA's enabling statute allows the FMBZA to condition its approval of a special exception—which is exactly what the Applicant requests from the Board in attempting to locate the Chancery in the Neighborhood. *President & Directors of Georgetown Coll. v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 69 (D.C. 2003) ("Implicit in the Board's power to grant special exceptions is the authority to place reasonable conditions upon such approval."). Even the FMA lets the FMBZA impose "limitations and conditions" on chanceries in low-density residential neighborhoods so long as they do "not exceed those applicable to other office or institutional uses in that area." D.C. Code § 6-1306(b)(3); *see also* H. R. Rep. No. 97-693, at 41 (1982) (Conf. Rep.) ("Section 206(b)(3) precludes the imposition of limitations and conditions on chanceries greater than those placed on other office or institutional uses. This insures

[33] The Board also cited (in its Decision and before the Superior Court) the Applicant's openness to many of MAHCA's conditions as a reason not to include them in the Decision. JA 82, 427. But it defies logic to deny MAHCA's request for conditions on this basis, because, if the Applicant approves of the conditions, then the Board has no reason not to memorialize them in the Decision.

[sic] treatment for chancery uses equal to that accorded ~~to~~ comparable uses in the same area."). Notably, in prior decisions, the Board has implemented all but one of MAHCA's proposed conditions. *Supra* p. 22.

The Board suggested that it could not include MAHCA's conditions without an explicit finding by OP that the conditions would serve the municipal interest. But the Board's own precedent shows that this is not the case. And as discussed *infra* p. 41, the Chancery can only serve the municipal interest if the Board imposes those conditions.

In a decision on the Embassy of the Republic of Benin's application to locate a chancery in an R-1-B zone, the Board included "numerous conditions designed to maintain the premises in a manner consistent with the residential character of the neighborhood" despite the absence of an OP recommendation to do so. *Application of the Embassy of the Republic of Benin*, Board of Zoning Adjustment Order No. 16519, at 11 (decided Jan. 5, 2000) (JA 575). But the Board included these conditions even though OP "questioned whether the proposed chancery was in the municipal interest, but did not make a recommendation as to the Board's determination with respect to the municipal interest." *Id.*

In a decision on the Embassy of the Republic of the Gambia's application to locate a chancery in a D-overlay district and R-1-B zone, OP found that the application was in the municipal interest without any mention of conditions.

Application of the Republic of the Gambia, Board of Zoning Adjustment Order No. 19301, at 4 (decided July 12, 2016) (JA 601). The local ANC did not disapprove of the application so long as the Board adopted certain conditions. *Id.* at 5 (JA 602). In response, the Board "modified the language of several conditions, for clarity, based on testimony of the Applicant, ANC 4A Commissioner David Wilson, and the representative of the Department of State," and then conditioned its approval on those conditions. *Id.*

The conditions that the Board issues are enforceable. The FMA provides that "[t]he Secretary [of State] shall require foreign missions to comply substantially with District of Columbia building and related codes." D.C. Code § 6-1306(g). Thus, the Board has recognized that "[w]hen the Board includes conditions in its order on a chancery application, the State Department considers those conditions enforceable in the same manner and to the same extent as the building and related codes of the District of Columbia." *Application of the Embassy of the Republic of Latvia*, Board of Zoning Adjustment Order No. 16739, at 9 (decided October 16, 2001)) (JA 591).

The Board has even provided an enforcement procedure for District residents to follow if they perceive that a foreign mission has violated its conditions:

> (1) The complaining party should first contact the pertinent Embassy to discuss the matter.
> (2) If that fails, the next step would be to request the relevant District of Columbia agency to investigate the matter and certify to the State Department that a violation has occurred.

> (3) The State Department will then take up the matter diplomatically with the Foreign Mission.
> (4) In the case of exigent circumstances, complaints should be referred directly to the State Department.

Id. at 10 (JA 592).

The Board's failure to include conditions in its Decision (which it has the legal ability to do) violated the municipal interest. The Comprehensive Plan requires "taking special care to protect the integrity of residential areas." D.C. Mun. Regs. 10.A § 318.10. By allowing the Applicant to locate its Chancery without any binding conditions on its occupancy, the Applicant is free to modify the Chancery in a manner that threatens the Neighborhood's residential character. *See supra* pp. 21–22. ~~22.~~ Members of MAHCA will have no reasonable mechanism to hold the Applicant responsible for its actions. If the Court determines that the FMBZA correctly held that the Chancery serves the municipal interest (which it does not), then this Court, at the minimum, should hold that the Board has the authority to condition a "does not disapprove" order in an FMA proceeding and must hear and determine whether to impose conditions, such as those proposed by MAHCA, adequate to "fulfill the purpose of [the] Comprehensive Plan," JA 417.

VIII. CONCLUSION

The Decision was unlawful because the Board (1) disregarded the Comprehensive Plan in its determination of the municipal interest and in its mixed-use determination and (2) determined that it could not include conditions to protect

the Neighborhood's residential character from the impact of the Chancery. MAHCA requests that this Court vacate the Board's entire Decision. Alternatively, if it does not vacate the Board's Decision not to disapprove the Application, it should require the Board to impose conditions consistent with the Comprehensive Plan. In either case, this Court should remand this matter to the Superior Court for further proceedings consistent with this Court's findings.[34]

Respectfully submitted,

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[34] Should this Court vacate and remand the Decision, MAHCA notes that the Applicant relied on the Decision before all MAHCA's appeal rights were exhausted at its own peril. *See Draude v. D.C. Bd. of Zoning Adjustment*, 582 A.2d 949, 951 n.1 (D.C. 1990); *Interdonato v. D.C. Bd. of Zoning Adjustment*, 429 A.2d 1000, 1004 (D.C. 1981). MAHCA also notes that, during the remand period, the Applicant would be able to use the Property as its embassy, which it may do so as a matter of right under the Zoning Regulations. D.C. Mun. Regs. 11.~~A~~B § 100.2 (defining an "embassy" as "t~~[t]~~he official residence of an ambassador or other chief of a diplomatic mission, or that portion of a combined chancery/embassy devoted to use as such official residence"); JA 422 n.1 (an "embassy" is considered a "residential use").

CERTIFICATE OF SERVICE

I certify that on this 16~~3~~th day of January, 2024, a copy of the foregoing was served via the Court's electronic filing and service system on all parties:

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/s/ Paul A. Cunningham
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ADDENDUM

Exhibit A: Foreign Missions Act, as codified in the D.C. Code.

Exhibit B: H. R. Rep. No. 97-693

Exhibit C: S. Rep. No. 97-329

Exhibit D: Foreign Missions Section of the Comprehensive Plan

Exhibit E: Report of the Council of the District of Columbia, Committee of the Whole, on Bill 13-108, the "Comprehensive Plan Technical Corrections and Response to NCPC Recommendations, and Closing of a Public Alley in Square 1189, S.O. 98-150, Act of 1999" (March 16, 1999)

Exhibit F: Relevant Zoning Regulations

Exhibit G: Mayor's Order 83-25

Exhibit H: Mayor's Order 83-106

EXHIBIT A

Code of the District of Columbia

Chapter 13. Regulation of Foreign Missions.

§ 6–1301. Congressional findings and policy.

§ 6–1302. Definitions.

§ 6–1303. Office of Foreign Missions.

§ 6–1304. Provision of benefits.

§ 6–1304.01. Notice of lapse of termination of liability insurance; report of motor vehicles, vessels, and aircraft owned by members of mission; fee for unsatisfied judgments or damages.

§ 6–1305. Property.

§ 6–1306. Location in District.

§ 6–1307. Preemption.

§ 6–1308. Administrative provisions.

§ 6–1309. Application to international organizations.

§ 6–1309.01. United States responsibilities for employees of the United Nations.

§ 6–1310. Privileges and immunities.

§ 6–1311. Enforcement.

§ 6–1312. Presidential approved procedures and guidelines.

§ 6–1313. Extraordinary protective services.

§ 6–1314. Use of foreign mission in a manner incompatible with its status as a foreign mission.

§ 6–1315. Application of travel restrictions to personnel of certain countries and organizations.

§ 6–1301. Congressional findings and policy.

(a) The Congress finds that the operation in the United States of foreign missions and public international organizations and the official missions to such organizations, including the permissible scope of their activities and the location and size of their facilities, is a proper subject for the exercise of federal jurisdiction.

(b) The Congress declares that it is the policy of the United States to support the secure and efficient operation of United States missions abroad, to facilitate the secure and efficient operation in the United States of foreign missions and public international organizations and the official missions to such organizations, and to assist in obtaining appropriate benefits, privileges, and immunities for those missions and organizations and to require their observance of corresponding obligations in accordance with international law.

(c) The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory

represented by that foreign mission, as well as matters relating to the protection of the interests of the United States.

(Aug. 24, 1982, 96 Stat. 283, Pub. L. 97-241, § 202(b); Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 127(a).)

Prior Codifications

1981 Ed., § 5-1201.

Section References

This section is referenced in § 6-1309.

Effective Dates

Section 204 of Public Law 97-241 provided that the amendments made by title II shall take effect on October 1, 1982.

§ 6–1302. Definitions.

(a) For purposes of this chapter:

(1) "Benefit" (with respect to a foreign mission) means any acquisition, or authorization for an acquisition, in the United States by or for a foreign mission, including the acquisition of: (A) real property by purchase, lease, exchange, construction, or otherwise; (B) public services, including services relating to customs, importation, and utilities, and the processing of applications or requests relating to public services; (C) supplies, maintenance, and transportation; (D) locally engaged staff on a temporary or regular basis; (E) travel and related services; and (F) protective services; and includes such other benefits as the Secretary may designate;

(2) "Chancery" means the principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), and includes the site and any building on such site which is used for such purposes;

(3) "Director" means the Director of the Office of Foreign Missions established pursuant to § 6-1303(a);

(4) "Foreign mission" means any mission to or agency in the United States involving diplomatic, consular, or other governmental activities of: (A) a foreign government; or (B) an organization (other than an international organization, as defined in § 6-1309(b)) representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States or which engages in some aspect of the conduct of the international affairs of such territory or political entity; including any real property of such a mission and including the personnel of such a mission;

(5) "Real property" includes any right, title, or interest in or to, or the beneficial use of, any real property in the United States, including any office or other building;

(6) "Secretary" means the Secretary of State;

(7) "Sending state" means the foreign government, territory, or political entity represented by a foreign mission; and

(8) "United States" means, when used in a geographic sense, the several states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(b) Determinations with respect to the meaning and applicability of the terms used in subsection (a) of this section shall be committed to the discretion of the Secretary.

(Aug. 24, 1982, 96 Stat. 283, Pub. L. 97-241, § 202; Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 127(b).)

Prior Codifications

1981 Ed., § 5-1202.

Section References

This section is referenced in § 6-1307 and § 6-1309.01.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6–1303. Office of Foreign Missions.

(a) The Secretary shall establish an Office of Foreign Missions as an office within the Department of State. The Office shall be headed by a Director, appointed by the President by and with the advice and consent of the Senate, who shall perform his or her functions under the supervision and direction of the Secretary. The Secretary may delegate this authority for supervision and direction of the Director only to the Deputy Secretary of State or an Under Secretary of State. The Director shall have the rank of ambassador. The Director shall be an individual who is a member of the Foreign Service, who has been a member of the Foreign Service for at least 10 years, who has significant administrative experience, and who has served in countries in which the United States has had significant problems in assuring the secure and efficient operations of its missions as the result of the actions of other countries.

(b) There shall also be a Deputy Director of the Office of Foreign Missions who shall be an individual who has served in the United States intelligence community.

(c) The Secretary may authorize the Director to:

(1) Assist agencies of federal, state, and municipal government with regard to ascertaining and according benefits, privileges, and immunities to which a foreign mission may be entitled;

(2) Provide or assist in the provision of benefits for or on behalf of a foreign mission in accordance with § 6-1304; and

(3) Perform such other functions as the Secretary may determine necessary in furtherance of the policy of this chapter.

(Aug. 24, 1982, 96 Stat. 284, Pub. L. 97-241, § 202(b); Nov. 22, 1983, 97 Stat. 1017, Pub. L. 98-164, § 604(a), (b).)

Prior Codifications

1981 Ed., § 5-1203.

Section References

This section is referenced in § 6-1302 and § 6-1307.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6–1304. Provision of benefits.

(a) Upon the request of a foreign mission, benefits may be provided to or for that foreign mission by or through the Director on such terms and conditions as the Secretary may approve.

(b) If the Secretary determines that such action is reasonably necessary on the basis of reciprocity or otherwise:

(1) To facilitate relations between the United States and a sending state;

(2) To protect the interests of the United States;

(3) To adjust for costs and procedures of obtaining benefits for missions of the United States abroad; or

(4) To assist in resolving a dispute affecting United States interests and involving a foreign mission or sending state, then the Secretary may require a foreign mission: (A) to obtain benefits from or through the Director on such terms and conditions as the Secretary may approve; or (B) to forego the acceptance, use, or relation of any benefit or to comply with such terms and conditions as the Secretary may determine as a condition to the execution or performance in the United States of any contract or other agreement,

the acquisition, retention, or use of any real property, or the application for or acceptance of any benefit (including any benefit from or authorized by any federal, state, or municipal governmental authority, or any entity providing public services).

(c) Terms and conditions established by the Secretary under this section may include:

(1) A requirement to pay to the Director a surcharge or fee; and

(2) A waiver by a foreign mission (or any assignee of or person deriving rights from a foreign mission) of any recourse against any governmental authority, any entity providing public services, any employee or agent of such an authority or entity, or any other person, in connection with any action determined by the Secretary to be undertaken in furtherance of this chapter.

(d) For purposes of effectuating a waiver of recourse which is required under this section, the Secretary may designate the Director or any other officer of the Department of State as the agent of a foreign mission (or of any assignee of or person deriving rights from a foreign mission). Any such waiver by an officer so designated shall for all purposes (including any court or administrative proceeding) be deemed to be a waiver by the foreign mission (or the assignee of or other person deriving rights from a foreign mission).

(e) Nothing in this chapter shall be deemed to preclude or limit in any way the authority of the United States Secret Service to provide protective services pursuant to § 3056 or §

3056A of Title 18, United States Code, at a level commensurate with protective requirements as determined by the United States Secret Service.

(Aug. 24, 1982, 96 Stat. 284, Pub. L. 97-241, § 204; Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, §§ 126(b), 127(c); Mar. 9, 2006, 120 Stat. 255, Pub. L. 109-177, § 605(d)(2).)

Prior Codifications

1981 Ed., § 5-1204.

Section References

This section is referenced in § 6-1303, § 6-1307, and § 6-1309.

Effect of Amendments

Pub. L. 109-177, in subsec. (e), substituted "§ 3056 or § 3056A" for " § 202 of Title 3, United States Code or § 3056".

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

Section 126(e) of Pub. L. 99-93 provided that the amendments made by the section shall take effect on October 1, 1985.

§ 6–1304.01. Notice of lapse of termination of liability insurance; report of motor vehicles, vessels, and aircraft owned by members of mission; fee for unsatisfied judgments or damages.

(a)(1) The head of a foreign mission shall notify promptly the Director of the lapse or termination of any liability insurance coverage held by a member of the mission, by a member of the family of such member, or by an individual described in § 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946.

(2) Not later than February 1 of each year, the head of each foreign mission shall prepare and transmit to the Director a report including a list of motor vehicles, vessels, and aircraft registered in the United States by members of the mission, members of the families of such members, individuals described ins § 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, and by the mission itself. Such list shall set forth for each such motor vehicle, vessel, or aircraft:

(A) The jurisdiction in which it is registered;

(B) The name of the insured;

(C) The name of the insurance company;

(D) The insurance policy number and the extent of insurance coverage; and

(E) Such other information as the Director may prescribe.

(b) Whenever the Director finds that a member of a foreign mission, a member of the family of such member, or an individual described in § 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946: (1) is at fault for personal injury, death, or property damage arising out of the operation of a motor vehicle, vessel, or aircraft in the United States; (2) is not covered by liability insurance; and (3) has not satisfied a court-rendered judgment against him or is not legally liable, the Director shall impose a surcharge or fee on the foreign mission of which such member or individual is a part, amounting to the unsatisfied portion of the judgment rendered against such member or individual or, if there is no court-rendered judgment, an estimated amount of damages incurred by the victim. The payment of any such surcharge or fee shall be available only for compensation of the victim or his estate.

(c) For purposes of this section:

(1) The term “head of a foreign mission” has the same meaning as is ascribed to the term “head of a mission” in Article 1 of the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227); and

(2) The terms “members of a mission” and “family” have the same meaning as is ascribed to them by paragraphs (1) and (2) of § 2 of the Diplomatic Relations Act (22 U.S.C. § 254a).

(Aug. 24, 1982, Pub. L. 97-241, § 204A; as added Nov. 22, 1983, 97 Stat. 1017, Pub. L. 98-164, § 204A.)

Prior Codifications

1981 Ed., § 5-1204.1.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6–1305. Property.

(a)(1) The Secretary shall require any foreign mission, including any mission to an international organization (as defined in § 6-1309(b)(2)), to notify the Director prior to any proposed acquisition, or any proposed sale or other disposition, of any real property by or on behalf of such mission. The foreign mission (or other party acting on behalf of the foreign mission) may initiate or execute any contract, proceeding, application, or other action required for the proposed action:

(A) Only after the expiration of the 60-day period beginning on the date of such notification (or after the expiration of such shorter period as the Secretary may specify in a given case); and

(B) Only if the mission is not notified by the Secretary within that period that the proposal has been disapproved; however, the Secretary may include in such a notification such terms and conditions as the Secretary may determine appropriate in order to remove the disapproval.

(2) For purposes of this section, “acquisition” includes any acquisition or alteration of, or addition to, any real property or any change in the purpose for which real property is used by a foreign mission.

(b) The Secretary may require any foreign mission to divest itself of, or forego the use of, any real property determined by the Secretary:

(1) Not to have been acquired in accordance with this section;

(2) To exceed limitations placed on real property available to a United States mission in the sending state; or

(3) Where otherwise necessary to protect the interests of the United States.

(c) If a foreign mission has ceased conducting diplomatic, consular, and other governmental activities in the United States and has not designated a protecting power or other agent approved by the Secretary to be responsible for the property of that foreign mission, the Secretary:

(1) Until the designation of a protecting power or other agent approved by the Secretary, may protect and preserve any property of that foreign mission; and

(2) May authorize the Director to dispose of such property at such time as the Secretary may determine after the expiration of the 1-year period beginning on the date that the foreign mission ceased those activities, and may remit to the sending state the net proceeds from such disposition.

(Aug. 24, 1982, 96 Stat. 285, Pub. L. 97-241, § 205; Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 127(d), (e).)

Prior Codifications

1981 Ed., § 5-1205.

Section References

This section is referenced in § 6-1306 and § 6-1307.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6–1306. Location in District.

(a) The location, replacement, or expansion of chanceries in the District of Columbia shall be subject to this section.

(b)(1) A chancery shall be permitted to locate as a matter of right in any area which is zoned commercial, industrial, waterfront, or mixed-use (CR).

(2) A chancery shall also be permitted to locate: (A) in any area which is zoned medium-high or high density residential; and (B) in any other area, determined on the basis of existing uses, which includes office or institutional uses, including, but not limited to, any area zoned mixed-use diplomatic or special purpose; subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with this section.

(3) In each of the areas described in paragraphs (1) and (2) of this subsection, the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses in that area.

(c)(1) If a foreign mission wishes to locate a chancery in an area described in subsection (b)(2) of this section, or wishes to appeal an administrative decision relating to a chancery based in whole or in part upon any zoning map or regulation, it shall file an application with the Board of Zoning Adjustment which shall publish notice of that application in the District of Columbia Register.

(2) Regulations issued to carry out this section shall provide appropriate opportunities for participation by the public in proceedings concerning the location, replacement, or expansion of chanceries.

(3) A final determination concerning the location, replacement, or expansion of a chancery shall be made not later than 6 months after the date of the filing of an application with respect to such location, replacement, or expansion. Such determination shall not be subject to the administrative proceedings of any other agency or official except as provided in this chapter.

(d) Any determination concerning the location of a chancery under subsection (b)(2) of this section, or concerning an appeal of an administrative decision with respect to a chancery based in whole or in part upon any zoning regulation or map, shall be based solely on the following criteria:

(1) The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation’s Capital;

(2) Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and federal regulations

governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks;

(3) The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary, after consultation with federal agencies authorized to perform protective services;

(4) The extent to which the area is capable of being adequately protected, as determined by the Secretary, after consultation with federal agencies authorized to perform protective services;

(5) The municipal interest, as determined by the Mayor of the District of Columbia; and

(6) The federal interest, as determined by the Secretary.

(e)(1) Regulations, proceedings, and other actions of the National Capital Planning Commission, the Zoning Commission for the District of Columbia, and the Board of Zoning Adjustment affecting the location, replacement, or expansion of chanceries shall be consistent with this section (including the criteria set out in subsection (d) of this section) and shall reflect the policy of this chapter.

(2) Proposed actions of the Zoning Commission concerning implementation of this section shall be referred to the National Capital Planning Commission for review and comment.

(f) Regulations issued to carry out this section shall provide for proceedings of a rule-making and not of an adjudicatory nature.

(g) The Secretary shall require foreign missions to comply substantially with District of Columbia building and related codes in a manner determined by the Secretary to be not inconsistent with the international obligations of the United States.

(h) Approval by the Board of Zoning Adjustment or the Zoning Commission or, except as provided in § 6-1305, by any other agency or official is not required:

(1) For the location, replacement, or expansion of a chancery to the extent that authority to proceed, or rights or interests, with respect to such location, replacement, or

expansion were granted to or otherwise acquired by the foreign mission before October 1, 1982; or

(2) For continuing use of a chancery by a foreign mission to the extent that the chancery was being used by a foreign mission on October 1, 1982.

(i)(1) The President may designate the Secretary of Defense, the Secretary of the Interior, or the Administrator of General Services (or such alternate as such official may from time to time designate) to serve as a member of the Zoning Commission in lieu of the Director of the National Park Service whenever the President determines that the Zoning Commission is performing functions concerning the implementation of this section.

(2) Whenever the Board of Zoning Adjustment is performing functions regarding an application by a foreign mission with respect to the location, expansion, or replacement of a chancery:

(A) The representative from the Zoning Commission shall be the Director of the National Park Service or if another person has been designated under paragraph (1) of this subsection, the person so designated; and

(B) The representative from the National Capital Planning Commission shall be the Executive Director of that Commission.

(j) Provisions of law (other than this chapter) applicable with respect to the location, replacement, or expansion of real property in the District of Columbia shall apply with respect to chanceries only to the extent that they are consistent with this section.

(Aug. 24, 1982, 96 Stat. 286, Pub. L. 97-241, § 206.)

Prior Codifications

1981 Ed., § 5-1206.

Section References

This section is referenced in § 6-1309 and § 6-1403.

Cross References

Application of construction code, see § 6-1403.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

Delegation of Authority

Delegation of authority under Law 97-241, see Mayor's Order 83-106, April 28, 1983.

§ 6–1307. Preemption.

Notwithstanding any other law, no act of any federal agency shall be effective to confer or deny any benefit with respect to any foreign mission contrary to this chapter. Nothing in § 6-1302, § 6-1303, § 6-1304, or § 6-1305 may be construed to preempt any state or municipal law or governmental authority regarding zoning, land use, health, safety, or

welfare, except that a denial by the Secretary involving a benefit for a foreign mission within the jurisdiction of a particular state or local government shall be controlling.

(Aug. 24, 1982, 96 Stat. 288, Pub. L. 97-241, § 207.)

Prior Codifications

1981 Ed., § 5-1207.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6–1308. Administrative provisions.

(a) The Secretary may issue such regulations as the Secretary may determine necessary to carry out the policy of this chapter.

(b) Compliance with any regulation, instruction, or direction issued by the Secretary under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court or administrative proceeding for, or with respect to, anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued by the Secretary under this chapter.

(c) For purposes of administering this chapter:

(1) The Secretary may accept details and assignments of employees of federal agencies to the Office of Foreign Missions on a reimbursable or nonreimbursable basis (with any such reimbursements to be credited to the appropriations made available for the salaries and expenses of officers and employees of the employing agency); and

(2) The Secretary may, to the extent necessary to obtain services without delay, exercise his authority to employ experts and consultants under § 3109 of Title 5, United States Code, without requiring compliance with such otherwise applicable requirements for that employment as the Secretary may determine, except that such employment shall be terminated after 60 days if by that time those requirements are not complied with.

(d) Contracts and subcontracts for supplies or services, including personal services, made by or on behalf of the Director shall be made after advertising, in such manner and at such times as the Secretary shall determine to be adequate to ensure notice and opportunity for competition, except that advertisement shall not be required when: (1) the Secretary determines that it is impracticable or will not permit timely performance to obtain bids by advertising; or (2) the aggregate amount involved in a purchase of supplies or procurement of services does not exceed $10,000. Such contracts and subcontracts may be entered into without regard to laws and regulations otherwise applicable to solicitation, negotiation, administration, and performance of government contracts. In awarding contracts, the Secretary may consider such factors as relative quality and availability of supplies or services and the compatibility of the supplies or services with implementation of this chapter.

(e) The head of any federal agency may, for purposes of this chapter:

(1) Transfer or loan any property to, and perform administrative and technical support functions and services for the operations of, the Office of Foreign Missions (with reimbursements to agencies under this paragraph to be credited to the current applicable appropriation of the agency concerned); and

(2) Acquire and accept services from the Office of Foreign Missions, including (whenever the Secretary determines it to be in furtherance of the purposes of this chapter) acquisitions without regard to laws normally applicable to the acquisition of services by such agency.

(f) Assets of or under the control of the Office of Foreign Missions, wherever situated, which are used by or held for the use of a foreign mission shall not be subject to attachment, execution, injunction, or similar process, whether intermediate or final.

(g) Except as otherwise provided, any determination required under this chapter shall be committed to the discretion of the Secretary.

(h)(1) In order to implement this chapter, the Secretary may transfer to the working capital fund established by § 13 of this act such amounts available to the Department of State as may be necessary.

(2) All revenues, including proceeds from gifts and donations, received by the Director or the Secretary in carrying out this chapter may be credited to the working capital fund established by § 13 of this act and shall be available for purposes of this chapter in accordance with that section.

(3) Only amounts transferred or credited to the working capital fund established by § 13 of this act may be used in carrying out the functions of the Secretary or the Director under this chapter.

(Aug. 24, 1982, 96 Stat. 288, Pub. L. 97-241, § 208.)

Prior Codifications

1981 Ed., § 5-1208.

Section References

This section is referenced in § 6-1313.

References in Text

"§ 13 of this act," referred to throughout subsection (h) of this section, is § 13 of the Act of August 24, 1982, 96 Stat. 288, Pub. L. 97-241.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6–1309. Application to international organizations.

(a) The Secretary may make § 6-1306, or any other provision of this chapter, applicable with respect to an international organization to the same extent that it is applicable with respect to a foreign mission if the Secretary determines that such application is necessary to carry out the policy set forth in § 6-1301(b) and to further the objectives set forth in § 6-1304(b).

(b) For purposes of this section, "international organization" means:

(1) a public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. §§ 288 — 288f-4) or a public international organization created pursuant to a treaty or other international agreement as an instrument through or by which 2 or more foreign governments engage in some aspect of their conduct of international affairs; and

(2) an official mission (other than a United States mission) to such a public international organization; including any real property of such an organization or mission

and including the personnel of such an organization or mission.

(Aug. 24, 1982, 96 Stat. 289, Pub. L. 97-241, § 209.)

Prior Codifications

1981 Ed., § 5-1209.

Section References

This section is referenced in § 6-1302, § 6-1305, § 6-1314, and § 6-1315.

References in Text

The "International Organizations Immunities Act," referred to in (b), is the Act of Dec. 29, 1945, C. 652, 59 Stat. 669, as amended, and is codified as 22 U.S.C. §§ 288—288f-4.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6–1309.01. United States responsibilities for employees of the United Nations.

(a) Findings. — The Congress finds that:

(1) Pursuant to the Agreement Between the United States and the United Nations Regarding the Headquarters of the United Nations (authorized by Public Law 80-357 (22 U.S.C. § 287 note)), the United States has accepted:

(A) The obligation to permit and to facilitate the right of individuals, who are employed by or are authorized by the United Nations to conduct official business in connection with that organization or its agencies, to enter into and exit from the United States for purposes of conducting official activities within the United Nations Headquarters District, subject to regulation as to points of entry and departure; and

(B) The implied obligation to permit and to facilitate the acquisition of facilities in order to conduct such activities within or in proximity to the United Nations Headquarters District, subject to reasonable regulation including regulation of the location and size of such facilities; and

(2) Taking into account paragraph (1) of this subsection and consistent with the obligation of the United States to facilitate the functioning of the United Nations, the United States has no additional obligation to permit the conduct of any other activities, including nonofficial activities, by such individuals outside of the United Nations Headquarters District.

(b) Activities of United Nations employees. — (1) The conduct of any activities, or the acquisition of any benefits (as defined in § 6-1302(a)(1)), outside the United Nations Headquarters District by any individual employed by, or authorized by the United Nations to conduct official business in connection with, that organization or its agencies, or by any person or agency acting on behalf thereof, may be permitted or denied or subject to reasonable regulation, as determined to be in the best interests of the United States and pursuant to this title.

(2) The Secretary shall apply to those employees of the United Nations Secretariat who are nationals of a foreign country or members of a foreign mission all terms, limitations, restrictions, and conditions which are applicable pursuant to this title to the members of that country's mission or of any other mission to the United Nations unless the Secretary determines and reports to the Congress that national security and foreign policy circumstances require that this paragraph be waived in specific circumstances.

(c) Reports. — The Secretary shall report to the Congress:

(1) Not later than 30 days after August 16, 1985, on the plans of the Secretary for implementing this section; and

(2) Not later than 6 months thereafter, on the actions taken pursuant to those plans.

(d) United States nationals. — This section shall not apply with respect to any United States national.

(e) Definitions. — For purposes of this section, the term "United Nations Headquarters District" means the area within the United States which is agreed to by the United Nations and the United States to constitute such a district, together with such other areas as the

Secretary of State may approve from time to time in order to permit effective functioning of the United Nations or missions to the United Nations.

(Aug. 24, 1982, Pub. L. 97-241, § 209A; as added Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 141.)

Prior Codifications

1981 Ed., § 5-1209.1.

References in Text

"This title," referred to subsection (b)(1) and (2), is the Act of August 24, 1982, Pub. L. 97-241, § 209A.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6–1310. Privileges and immunities.

Nothing in this chapter shall be construed to limit the authority of the United States to carry out its international obligations, or to supersede or limit immunities otherwise available by law. No act or omission by any foreign mission, public international organization, or official mission to such an organization, in compliance with this chapter shall be deemed to be an implied waiver of any immunity otherwise provided for by law.

(Aug. 24, 1982, 96 Stat. 290, Pub. L. 97-241, § 210.)

Prior Codifications

1981 Ed., § 5-1210.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6–1311. Enforcement.

(a) It shall be unlawful for any person to make available any benefits to a foreign mission contrary to this chapter. The United States, acting on its own behalf or on behalf of a foreign mission, has standing to bring or intervene in an action to obtain compliance with this chapter, including any action for injunctive or other equitable relief.

(b) Upon the request of any federal agency, any state or local government agency, or any business or other person that proposes to enter into a contract or other transaction with a foreign mission, the Secretary shall advise whether the proposed transaction is prohibited by any regulation or determination of the Secretary under this chapter.

(Aug. 24, 1982, 96 Stat. 290, Pub. L. 97-241, § 211.)

Prior Codifications

1981 Ed., § 5-1211.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6–1312. Presidential approved procedures and guidelines.

The authorities granted to the Secretary pursuant to the provisions of this chapter shall be exercised in accordance with procedures and guidelines approved by the President.

(Aug. 24, 1982, 96 Stat. 290, Pub. L. 97-241, § 212.)

Prior Codifications

1981 Ed., § 5-1212.

Effective Dates

For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6–1313. Extraordinary protective services.

(a) General authority. — The Secretary may provide extraordinary protective services for foreign missions directly, by contract, or through state or local authority to the extent deemed necessary by the Secretary in carrying out this chapter, except that the Secretary may not provide under this section any protective services for which authority exists to provide such services under § 3056A(a)(7) and (d) of Title 18, United States Code.

(b) Requirement of extraordinary circumstances. — The Secretary may provide funds to a state or local authority for protective services under this section only if the Secretary has determined that a threat of violence, or other circumstances, exists which requires extraordinary security measures which exceed those which local law enforcement agencies can reasonably be expected to take.

(c) Consultation with Congress before obligation of funds. — Funds may be obligated under this section only after regulations to implement this section have been issued by the Secretary after consultation with appropriate committees of the Congress.

(d) Restrictions on use of funds. — Of the funds made available for obligation under this section in any fiscal year:

(1) Not more than 20% may be obligated for protective services within any single state during that year; and

(2) Not less than 15% shall be retained as a reserve for protective services provided directly by the Secretary or for expenditures in local jurisdictions not otherwise covered by an agreement for protective services under this section. The limitations on funds available for obligation in this subsection shall not apply to unobligated funds during the final quarter of any fiscal year.

(e) Period of agreement with state or local authority. — Any agreement with a state or local authority for the provision of protective services under this section shall be for a period of not to exceed 90 days in any calendar year, but such agreements may be renewed after review by the Secretary.

(f) Requirement for appropriations. — Contracts may be entered into in carrying out this section only to such extent or in such amounts as are provided in advance in appropriation acts.

(g) Working capital fund. — Amounts used to carry out this section shall not be subject to § 6-1308(h).

(Aug. 24, 1982, Pub. L. 97-241, § 214; as added Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 126(a); Mar. 9, 2006, 120 Stat. 255, Pub. L. 109-177, § 605(d)(3).)

Prior Codifications

1981 Ed., § 5-1213.

Effect of Amendments

Pub. L. 109-177, in subsec. (a), substituted "§ 3056A(a)(7) and (d) of Title 18" for "§§ 202(8) and 208 of Title 3".

Effective Dates

Section 126(e) of Pub. L. 99-93 provided that the amendments made by the section shall take effect on October 1, 1985.

§ 6–1314. Use of foreign mission in a manner incompatible with its status as a foreign mission.

(a) Establishment of limitation on certain uses. — A foreign mission may not allow an unaffiliated alien the use of any premise of that foreign mission which is inviolable under United States law (including any treaty) for any purpose which is incompatible with its status as a foreign mission, including use as a residence.

(b) Temporary lodging. — For the purposes of this section, the term "residence" does not include such temporary lodging as may be permitted under regulations issued by the Secretary.

(c) Waiver. — The Secretary may waive subsection (a) of this section with respect to all foreign missions of a country (and may revoke such a waiver) 30 days after providing written notification of such a waiver, together with the reasons for such waiver (or revocation of such a waiver), to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(d) Report. — Not later than 180 days after December 23, 1987, the Secretary of State shall submit a report to the Congress concerning the implementation of this section and

shall submit such other reports to the Congress concerning changes in implementation as may be necessary.

(e) Definitions. — For the purposes of this section:

(1) The term "foreign mission" includes any international organization as defined in § 6-1309(b).

(2) The term "unaffiliated alien" means, with respect to a foreign country, an alien who:

(A) Is admitted to the United States as a nonimmigrant, and

(B) Is not a member, or a family member of a member, of a foreign mission of that foreign country.

(Aug. 24, 1982, Pub. L. 97-241, § 215; as added Dec. 23, 1987, 101 Stat. 1343, Pub. L. 100-204, title I, § 128(a).)

Prior Codifications

1981 Ed., § 5-1214.

Effective Dates

Section 128(b) of Pub. L. 100-204 provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to any foreign mission beginning on the Dates of enactment of this Act.

"(2)(A) The amendment made by subsection (a) shall apply beginning 6 months after the Dates of enactment of this Act with respect to any nonimmigrant alien who is using a foreign mission as a residence or a place of business on the Dates of enactment of this Act.

"(B) The Secretary of State may delay the effective Dates provided for in subparagraph (A) for not more than 6 months with respect to any nonimmigrant alien if the Secretary finds that a hardship to that alien would result from the implementation of subsection (A)."

§ 6–1315. Application of travel restrictions to personnel of certain countries and organizations.

(a) Requirement for restrictions. — The Secretary shall apply the same generally applicable restrictions to the travel while in the United States of the individuals described in subsection (b) as are applied under this title to the members of the missions of the Soviet Union in the United States.

(b) Individuals subject to restrictions. — The restrictions required by subsection (a) shall be applied with respect to those individuals who (as determined by the Secretary) are:

(1) The personnel of an international organization, if the individual is a national of any foreign country whose government engages in intelligence activities in the United States that are harmful to the national security of the United States;

(2) The personnel of a mission to an international organization if that mission is the mission of a foreign government that engages in intelligence activities in the United States that are harmful to the national security of the United States; or

(3) The family members or dependents of an individual described in paragraphs (1) and (2);

and who are not nationals or permanent resident aliens of the United States.

(c) Waivers. — The Secretary, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, may waive application of the restrictions required by subsection (a) if the Secretary determines that the national security and foreign policy interests of the United States so require.

(d) Reports. — The Secretary shall transmit to the Select Committee on Intelligence and the Committee on Foreign Relations of the Senate, and to the Permanent Select Committee on Intelligence and the Committee on Foreign Affairs of the House of Representatives, not later than six months after December 23, 1987, and not later than every six months thereafter, a report on the actions taken by the Secretary in carrying out this section during the previous six months.

(e) Definitions. — For purposes of this section:

(1) The term "generally applicable restrictions" means any limitations on the radius within which unrestricted travel is permitted and obtaining travel services through the auspices of the Office of Foreign Missions for travel elsewhere, and does not include any restrictions which unconditionally prohibit the members of missions of the Soviet Union in the United States from traveling to designated areas of the United States and which are applied as a result of particular factors in relations between the United States and the Soviet Union.

(2) The term "international organization" means an organization described in § 6-1309(b)(1).

(3) The term "personnel" includes:

(A) Officers, employees, and any other staff member, and

(B) Any individual who is retained under the contract or other arrangement to serve functions similar to those of an officer, employee, or other staff member.

(Aug. 24, 1982, Pub. L. 97-241, § 216; as added Dec. 23, 1987, 101 Stat. 1357, Pub. L. 100-204, title I, § 162(a).)

Prior Codifications

1981 Ed., § 5-1215.

References in Text

"This title", referred to in subsection (a), is title II of the State Department Basic Authorities Act of 1956 (22 U.S.C. § 4301 et seq.).

Effective Dates

Section 162(b) of Pub. L. 100-204 provided that subsection (a) shall take effect 90 days after the Dates of enactment of this Act.

PUBLICATION INFORMATION

Current through
Dec. 19, 2024

Last codified Emergency Law:
Act 25-669 effective Dec. 19, 2024

Last codified D.C. Law:
Law 25-256 effective Dec. 17, 2024

Last codified Federal Law:
Public Law 115-334 approved Dec. 20, 2018

EXHIBIT B

97TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT No. 97-693

AUTHORIZING APPROPRIATIONS FOR FISCAL YEARS 1982 AND 1983 FOR THE DEPARTMENT OF STATE, THE UNITED STATES INFORMATION AGENCY, AND THE BOARD FOR INTERNATIONAL BROADCASTING

AUGUST 3, 1982.—Ordered to be printed

Mr. FASCELL, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1193]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1193) to authorize appropriations for fiscal years 1982 and 1983 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—DEPARTMENT OF STATE

SHORT TITLE

SEC. 101. This title may be cited as the "Department of State Authorization Act, Fiscal Years 1982 and 1983".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 102. There are authorized to be appropriated for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States and other purposes authorized by law, the following amounts:

(1) For "Administration of Foreign Affairs", $1,245,637,000 for the fiscal year 1982 and $1,248,059,000 for the fiscal year 1983.

(2) For "International Organizations and Conferences", $503,462,000 for the fiscal year 1982 and $514,436,000 for the fiscal year 1983.

(3) For "International Commissions", $19,808,000 for the fiscal year 1982 and $22,432,000 for the fiscal year 1983.

(4) For "Migration and Refugee Assistance", $504,100,000 for the fiscal year 1982 and $460,000,000 for the fiscal year 1983.

REOPENING CERTAIN UNITED STATES CONSULATES

SEC. 103. (a) Notwithstanding any other provision of law, $400,000 of the funds available for the fiscal year 1982 for "Salaries and Expenses" of the Department of State are hereby reprogrammed for, and shall be used by the Department for, the expenses of operating and maintaining the consulates specified in subsection (c) of this section.

(b) None of the funds made available under this or any other Act for "Administration of Foreign Affairs" may be used for the establishment or operation of any United States consulate that did not exist on the date of enactment of this Act (other than the consulates specified in subsection (c)) until all the United States consulates specified in subsection (c) have been reopened as required by section 108 of the Department of State Authorization Act, Fiscal Years 1980 and 1981.

(c) The consulates referred to in subsections (a) and (b) of this section are the consulates in the following locations: Turin, Italy; Salzburg, Austria; Goteborg, Sweden; Bremen, Germany; Nice, France; Mandalay, Burma; and Brisbane, Australia.

RESTRICTIONS RELATING TO PALESTINIAN RIGHTS UNITS AND PROJECTS PROVIDING POLITICAL BENEFITS TO THE PALESTINE LIBERATION ORGANIZATION

SEC. 104. (a) Funds appropriated under paragraph (2) of section 102 of this Act may not be used for payment by the United States, as its contribution toward the assessed budget of the United Nations for any year, of any amount which would cause the total amount paid by the United States as its assessed contribution for that year to exceed the amount assessed as the United States contribution for that year less—

(1) 25 percent of the amount budgeted for that year for the Committee on the Exercise for the Inalienable Rights of the Palestinian People (or any similar successor entity); and

(2) 25 percent of the amount budgeted for that year for the Special Unit on Palestinian Rights (or any similar successor entity); and.

(3) 25 percent of the amount budgeted for that year for projects whose primary purpose is to provide political benefits to the Palestine Liberation Organization or entities associated with it.

(b) Funds appropriated under paragraph (2) of section 102 of this Act may not be used for payment by the United States, as its contribution toward the assessed budget of any specialized agency of the United Nations for any year, of any amount which would cause the total amount paid by the United States as its assessed contribution for that year to exceed the amount assessed as the United States

contribution for that year less 25 percent of the amount budgeted by such agency for that year for projects whose primary purpose is to provide political benefits to the Palestine Liberation Organization or entities associated with it.

(c) The President shall annually review the budgets of the United Nations and its specialized agencies to determine which projects have the primary purpose of providing political benefit to the Palestine Liberation Organization. The President shall report to the Congress on any such project for which a portion of the United States assessed contribution is withheld and the amount withheld.

(d) Subsections (a)(3) and (b) shall not be construed as limiting United States contributions to the United Nations, or its specialized agencies, for projects whose primary purpose is to provide humanitarian, educational, developmental, and other nonpolitical benefits to the Palestinian people.

PAYMENT OF ASSESSED CONTRIBUTIONS FOR CERTAIN INTERNATIONAL ORGANIZATIONS

SEC. 105. (a) Funds authorized to be appropriated for the fiscal year 1982 by paragraph (2) of section 102 of this Act shall be used for payment of the entire amount payable for the United States contribution for the calendar year 1982 to the Organization of American States, to the Pan American Health Organization, and to the Inter-American Institute for Cooperation on Agriculture.

(b) Funds authorized to be appropriated for the fiscal year 1983 by paragraph (2) of section 102 of this Act shall be used for payment of the entire amount payable for the United States contribution for the calendar year 1983 to the Organization of American States, to the Pan American Health Organization, and to the Inter-American Institute for Cooperation on Agriculture.

(c) For purposes of this section, the term "United States contribution" means the United States assessed contribution to the budget of the Organization of American States, the Pan American Health Organization, or the Inter-American Institute for Cooperation on Agriculture, as the case may be, plus amounts required to be paid by the United States or minus amounts credited to the United States (as appropriate) under that organization's tax equalization program.

INTERNATIONAL COMMITTEE OF THE RED CROSS

SEC. 106. Of the amounts authorized to be appropriated by paragraph (4) of section 102 of this Act, $1,500,000 shall be available for the fiscal year 1982 and $1,500,000 shall be available for the fiscal year 1983 only for the International Committee of the Red Cross to support the activities of the protection and assistance program for "political" detainees.

ASSISTANCE FOR REFUGEES SETTLING IN ISRAEL

SEC. 107. Of the amounts authorized to be appropriated by paragraph (4) of section 102 of this Act, $12,500,000 for the fiscal year 1982 and $16,875,000 for the fiscal year 1983 shall be available only for assistance for the resettlement in Israel of refugees from the

Union of Soviet Socialist Republics, from Communist countries in Eastern Europe, and from other countries.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

SEC. 108. (a) The Congress finds that—

(1) a free press is vital to the functioning of free governments;

(2) Article 19 of the Universal Declaration of Human Rights provides for the right to freedom of expression and to "seek, receive and impart information and ideas through any media and regardless of frontiers";

(3) the Constitution of the United Nations Educational, Scientific and Cultural Organization provides for the promotion of "the free flow of ideas by word and image";

(4) the signatories of the Final Act of the Conference on Security and Cooperation in Europe (Helsinki, 1975) pledged themselves "to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries, and to improve the conditions under which journalists from one participating State exercise their profession in another participating State"; and

(5) government censorship, domination, or suppression of a free press is a danger to free men and women everywhere.

(b) Therefore, it is the sense of the Congress that the United Nations Educational, Scientific and Cultural Organization should cease efforts to attempt to regulate news content and to formulate rules and regulations for the operation of the world press.

(c) The Congress opposes efforts by some countries to control access to and dissemination of news.

(d) The President shall evaluate and, not later than six months after the date of enactment of this Act, shall report to the Congress his assessment of—

(1) the extent to which United States financial contributions to the United Nations Educational, Scientific and Cultural Organization, and the extent to which the programs and activities of that Organization, serve the national interests of the United States;

(2) the programs and activities of the United Nations Educational, Scientific and Cultural Organization, especially its programs and activities in the communications sector; and

(3) the quality of United States participation in the United Nations Educational, Scientific and Cultural Organization, including the quality of United States diplomatic efforts with respect to that Organization, the quality of United States representation in the Secretariat of that Organization, and the quality of recruitment of United States citizens to be employed by that Organization.

Such report should include the President's recommendations regarding any improvements which should be made in the quality and substance of United States representation in the United Nations Educational, Scientific and Cultural Organization.

RESTRICTION ON CONTRIBUTIONS TO THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

SEC. 109. (a) None of the funds authorized to be appropriated by paragraph (2) of section 102 of this Act or by any other Act for "International Organizations and Conferences" may be used for payment by the United States of its contribution toward the assessed budget of the United Nations Educational, Scientific and Cultural Organization if that organization implements any policy or procedure the effect of which is to license journalists or their publications, to censor or otherwise restrict the free flow of information within or among countries, or to impose mandatory codes of journalistic practice or ethics.

(b) Not later than February 1 of each year, the Secretary of State shall report to the Congress with respect to whether the United Nations Educational, Scientific and Cultural Organization has taken any action described in subsection (a) of this section.

BILATERAL SCIENCE AND TECHNOLOGY AGREEMENTS

SEC. 110. In addition to the amounts authorized to be appropriated by section 102 of this Act, there are authorized to be appropriated to the Secretary of State $3,700,000 for the fiscal year 1982 and $3,700,000 for the fiscal year 1983 for payment of the United States share of expenses of the science and technology agreements between the United States and Yugoslavia and between the United States and Poland.

ASIA FOUNDATION

SEC. 111. In addition to the amounts authorized to be appropriated by section 102 of this Act, there are authorized to be appropriated to the Secretary of State $4,500,000 for the fiscal year 1982 and $4,500,000 for the fiscal year 1983 for the Asia Foundation in furtherance of that organization's purposes as described in its charter. Amounts appropriated under this section shall be made available to the Asia Foundation by the Secretary of State in accordance with the terms and conditions of a grant agreement to be negotiated between the Secretary and the Foundation.

BUYING POWER MAINTENANCE

SEC. 112. (a) Section 24(b) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2696(b)) is amended to read as follows:

"(b)(1) In order to maintain the levels of program activity for the Department of State provided for each fiscal year by the annual authorizing legislation, there are authorized to be appropriated for the Department of State such sums as may be necessary to offset adverse fluctuations in foreign currency exchange rates, or overseas wage and price changes, which occur after November 30 of the earlier of—

"(A) the calendar year which ended during the fiscal year preceding such fiscal year, or

"(B) the calendar year which preceded the calendar year during which the authorization of appropriations for such fiscal year was enacted.

"(2) In carrying out this subsection, there may be established a Buying Power Maintenance account.

"(3) In order to eliminate substantial gains to the approved levels of overseas operations for the Department of State, the Secretary of State shall transfer to the Buying Power Maintenance account such amounts in any appropriation account under the heading 'Administration of Foreign Affairs' as the Secretary determines are excessive to the needs of the approved level of operations under that appropriation account because of fluctuations in foreign currency exchange rates or changes in overseas wages and prices.

"(4) In order to offset adverse fluctuations in foreign currency exchange rates or overseas wage and price changes, the Secretary of State may transfer from the Buying Power Maintenance account to any appropriation account under the heading 'Administration of Foreign Affairs' such amounts as the Secretary determines are necessary to maintain the approved level of operations under that appropriation account.

"(5) Funds transferred by the Secretary of State from the Buying Power Maintenance account to another account shall be merged with and be available for the same purpose, and for the same time period, as the funds in that other account. Funds transferred by the Secretary from another account to the Buying Power Maintenance account shall be merged with the funds in the Buying Power Maintenance account and shall be available for the purposes of that account until expended.

"(6) Any restriction contained in an appropriation Act or other provision of law limiting the amounts available for the Department of State that may be obligated or expended shall be deemed to be adjusted to the extent necessary to offset the net effect of fluctuations in foreign currency exchange rates or overseas wage and price changes in order to maintain approved levels.".

(b) Section 704(c) of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1477b(c)) is amended—

(1) by inserting ", or overseas wage and price changes," immediately after "foreign currency exchange rates"; and

(2) by striking out "preceding fiscal year" and inserting in lieu thereof "earlier of (1) the calendar year which ended during the fiscal year preceding such fiscal year, or (2) the calendar year which preceded the calendar year during which the authorization of appropriations for such fiscal year was enacted".

(c) Section 8(a)(2) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2287(a)(2)) is amended—

(1) in the first sentence, by inserting ", or overseas wage and price changes," immediately after "foreign currency exchange rates";

(2) in the first sentence, by striking out "preceding fiscal year" and inserting in lieu thereof "earlier of (A) the calendar year which ended during the fiscal year preceding such fiscal year, or (B) the calendar year which preceded the calendar year during which the authorization of appropriations for such fiscal year was enacted"; and

(3) in the second sentence, by inserting "or such changes" immediately after "such fluctuations".

PAN AMERICAN INSTITUTE OF GEOGRAPHY AND HISTORY

SEC. 113. Paragraph (1) of the first section of the joint resolution entitled "Joint Resolution to provide for membership of the United States in the Pan American Institute of Geography and History; and to authorize the President to extend an invitation for the next general assembly of the institute to meet in the United States in 1935, and to provide an appropriation for expenses thereof", approved August 2, 1935 (22 U.S.C. 273), is amended by striking out ", not to exceed $200,000 annually,".

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW AND THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

SEC. 114. Section 2 of the joint resolution entitled "Joint Resolution to provide for participation by the Government of the United States in the Hague Conference on Private International Law and the International (Rome) Institute for the Unification of Private Law, and authorizing appropriations therefor", approved December 30, 1963 (22 U.S.C. 269g-1), is amended by striking out ", except that" and all that follows through "that year".

PAN AMERICAN RAILWAY CONGRESS

SEC. 115. Section 2(a) of the joint resolution entitled "Joint Resolution providing for participation by the Government of the United States in the Pan American Railway Congress, and authorizing an appropriation therefor", approved June 28, 1948 (22 U.S.C. 280k), is amended by striking out "Not more than $15,000 annually" and inserting in lieu thereof "Such sums as may be necessary".

PASSPORT FEES AND PERIOD OF VALIDITY

SEC. 116. (a) The first sentence of section 1 under the heading "FEES FOR PASSPORTS AND VISÉS" of the Act of June 4, 1920 (22 U.S.C. 214), is amended to read as follows: "There shall be collected and paid into the Treasury of the United States a fee, prescribed by the Secretary of State by regulation, for each passport issued and a fee, prescribed by the Secretary of State by regulation, for executing each application for a passport.".

(b)(1) Section 2 of the Act entitled "An Act to regulate the issue and validity of passports, and for other purposes", approved July 3, 1926 (22 U.S.C. 217a), is amended to read as follows:

"SEC. 2. A passport shall be valid for a period of ten years from the date of issue, except that the Secretary of State may limit the validity of a passport to a period of less than ten years in an individual case or on a general basis pursuant to regulation.".

(2) The amendment made by this subsection applies with respect to passports issued after the date of enactment of this Act.

DOCUMENTATION OF CITIZENSHIP

SEC. 117. The State Department Basic Authorities Act of 1956 is amended by inserting the following new section 33 immediately after section 32 and by redesignating existing section 33 as section 34:

"SEC. 33. The following documents shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney General or by a court having naturalization jurisdiction:

"(1) A passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States.

"(2) The report, designated as a 'Report of Birth Abroad of a Citizen of the United States', issued by a consular officer to document a citizen born abroad.".

UNITED STATES REPRESENTATIVE TO INTERNATIONAL ORGANIZATIONS IN VIENNA

SEC. 118. Section 2 of the United Nations Participation Act of 1945 (22 U.S.C. 287) is amended by adding at the end thereof the following new subsection:

"(h) The President, by and with the advice and consent of the Senate, shall appoint a representative of the United States to the Vienna office of the United Nations with appropriate rank and status, who shall serve at the pleasure of the President and subject to the direction of the Secretary of State. Such individual shall, at the direction of the Secretary of State, represent the United States at the Vienna office of the United Nations and perform such other functions there in connection with the participation of the United States in international organizations as the Secretary of State from time to time may direct.".

LIVING QUARTERS FOR THE STAFF OF THE UNITED STATES REPRESENTATIVE TO THE UNITED NATIONS

SEC. 119. Section 8 of the United Nations Participation Act of 1945 (22 U.S.C. 287e) is amended—

(1) by striking out "representative of the United States to the United Nations referred to in paragraph (a) of section 2 hereof" and inserting in lieu thereof "representatives provided for in section 2 of this Act and of their appropriate staffs"; and

(2) by adding at the end thereof the following: "Any payments made by United States Government personnel for occupancy by them of living quarters leased or rented under this section shall be credited to the appropriation, fund, or account utilized by the Secretary of State for such lease or rental or to the appropriation, fund, or account currently available for such purpose.".

PRIVATE SECTOR REPRESENTATIVES ON UNITED STATES DELEGATIONS TO INTERNATIONAL TELECOMMUNICATIONS MEETINGS AND CONFERENCES

SEC. 120. (a) Sections 203, 205, 207, and 208 of title 18, United States Code, shall not apply to a private sector representative on the United States delegation to an international telecommunications meeting or conference who is specifically designated to speak on behalf of or otherwise represent the interests of the United States at such meeting or conference with respect to a particular matter, if the Secretary of State (or the Secretary's designee) certifies that no

Government employee on the delegation is as well qualified to represent United States interests with respect to such matter and that such designation serves the national interest. All such representatives shall have on file with the Department of State the financial disclosure report required for special Government employees.

(b) As used in this section, the term "international telecommunications meeting or conference" means the conferences of the International Telecommunications Union, meetings of its International Consultative Committees for Radio and for Telephone and Telegraph, and such other international telecommunications meetings or conferences as the Secretary of State may designate.

PROCUREMENT CONTRACTS

SEC. 121. The State Department Basic Authorities Act of 1956 is amended by inserting the following new section immediately after section 13:

"SEC. 14. (a) Any contract for the procurement of property or services, or both, for the Department of State or the Foreign Service which is funded on the basis of annual appropriations may nevertheless be made for periods not in excess of five years when—

"(1) appropriations are available and adequate for payment for the first fiscal year and for all potential cancellation costs; and

"(2) the Secretary of State determines that—

"(A) the need of the Government for the property or service being acquired over the period of the contract is reasonably firm and continuing;

"(B) such a contract will serve the best interests of the United States by encouraging effective competition or promoting economies in performance and operation; and

"(C) such a method of contracting will not inhibit small business participation.

"(b) In the event that funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be cancelled and any cancellation costs incurred shall be paid from appropriations originally available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.".

COMPENSATION FOR DISABILITY OR DEATH

SEC. 122. The State Department Basic Authorities Act of 1956 is amended by inserting the following new section immediately after section 15:

"SEC. 16. The first section of the Act of August 16, 1941 (42 U.S.C. 1651; commonly known as the 'Defense Base Act') shall not apply with respect to such contracts as the Secretary of State may determine which are contracts with persons employed to perform work for the Department of State or the Foreign Service on an intermittent basis for not more than 90 days in a calendar year.".

DUTIES OF A CHIEF OF MISSION

SEC. 123. Section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) is amended by adding at the end thereof the following new subsection:

"(c) Each chief of mission to a foreign country shall have as a principal duty the promotion of United States goods and services for export to such country.".

BASIC SALARY RATES FOR THE SENIOR FOREIGN SERVICE

SEC. 124. Section 402(a) of the Foreign Service Act of 1980 (22 U.S.C. 3962(a)) is amended—

(1) by inserting "(1)" immediately after "(a)";

(2) by inserting immediately after the first sentence the following new sentence: "The President shall also prescribe one or more basic salary rates for each class."; and

(3) by adding at the end thereof the following new paragraph:

"(2) The Secretary shall determine which of the basic salary rates prescribed by the President under paragraph (1) for any salary class shall be paid to each member of the Senior Foreign Service who is appointed to that class. The Secretary may adjust the basic salary rate of a member of the Senior Foreign Service not more than once during any 12-month period.".

AMENDMENTS CORRECTING PRINTING ERRORS

SEC. 125. The Foreign Service Act of 1980 is amended—

(1) in section 704(b)(2) (22 U.S.C. 4024(b)(2)) by striking out "411" and inserting in lieu thereof "412"; and

(2) in section 814(a)(3) (22 U.S.C. 4054(a)(3)) by striking out "on" the second place it appears in the first sentence and inserting in lieu thereof "or".

SCIENTIFIC EXCHANGE ACTIVITIES WITH THE SOVIET UNION

SEC. 126. (a) Not later than 90 days after the date of enactment of this Act, the Secretary of State shall submit to the Congress a report with respect to the individual exchange activities conducted pursuant to the 11 agreements for cooperation in specialized fields which were entered into by the United States and the Union of Soviet Socialist Republics between 1972 and 1974. This report shall include—

(1) an assessment of the risk of the transfer to the Soviet Union of militarily significant technology through research, exchanges, and other activities conducted pursuant to those agreements; and

(2) a detailed description on the exchanges and other activities conducted pursuant to those agreements during fiscal year 1981 and fiscal year 1982, including—

(A) the areas of cooperation,

(B) the specific research and projects involved,

(C) the man-hours spent in short-term (less than sixty days) and long-term exchanges,

(D) the level of United States and Soviet funding in each such fiscal year, and

(E) an assessment of the equality or inequality in value of the information exchanged.

(b) The Secretary of State shall prepare the report required by subsection (a) in consultation and cooperation with the heads of the other agencies involved in the exchange and other cooperative activities conducted pursuant to the agreements described in that subsection.

(c) Not later than July 1 of each year, the Secretary of the State shall submit to the Congress a list of the Soviet nationals participating during the upcoming academic year in the United States-Union of Soviet Socialist Republics graduate student/young faculty exchange or in the United States-Union of Soviet Socialist Republics senior scholar exchange, their topics of study, and where they are to study. This report shall also include a determination by the Secretary of State, in consultation with the heads of the other agencies involved in these exchange programs, that these exchange programs will not jeopardize United States national security interests.

TITLE II—FOREIGN MISSIONS

SHORT TITLE

SEC. 201. This title may be cited as the "Foreign Missions Act".

REGULATION OF FOREIGN MISSIONS

SEC. 202. (a) The State Department Basic Authorities Act of 1956 is amended by striking out "That the Secretary" in the first section and inserting in lieu thereof the following:

"TITLE I—BASIC AUTHORITIES GENERALLY

"SECTION 1. The Secretary".

(b) That Act is further amended by adding at the end thereof the following:

"TITLE II—AUTHORITIES RELATING TO THE REGULATION OF FOREIGN MISSIONS

"DECLARATION OF FINDINGS AND POLICY

"SEC. 201. (a) The Congress finds that the operation in the United States of foreign missions and public international organizations and the official missions to such organizations, including the permissible scope of their activities and the location and size of their facilities, is a proper subject for the exercise of Federal jurisdiction.

"(b) The Congress declares that it is the policy of the United States to support the secure and efficient operation of United States missions abroad, to facilitate the secure and efficient operation in the United States of foreign missions and public international organizations and the official missions to such organizations, and to assist in obtaining appropriate benefits, privileges, and immunities for those missions and organizations and to require their observance of corresponding obligations in accordance with international law.

"(c) The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consid-

eration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission.

"DEFINITIONS

"SEC. 202. (a) For purposes of this title—

"(1) 'benefit' (with respect to a foreign mission) means any acquisition, or authorization for an acquisition, in the United States by or for a foreign mission, including the acquisition of—

"(A) real property by purchase, lease, exchange, construction, or otherwise,

"(B) public services, including services relating to customs, importation, and utilities, and the processing of applications or requests relating to public services,

"(C) supplies, maintenance, and transportation,

"(D) locally engaged staff on a temporary or regular basis,

"(E) travel and related services, and

"(F) protective services,

and includes such other benefits as the Secretary may designate;

"(2) 'chancery' means the principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), and includes the site and any building on such site which is used for such purposes;

"(3) 'Director' means the Director of the Office of Foreign Missions established pursuant to section 203(a);

"(4) 'foreign mission' means any official mission to the United States involving diplomatic, consular, or other governmental activities of—

"(A) a foreign government, or

"(B) an organization (other than an international organization, as defined in section 209(b) of this title) representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States,

including any real property of such a mission and including the personnel of such a mission;

"(5) 'real property' includes any right, title, or interest in or to, or the beneficial use of, any real property in the United States, including any office or other building;

"(6) 'Secretary' means the Secretary of State;

"(7) 'sending State' means the foreign government, territory, or political entity represented by a foreign mission; and

"(8) 'United States' means, when used in a geographic sense, the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

"(b) Determinations with respect to the meaning and applicability of the terms used in subsection (a) shall be committed to the discretion of the Secretary.

"OFFICE OF FOREIGN MISSIONS

"SEC. 203. (a) The Secretary shall establish an Office of Foreign Missions as an office within the Department of State. The Office shall be headed by a Director, appointed by the Secretary, who shall perform his or her functions under the supervision and direction of the Secretary. The Secretary may delegate this authority for supervision and direction of the Director only to the Deputy Secretary of State or an Under Secretary of State.

"(b) The Secretary may authorize the Director to—

"(1) assist agencies of Federal, State, and municipal government with regard to ascertaining and according benefits, privileges, and immunities to which a foreign mission may be entitled;

"(2) provide or assist in the provision of benefits for or on behalf of a foreign mission in accordance with section 204; and

"(3) perform such other functions as the Secretary may determine necessary in furtherance of the policy of this title.

"PROVISION OF BENEFITS

"SEC. 204. (a) Upon the request of a foreign mission, benefits may be provided to or for that foreign mission by or through the Director on such terms and conditions as the Secretary may approve.

"(b) If the Secretary determines that such action is reasonably necessary on the basis of reciprocity or otherwise—

"(1) to facilitate relations between the United States and a sending State,

"(2) to protect the interests of the United States,

"(3) to adjust for costs and procedures of obtaining benefits for missions of the United States abroad, or

"(4) to assist in resolving a dispute affecting United States interests and involving a foreign mission or sending State,

then the Secretary may require a foreign mission (A) to obtain benefits from or through the Director on such terms and conditions as the Secretary may approve, or (B) to comply with such terms and conditions as the Secretary may determine as a condition to the execution or performance in the United States of any contract or other agreement, the acquisition, retention, or use of any real property, or the application for or acceptance of any benefit (including any benefit from or authorized by any Federal, State, or municipal governmental authority, or any entity providing public services).

"(c) Terms and conditions established by the Secretary under this section may include—

"(1) a requirement to pay to the Director a surcharge or fee, and

"(2) a waiver by a foreign mission (or any assignee of or person deriving rights from a foreign mission) of any recourse against any governmental authority, any entity providing public services, any employee or agent of such an authority or entity, or any other person, in connection with any action determined by the Secretary to be undertaken in furtherance of this title.

"(d) For purposes of effectuating a waiver of recourse which is required under this section, the Secretary may designate the Director or any other officer of the Department of State as the agent of a for-

eign mission (or of any assignee of or person deriving rights from a foreign mission). Any such waiver by an officer so designated shall for all purposes (including any court or administrative proceeding) be deemed to be a waiver by the foreign mission (or the assignee of or other person deriving rights from a foreign mission).

"(e) Nothing in this section shall be deemed to preclude or limit in any way the authority of the United States Secret Service to provide protective services pursuant to section 202 of title 3, United States Code, or section 3056 of title 18, United States Code, at a level commensurate with protective requirements as determined by the United States Secret Service.

"PROPERTY OF FOREIGN MISSIONS

"SEC. 205. (a)(1) The Secretary may require any foreign mission to notify the Director prior to any proposed acquisition, or any proposed sale or other disposition, of any real property by or on behalf of such mission. If such a notification is required, the foreign mission (or other party acting on behalf of the foreign mission) may initiate or execute any contract, proceeding, application, or other action required for the proposed action—

"(A) only after the expiration of the sixty-day period beginning on the date of such notification (or after the expiration of such shorter period as the Secretary may specify in a given case); and

"(B) only if the mission is not notified by the Secretary within that period that the proposal has been disapproved; however, the Secretary may include in such a notification such terms and conditions as the Secretary may determine appropriate in order to remove the disapproval.

"(2) For purposes of this section, 'acquisition' includes any acquisition or alteration of, or addition to, any real property or any change in the purpose for which real property is used by a foreign mission.

"(b) The Secretary may require any foreign mission to divest itself of, or forego the use of, any real property determined by the Secretary—

"(1) not to have been acquired in accordance with this section; or

"(2) to exceed limitations placed on real property available to a United States mission in the sending State.

"(c) If a foreign mission has ceased conducting diplomatic, consular, and other governmental activities in the United States and has not designated a protecting power or other agent approved by the Secretary to be responsible for the property of that foreign mission, the Secretary—

"(1) until the designation of a protecting power or other agent approved by the Secretary, may protect and preserve any property of that foreign mission; and

"(2) may authorize the Director to dispose of such property at such time as the Secretary may determine after the expiration of the one-year period beginning on the date that the foreign mission ceased those activities, and may remit to the sending State the net proceeds from such disposition.

"LOCATION OF FOREIGN MISSIONS IN THE DISTRICT OF COLUMBIA

"SEC. 206. (a) The location, replacement, or expansion of chanceries in the District of Columbia shall be subject to this section.

"(b)(1) A chancery shall be permitted to locate as a matter of right in any area which is zoned commercial, industrial, waterfront, or mixed-use (CR).

"(2) A chancery shall also be permitted to locate—

"(A) in any area which is zoned medium-high or high density residential, and

"(B) in any other area, determined on the basis of existing uses, which includes office or institutional uses, including but not limited to any area zoned mixed-use diplomatic or special purpose,

subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with this section.

"(3) In each of the areas described in paragraphs (1) and (2), the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses in that area.

"(c)(1) If a foreign mission wishes to locate a chancery in an area described in subsection (b)(2), or wishes to appeal an administrative decision relating to a chancery based in whole or in part upon any zoning map or regulation, it shall file an application with the Board of Zoning Adjustment which shall publish notice of that application in the District of Columbia Register.

"(2) Regulations issued to carry out this section shall provide appropriate opportunities for participation by the public in proceedings concerning the location, replacement, or expansion of chanceries.

"(3) A final determination concerning the location, replacement, or expansion of a chancery shall be made not later than six months after the date of the filing of an application with respect to such location, replacement, or expansion. Such determination shall not be subject to the administrative proceedings of any other agency or official except as provided in this title.

"(d) Any determination concerning the location of a chancery under subsection (b)(2), or concerning an appeal of an administrative decision with respect to a chancery based in whole or in part upon any zoning regulation or map, shall be based solely on the following criteria:

"(1) The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

"(2) Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and Federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.

"(3) The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary, after consul-

tation with Federal agencies authorized to perform protective services.

"(4) The extent to which the area is capable of being adequately protected, as determined by the Secretary, after consultation with Federal agencies authorized to perform protective services.

"(5) The municipal interest, as determined by the Mayor of the District of Columbia.

"(6) The Federal interest, as determined by the Secretary.

"(e)(1) Regulations, proceedings, and other actions of the National Capital Planning Commission, the Zoning Commission for the District of Columbia, and the Board of Zoning Adjustment affecting the location, replacement, or expansion of chanceries shall be consistent with this section (including the criteria set out in subsection (d)) and shall reflect the policy of this title.

"(2) Proposed actions of the Zoning Commission concerning implementation of this section shall be referred to the National Capital Planning Commission for review and comment.

"(f) Regulations issued to carry out this section shall provide for proceedings of a rule-making and not of an adjudicatory nature.

"(g) The Secretary shall require foreign missions to comply substantially with District of Columbia building and related codes in a manner determined by the Secretary to be not inconsistent with the international obligations of the United States.

"(h) Approval by the Board of Zoning Adjustment or the Zoning Commission or, except as provided in section 205, by any other agency or official is not required—

"(1) for the location, replacement, or expansion of a chancery to the extent that authority to proceed, or rights or interests, with respect to such location, replacement, or expansion were granted to or otherwise acquired by the foreign mission before the effective date of this section; or

"(2) for continuing use of a chancery by a foreign mission to the extent that the chancery was being used by a foreign mission on the effective date of this section.

"(i)(1) The President may designate the Secretary of Defense, the Secretary of the Interior, or the Administrator of General Services (or such alternate as such official may from time to time designate) to serve as a member of the Zoning Commission in lieu of the Director of the National Park Service whenever the President determines that the Zoning Commission is performing functions concerning the implementation of this section.

"(2) Whenever the Board of Zoning Adjustment is performing functions regarding an application by a foreign mission with respect to the location, expansion, or replacement of a chancery—

"(A) the representative from the Zoning Commission shall be the Director of the National Park Service or if another person has been designated under paragraph (1) of this subsection, the person so designated; and

"(B) the representative from the National Capital Planning Commission shall be the Executive Director of that Commission.

"(j) Provisions of law (other than this title) applicable with respect to the location, replacement, or expansion of real property in

the District of Columbia shall apply with respect to chanceries only to the extent that they are consistent with this section.

"PREEMPTION

"SEC. 207. Notwithstanding any other law, no act of any Federal agency shall be effective to confer or deny any benefit with respect to any foreign mission contrary to this title. Nothing in section 202, 203, 204, or 205 may be construed to preempt any State or municipal law or governmental authority regarding zoning, land use, health, safety, or welfare, except that a denial by the Secretary involving a benefit for a foreign mission within the jurisdiction of a particular State or local government shall be controlling.

"GENERAL PROVISIONS

"SEC. 208. (a) The Secretary may issue such regulations as the Secretary may determine necessary to carry out the policy of this title.

"(b) Compliance with any regulation, instruction, or direction issued by the Secretary under this title shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court or administrative proceeding for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued by the Secretary under this title.

"(c) For purposes of administering this title—

"(1) the Secretary may accept details and assignments of employees of Federal agencies to the Office of Foreign Missions on a reimbursable or nonreimbursable basis (with any such reimbursements to be credited to the appropriations made available for the salaries and expenses of officers and employees of the employing agency); and

"(2) the Secretary may, to the extent necessary to obtain services without delay, exercise his authority to employ experts and consultants under section 3109 of title 5, United States Code, without requiring compliance with such otherwise applicable requirements for that employment as the Secretary may determine, except that such employment shall be terminated after 60 days if by that time those requirements are not complied with.

"(d) Contracts and subcontracts for supplies or services, including personal services, made by or on behalf of the Director shall be made after advertising, in such manner and at such times as the Secretary shall determine to be adequate to ensure notice and opportunity for competition, except that advertisement shall not be required when (1) the Secretary determines that it is impracticable or will not permit timely performance to obtain bids by advertising, or (2) the aggregate amount involved in a purchase of supplies or procurement of services does not exceed $10,000. Such contracts and subcontracts may be entered into without regard to laws and regulations otherwise applicable to solicitation, negotiation, administration, and performance of government contracts. In awarding contracts, the Secretary may consider such factors as relative quality

and availability of supplies or services and the compatibility of the supplies or services with implementation of this title.

"(e) The head of any Federal agency may, for purposes of this title—

"(1) transfer or loan any property to, and perform administrative and technical support functions and services for the operations of, the Office of Foreign Missions (with reimbursements to agencies under this paragraph to be credited to the current applicable appropriation of the agency concerned); and

"(2) acquire and accept services from the Office of Foreign Missions, including (whenever the Secretary determines it to be in furtherance of the purposes of this title) acquisitions without regard to laws normally applicable to the acquisition of services by such agency.

"(f) Assets of or under the control of the Office of Foreign Missions, wherever situated, which are used by or held for the use of a foreign mission shall not be subject to attachment, execution, injunction, or similar process, whether intermediate or final.

"(g) Except as otherwise provided, any determination required under this title shall be committed to the discretion of the Secretary.

"(h)(1) In order to implement this title, the Secretary may transfer to the working capital fund established by section 13 of this Act such amounts available to the Department of State as may be necessary.

"(2) All revenues, including proceeds from gifts and donations, received by the Director or the Secretary in carrying out this title may be credited to the working capital fund established by section 13 of this Act and shall be available for purposes of this title in accordance with that section.

"(3) Only amounts transferred or credited to the working capital fund established by section 13 of this Act may be used in carrying out the functions of the Secretary or the Director under this title.

"APPLICATION TO PUBLIC INTERNATIONAL ORGANIZATIONS AND OFFICIAL MISSIONS TO SUCH ORGANIZATIONS

"SEC. 209. (a) The Secretary may make section 206, or any other provision of this title, applicable with respect to an international organization to the same extent that it is applicable with respect to a foreign mission if the Secretary determines that such application is necessary to carry out the policy set forth in section 201(b) and to further the objectives set forth in section 204(b).

"(b) For purposes of this section, 'international organization' means—

"(1) a public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. 288—288f-2) or a public international organization created pursuant to a treaty or other international agreement as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs; and

"(2) an official mission (other than a United States mission) to such a public international organization,

including any real property of such an organization or mission and including the personnel of such an organization or mission.

"PRIVILEGES AND IMMUNITIES

"SEC. 210. Nothing in this title shall be construed to limit the authority of the United States to carry out its international obligations, or to supersede or limit immunities otherwise available by law. No act or omission by any foreign mission, public international organization, or official mission to such an organization, in compliance with this title shall be deemed to be an implied waiver of any immunity otherwise provided for by law.

"ENFORCEMENT

"SEC. 211. (a) It shall be unlawful for any person to make available any benefits to a foreign mission contrary to this title. The United States, acting on its own behalf or on behalf of a foreign mission, has standing to bring or intervene in an action to obtain compliance with this title, including any action for injunctive or other equitable relief.

"(b) Upon the request of any Federal agency, any State or local government agency, or any business or other person that proposes to enter into a contract or other transaction with a foreign mission, the Secretary shall advise whether the proposed transaction is prohibited by any regulation or determination of the Secretary under this title.

"PRESIDENTIAL GUIDELINES

"SEC. 212. The authorities granted to the Secretary pursuant to the provisions of this title shall be exercised in accordance with procedures and guidelines approved by the President.

"SEVERABILITY

"SEC. 213. If any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to any other person or circumstance shall not be affected thereby.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 203. (a) Section 13 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2684) is amended in the first sentence by striking out "and" following the semicolon at the end of clause (3), and by inserting immediately before the period at the end of the sentence the following: "; and (5) services and supplies to carry out title II of this Act".

(b)(1) Subparagraph (A) of section 2(1) of the Diplomatic Relations Act (22 U.S.C. 254a(1)(A)) is amended to read as follows:

> *"(A) the head of a mission and those members of a mission who are members of the diplomatic staff or who, pursuant to law, are granted equivalent privileges and immunities,".*

(2) Section 3(b) of such Act (22 U.S.C. 254b) is amended to read as follows:

"(b) With respect to a nonparty to the Vienna Convention, the mission, the members of the mission, their families, and diplomatic couriers shall enjoy the privileges and immunities specified in the Vienna Convention.".

(3) Section 4 of such Act (22 U.S.C. 254c) is amended—

(A) by inserting "the mission, the" immediately after "immunities for"; and

(B) by striking out "of any sending state".

(4) Section 1364 of title 28, United States Code, is amended by striking out "as defined in the Vienna Convention on Diplomatic Relations" and inserting in lieu thereof "within the meaning of section 2(3) of the Diplomatic Relations Act (22 U.S.C. 254a(3))".

(c) Section 6 of the Act of June 20, 1938 (D.C. Code, 1981 ed., sec. 5-418) is amended by striking out "(a)", and by striking out subsections (b), (c), (d), and (e).

EFFECTIVE DATE

SEC. 204. The amendments made by this title shall take effect on October 1, 1982.

TITLE III—UNITED STATES INFORMATION AGENCY

SHORT TITLE

SEC. 301. This title may be cited as the "United States Information Agency Authorization Act, Fiscal Years 1982 and 1983".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 302. There are authorized to be appropriated for the United States Information Agency, as so redesignated by section 303 of this Act, $494,034,000 for the fiscal year 1982 and $559,000,000 for the fiscal year 1983 to carry out international communication, educational, cultural, and exchange programs under the United States Information and Educational Exchange Act of 1948, the Mutual Educational and Cultural Exchange Act of 1961, and Reorganization Plan Numbered 2 of 1977, and other purposes authorized by law.

REDESIGNATION OF THE INTERNATIONAL COMMUNICATION AGENCY AS THE UNITED STATES INFORMATION AGENCY

SEC. 303. (a) The International Communication Agency, established by Reorganization Plan Numbered 2 of 1977, is hereby redesignated the United States Information Agency. The Director of the International Communication Agency or any other official of the International Communication Agency is hereby redesignated the Director or other official, as appropriate, of the United States Information Agency.

(b) Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the International Communication Agency or the Director or other official of the International Communication Agency shall be deemed to refer respectively to the United States Information Agency or the Director or other official of the United States Information Agency, as so redesignated by subsection (a).

CHANGES IN ADMINISTRATIVE AUTHORITIES

SEC. 304. (a)(1) Title III of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1451–1453) is amended—

(A) in section 301 by striking out "citizen of the United States" and inserting in lieu thereof "person"; and

(B) in sections 302 and 303 by striking out "citizen of the United States" and inserting in lieu thereof "person in the employ or service of the Government of the United States".

(2) Such title is further amended—

(A) in section 301—

(i) by striking out "Secretary" the first place it appears and inserting in lieu thereof "Director of the United States Information Agency", and

(ii) by striking out "Secretary" the second place it appears and inserting in lieu thereof "Director"; and

(B) in section 303 by striking out "Secretary" and inserting in lieu thereof "Director of the United States Information Agency".

(3) Section 302 of such Act is amended—

(A) in the second sentence by striking out "section 901(3) of the Foreign Service Act of 1946 (60 Stat. 999)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980"; and

(B) in the last sentence by striking out "section 1765 of the Revised Statutes" and inserting in lieu thereof "section 5536 of title 5, United States Code".

(b) Section 802 of such Act (22 U.S.C. 1472) is amended—

(1) by inserting "(a)" immediately after "Sec. 802."; and

(2) by adding at the end thereof the following new subsection:

"(b)(1) Any contract authorized by subsection (a) and described in paragraph (3) of this subsection which is funded on the basis of annual appropriations may nevertheless be made for periods not in excess of five years when—

"(A) appropriations are available and adequate for payment for the first fiscal year and for all potential cancellation costs; and

"(B) the Director of the United States Information Agency determines that—

"(i) the need of the Government for the property or service being acquired over the period of the contract is reasonably firm and continuing;

"(ii) such a contract will serve the best interests of the United States by encouraging effective competition or promoting economies in performance and operation; and

"(iii) such method of contracting will not inhibit small business participation.

"(2) In the event that funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be canceled and any cancellation costs incurred shall be paid from appropriations originally available for the performance of the contract, appropriations currently available for the acquisition

of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

"(3) This subsection applies to contracts for the procurement of property or services, or both, for the operation, maintenance, and support of programs, facilities, and installations for or related to telecommunication activities, newswire services, and the distribution of books and other publications in foreign countries.".

(c) Paragraph (16) of section 804 of such Act (22 U.S.C. 1474(16)) is amended by inserting "and security" immediately after "right-hand drive".

(d) Section 804 of such Act (22 U.S.C. 1474) is amended—

(1) by striking out "and" at the end of paragraph (18);

(2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; and"; and

(3) by adding at the end of the section the following new paragraph:

"(20) subject to the availability of appropriated funds, purchase motion picture, radio and television producers' liability insurance to cover errors and omissions or similar insurance coverage for the protection of interests in intellectual property.".

(e) Title VIII of such Act (22 U.S.C. 1471-1475b) is amended by adding at the end thereof the following new sections:

"ACTING ASSOCIATE DIRECTORS

"SEC. 808. If an Associate Director of the United States Information Agency dies, resigns, or is sick or absent, the Associate Director's principal assistant shall perform the duties of the office until a successor is appointed or the absence or sickness stops.

"COMPENSATION FOR DISABILITY OR DEATH

"SEC. 809. A cultural exchange, international fair or exposition, or other exhibit or demonstration of United States economic accomplishments and cultural attainments, provided for under this Act or the Mutual Educational and Cultural Exchange Act of 1961 shall not be considered a 'public work' as that term is defined in the first section of the Act of August 16, 1941 (42 U.S.C. 1651; commonly known as the 'Defense Base Act').

"USE OF ENGLISH-TEACHING PROGRAM FEES

"SEC. 810. (a) Notwithstanding section 3617 of the Revised Statutes of the United States (31 U.S.C. 484) or any other law or limitation of authority, tuition fees or other payments received by or for the use of the International Communication Agency from or in connection with English-teaching programs conducted by or on behalf of the Agency under the authority of this Act or the Mutual Educational and Cultural Exchange Act of 1961 may be credited to the Agency's applicable appropriation to such extent as may be provided in advance in an appropriation Act.

"(b) This section shall take effect on October 1, 1982.".

(f) Section 1011(h) of such Act (22 U.S.C. 1442(h)) is amended by adding at the end thereof the following new paragraph:

"(4) Section 701(a) of this Act shall not apply with respect to any amounts appropriated under this section for the purpose of liquidating the notes (and any accrued interest thereon) which were assumed in the operation of the informational media guaranty program under this section and which were outstanding on the date of enactment of this paragraph.".

INTERNATIONAL EXCHANGES AND NATIONAL SECURITY

SEC. 305. (a) The Congress finds that—

(1) United States Government sponsorship of international exchange-of-persons activities has, during the postwar era, contributed significantly to United States national security interests;

(2) during the 1970's, while United States programs declined dramatically, Soviet exchange-of-persons activities increased steadily in pace with the Soviet military buildup;

(3) as a consequence of these two trends, Soviet exchange-of-persons programs now far exceed those sponsored by the United States Government and thereby provide the Soviet Union an important means of extending its worldwide influence;

(4) the importance of competing effectively in this area is reflected in the efforts of major United States allies, whose programs also represent far greater emphasis on exchange-of-persons activities than is demonstrated by the current United States effort; and

(5) with the availability of increased resources, the United States exchange-of-persons program could be greatly strengthened, both qualitatively and quantitatively.

(b) It is therefore the sense of the Congress that—

(1) United States exchange-of-persons activities should be strengthened;

(2) the allocation of resources necessary to accomplish this improvement would constitute a highly cost-effective means of enhancing the United States national security; and

(3) because of the integral and continuing national security role of exchange-of-persons programs, such activities should be accorded a dependable source of long-term funding.

(c) The amount obligated by the United States Information Agency each fiscal year for grants for exchange-of-persons activities shall be increased, through regular annual increases, so that by the fiscal year 1986 the amount obligated for such grants is at least double (in terms of constant dollars) the amount obligated for such grants for the fiscal year 1982.

(d)(1) In furtherance of the purposes of subsection (c), the Congress directs that of the amount appropriated for the United States Information Agency for the fiscal year 1983—

(A) $84,256,000 shall be available only for grants for the Fulbright Academic Exchange Programs and the International Visitor Program; and

(B) $3,248,000 shall be available only for grants for the Humphrey Fellowship Program; and

(C) $8,906,000 shall be available only for grants to private, not-for-profit organizations engaging in exchange-of-persons programs;

subject to paragraphs (2) and (3) of this subsection.

(2) If the amount appropriated for the United States Information Agency for the fiscal year 1983 is less than the amount authorized for the fiscal year 1983, then the amounts specified in subparagraphs (A) through (C) of paragraph (1) shall each be deemed to be reduced to the amount which bears the same ratio to the specified amount as the amount appropriated bears to the amount authorized. For purposes of this paragraph—

(A) the term "amount appropriated" means the amount appropriated under section 302 of this Act (less any rescissions), and does not include amounts appropriated under section 704 of the United States Information and Educational Exchange Act of 1948 (relating to nondiscretionary personnel costs and currency fluctuations) or under any other provision of law; and

(B) the term "amount authorized" means the amount authorized to be appropriated by section 302 of this Act, less an amount equal to any amount which was withheld from appropriation (or was rescinded) in order to reduce the amount available for a particular program or activity.

(3) The Director of the United States Information Agency may authorize up to 5 percent of the amount earmarked under subparagraph (A), (B), or (C) of paragraph (1) to be used for a purpose other than the exchange-of-persons activities specified in that subparagraph. Not less than 15 days prior to any such authorization, the Director shall submit to the Committee on Foreign Affairs of the House of Representatives, and to the Committee on Foreign Relations of the Senate, a justification for authorizing the use of earmarked funds for a purpose other than the specified exchange-of-persons activities.

DISTRIBUTION WITHIN THE UNITED STATES OF CERTAIN UNITED STATES INFORMATION AGENCY FILMS

SEC. 306. (a) Notwithstanding the second sentence of section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461)—

(1) the Director of the United States Information Agency shall make available to the Administrator of General Services a master copy of each of the films listed in subsection (b) of this section; and

(2) the Administrator shall reimburse the Director for any expenses of the Agency in making that master copy available, shall secure any licenses or other rights required for distribution of that film within the United States, shall deposit that film in the National Archives of the United States, and shall make copies of that film available for purchase and public viewing within the United States.

Any reimbursement to the Director pursuant to this section shall be credited to the applicable appropriation of the United States Information Agency.

(b) The films to be made available pursuant to this section are the following: "Reflections: Samuel Eliott Morison"; "And Now Miguel"; and "In Their Own Words".

TITLE IV—BOARD FOR INTERNATIONAL BROADCASTING

SHORT TITLE

SEC. 401. This title may be cited as the "Board for International Broadcasting Authorization Act, fiscal years 1982 and 1983".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 402. Subparagraph (A) of section 8(a)(1) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2877(a)(1)(A)) is amended to read as follows:

"(A) $86,519,000 for the fiscal year 1982 and $98,317,000 for the fiscal year 1983; and".

MEMBERSHIP OF THE RFE/RL BOARD AND THE BOARD FOR INTERNATIONAL BROADCASTING

SEC. 403. (a) The Board for International Broadcasting Act of 1973 (22 U.S.C. 2871-2879) is amended by adding at the end thereof the following new section:

"MERGER OF THE BOARD FOR INTERNATIONAL BROADCASTING AND THE RFE/RL BOARD

"SEC. 11. (a) Effective 60 days after the date of enactment of this section, no grant may be made under this Act to RFE/RL, Incorporated, unless the certificate of incorporation of RFE/RL, Incorporated, has been amended to provide that—

"(1) the Board of Directors of RFE/RL, Incorporated, shall consist of the members of the Board for International Broadcasting and of no other members, except that the member of the Board for International Broadcasting who is an ex officio member of that Board because of his or her position as chief operating executive of RFE/RL, Incorporated, may participate in the activities of the Board of Directors but may not vote in the determinations of the Board of Directors; and

"(2) such Board of Directors shall make all major policy determinations governing the operation of RFE/RL, Incorporated, and shall appoint and fix the compensation of such managerial officers and employees of RFE/RL, Incorporated, as it deems necessary to carry out the purposes of this Act.

"(b) Compliance with the requirement of paragraph (1) of subsection (a) shall not be construed to make RFE/RL, Incorporated, a Federal agency or instrumentality.".

(b)(1) Section 3(b)(1) of such Act (22 U.S.C. 2872(b)(1)) is amended to read as follows:

"(b)(1) COMPOSITION OF BOARD.—The Board shall consist of ten members, one of whom shall be an ex officio member. The President shall appoint, by and with the advice and consent of the Senate, nine voting members, one of whom the President shall designate as chairman. Not more than five of the members of the Board appoint-

ed by the President shall be of the same political party. The chief operating executive of RFE/RL, Incorporated, shall be an ex officio member of the Board and may participate in the activities of the Board, but may not vote in the determinations of the Board.".

(2) Sections 3(b) (3) and (4) of that Act (22 U.S.C. 2872(b) (3) and (4)) are amended to read as follows:

"(3) TERM OF OFFICE OF PRESIDENTIALLY APPOINTED MEMBERS.—The term of office of each member of the Board appointed by the President shall be three years, except that the terms of office of the individuals initially appointed as the four additional voting members of the Board who are provided for by the Board for International Broadcasting Authorization Act, Fiscal Years 1982 and 1983, shall be one, two, or three years (as designated by the President at the time of their appointment) so that the terms of one-third of the voting members of the Board expire each year. The President shall appoint, by and with the advice and consent of the Senate, members to fill vacancies occurring prior to the expiration of a term, in which case the members so appointed shall serve for the remainder of such term. Any member whose term has expired may serve until his or her successor has been appointed and qualified.

"(4) TERM OF OFFICE OF THE EX OFFICIO MEMBER.—The ex officio member of the Board shall serve on the Board during his or her term of service as chief operating executive of RFE/RL, Incorporated.".

RADIO BROADCASTING TO CUBA

SEC. 404. Any program of the United States Government involving radio broadcasts directed principally to Cuba, for which funds are authorized to be appropriated by this Act or any other Act, shall be designated as "Radio Marti".

TITLE V—MISCELLANEOUS PROVISIONS

INTER-AMERICAN FOUNDATION

SEC. 501. (a) Section 401(s)(2) of the Foreign Assistance Act of 1969 (22 U.S.C. 290f(s)(2)) is amended in the first sentence by striking out "$25,000,000 for each of the fiscal years 1979 and 1980" and inserting in lieu thereof "$12,000,000 for the fiscal year 1982 and $12,800,000 for the fiscal year 1983".

(b) Section 401(h) of that Act (22 U.S.C. 290f(h)) is amended by striking out "actual and necessary expenses not in excess of $50 per day, and for transportation expenses" and inserting in lieu thereof "travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of title 5, United States Code".

(c) Section 401 of that Act is further amended by adding at the end thereof the following new subsection:

"(u) When, with the permission of the Foundation, funds made available to a grantee under this section are invested pending disbursement, the resulting interest is not required to be deposited in the United States Treasury if the grantee uses the resulting interest for the purposes for which the grant was made. This subsection applies with respect to both interest earned before and interest earned after the enactment of this subsection.".

REPORT ON COSTS FOR REFUGEES AND CUBAN AND HAITIAN ENTRANTS

SEC. 502. (a) Not later than 60 days after the date of enactment of this Act, the President shall prepare and transmit to the Congress a full and complete report on the total cost of Federal, State, and local efforts to assist refugees and Cuban and Haitian entrants within the United States or abroad for each of the fiscal years 1981 and 1982. Such report shall include and set forth for each such fiscal year—

(1) the costs of assistance for resettlement of refugees and Cuban and Haitian entrants within the United States or abroad;

(2) the costs of United States contributions to foreign governments, international organizations, or other agencies which are attributable to assistance for refugees and Cuban and Haitian entrants;

(3) the costs of Federal, State, and local efforts other than those described in paragraphs (1) and (2) to assist and provide services for refugees and Cuban and Haitian entrants;

(4) administrative and operating expenses of Federal, State, and local governments that are attributable to programs of assistance or services described in paragraphs (1), (2), and (3); and

(5) administrative and operating expenses incurred by the United States because of the entry of such aliens into the United States.

(b) For purposes of this section—

(1) the term "refugees" is used within the meaning of paragraph (42) of section 101(a) of the Immigration and Nationality Act; and

(2) the term "Cubans and Haitian entrants" means Cuban and Haitians paroled into the United States, pursuant to section 212(d)(5) of the Immigration and Nationality Act, during 1980 who have not been given or denied refugee status under that Act.

JAPAN-UNITED STATES FRIENDSHIP COMMISSION

SEC. 503. (a) Section 6(4) of the Japan-United States Friendship Act (22 U.S.C. 2905(4)) is amended by striking out "and not to exceed 5 per centum annually of the principal of the Fund" and inserting in lieu thereof ", any amount of the contributions deposited in the Fund from nonappropriated sources pursuant to paragraph (2) or (3) of this section, and not to exceed 5 percent annually of the principal of the total amount appropriated to the Fund".

(b) Section 7(e) of such Act (22 U.S.C. 2906(e)) is amended by inserting after "amounts received" the following: "(including amounts earned as interest on, and proceeds from the sale or redemption of, obligations purchased with amounts received)".

INTERNATIONAL CODE OF MARKETING OF BREASTMILK SUBSTITUTES

SEC. 504. The Congress expresses its strong support for the promotion by the United States of sound infant feeding practices, and continues to be concerned with the sole negative vote cast by the United States against the International Code of Marketing of Breastmilk

Substitutes. The Congress urges the President, in light of congressional concern and of new indications of international support for general implementation of the Code, to review the United States position on the Code prior to the 25th World Health Assembly meeting. The Congress also urges United States infant formula manufacturers to continue to re-examine their own position regarding the Code.

REPEAL OF OBSOLETE PROVISIONS

SEC. 505. (a) The following provisions of law are repealed:

(1) Section 408 of the Act entitled "An Act to authorize appropriations for fiscal years 1980 and 1981 for the Department of State, the International Communication Agency, and the Board for International Broadcasting", approved August 15, 1979.

(2) Sections 121(b), 122(b), 504(e), 601(b), 603(c), 608(c), 609(c), 610(c), 611(b), 613(b), 705(a), 709, and 711 of the Foreign Relations Authorization Act, Fiscal Year 1979.

(3) Sections 107(b), 109(a)(7), 414(b), 501, 503(b), 505(a), and 513 of the Foreign Relations Authorization Act, Fiscal Year 1978.

(4) Section 403 of the Foreign Relations Authorization Act, Fiscal Year 1977.

(5) Sections 102(b) and 503(b) of the Foreign Relations Authorization Act, Fiscal Year 1976.

(6) Section 15 of the State Department/USIA Authorization Act, Fiscal Year 1975.

(b)(1) Sections 121, 122, 601, 611, and 613 of the Foreign Relations Authorization Act, Fiscal Year 1979, sections 107, 414, and 503 of the Foreign Relations Authorization Act, Fiscal Year 1978, and section 503 of the Foreign Relations Authorization Act, Fiscal Year 1976, are each amended by striking out "(a)".

(2) Section 705 of the Foreign Relations Authorization Act, Fiscal Year 1979, and section 505 of the Foreign Relations Authorization Act, Fiscal Year 1978, are each amended by striking out "(b)".

(3) Section 102 of the Foreign Relations Authorization Act, Fiscal Year 1976, is amended by striking out "(a) Except as provided in subsection (b), no" and inserting in lieu thereof "No".

And the House agree to the same.

CLEMENT J. ZABLOCKI,
DANTE B. FASCELL,
GUS YATRON,
DANIEL MICA,
WM. BROOMFIELD,
EDWARD J. DERWINSKI,
LARRY WINN, JR.,
Managers on the Part of the House.

CHARLES H. PERCY,
JESSE HELMS,
S. I. HAYAKAWA,
DICK LUGAR,
C. PELL,
JOE BIDEN,
JOHN GLENN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1193) to authorize appropri-

ations for fiscal years 1982 and 1983 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, expect for clerical corrections, conforming changes made necessary by agreements reached in the committee of conference, and minor drafting and clarifying changes.

TABLE I.—BUDGET ISSUES: FISCAL YEAR 1982

[In thousands of dollars]

	Executive branch request	Senate bill	House amendment	Conference
Department of State:				
Administration of foreign affairs	1,245,637	1,318,754	1,245,637	1,245,637
International organizations and conferences	503,462	523,806	503,462	503,462
International commissions	19,808	22,508	19,808	19,808
U.S. bilateral science and technology agreements	3,700	3,700	3,700	3,700
Asia Foundation		4,500		[1] 4,500
Migration and refugee assistance	504,100	560,850	504,100	[2] 504,100
Subtotal, Department of State	2,276,707	2,434,118	2,276,707	2,281,207
International Communication Agency	494,034	561,402	494,034	494,034
Board for International Broadcasting	86,519	98,317	86,519	86,519
Inter-American Foundation	12,000	12,000	10,560	12,000
Arms Control and Disarmament Agency	16,768	18,268		
Total	2,886,028	3,124,105	2,867,820	2,873,760

[1] In providing a separate authorization for the Asia Foundation for fiscal years 1982 and 1983, the conferees expect the executive branch to request separate authorizations for this purpose in succeeding fiscal years.

[2] Includes an earmarking of $12,500,000 for Soviet and Eastern European refugees resettling in Israel, and an earmarking of $1,500,000 for the "political detainee" program of the International Committee for the Red Cross (ICRC).

TABLE II—BUDGET ISSUES: FISCAL YEAR 1983

[In thousands of dollars]

	Executive branch request	Senate bill	House amendment	Conference
Department of State:				
Administration of foreign affairs	1,248,059	1,248,059	1,248,059	1,248,059
International organizations and conferences	514,436	514,436	514,436	514,436
International commissions	22,432	22,432	22,432	22,432
U.S. bilateral science and technology agreements	3,700	3,700	3,700	3,700
Asia Foundation				4,500
Migration and refugee assistance	460,000	467,750	460,000	[1] 460,000
Subtotal, Department of State	2,248,627	2,256,377	2,248,627	2,253,127
International Communication Agency	644,000	482,340	482,340	[2] 559,000
Board for International Broadcasting	98,317	98,317	98,317	98,317
Inter-American Foundation	12,800		12,800	12,800

TABLE II—BUDGET ISSUES: FISCAL YEAR 1983—Continued

[In thousands of dollars]

	Executive branch request	Senate bill	House amendment	Conference
Arms Control and Disarmament Agency	19,942	([3])		
Total	3,023,686	2,837,034	2,842,084	2,923,244

[1] Includes an earmarking of $16,875,000 for Soviet and Eastern European refugees resettling in Israel, and an earmaking of $1,500,000 for the "political detainee" program of the International Committee of the Red Cross.
[2] The executive branch request, including supplemental, totals $644,000,000. The Senate bill and the House amendment recommended $482,340,000. However, since both the Senate Foreign Relations Committee and the House Foreign Affairs Committee subsequently reported supplemental authorization legislation (H.R. 5998 and S. 2581), the conferees agreed to the lower Senate combined level of $559,000,000. This amount includes earmarkings of $84,256,000 for grants for the Futbright Academic Exchange Program and the International Visitor Program; $3,248,000 for grants for the Humphrey Fellowship Program; $8,906,000 for grants to certain private nonprofit organizations.
[3] The Senate bill authorized "such sums as may be necessary" for fiscal year 1983.

AUTHORIZATION OF APPROPRIATIONS

With respect to the fiscal year 1983 authorization request for the International Communication Agency, the committee of conference agreed to an authorization level that is below the President's request by $85 million. In authorizing an appropriation of $559 million for the International Communication Agency, it is the intent of the committee of conference that the appropriation for this amount not be offset by executive branch fiscal year 1983 budget reductions in other accounts in the international affairs budget function. In particular, the appropriation for ICA shall not be offset by executive branch reductions in the current request for salaries and expenses or other accounts of the Department of State, functional development assistance programs, operating expenses for the Agency for International Development, or the U.S.-assessed or voluntary contributions to international organizations. Should the executive branch seek at a later date a supplemental authorization and appropriation for fiscal year 1983 for the International Communication Agency above $559 million, such additional sum shall not be offset by reductions in any of the above-mentioned accounts or any other international affairs account. The committee of conference wishes to point out that the foreign policy agencies as a group are considered vital elements of U.S. national security. As such, it makes no sense and is, indeed, destructive of foreign policy and national security needs, to place the agencies in budgetary competition with each other.

The letter indicating support for this figure follows:

INTERNATIONAL
COMMUNICATION AGENCY,
OFFICE OF THE DIRECTOR,
Washington, D.C., July 20, 1982.

Hon. DANTE B. FASCELL,
Chairman, Subcommittee on International Operations, Committee on Foreign Affairs, House of Representatives.

DEAR MR. CHAIRMAN: In its last meeting on the Department of State/USICA/BIB authorization bill, the Conference Committee set the USICA authorization for fiscal year 1983 at $482.3 million. This represents a reduction of more than 20 percent from the Administration's latest request of $644 million. The Committee also estab-

lished within the authorized sum specific exchange-of-persons program earmarks totaling $89.8 million.

The resource impact of these actions poses a serious threat to this Agency's ability to serve effectively our vital national interests. This is especially worrisome at this critical crossroads in our relations with the rest of the world. We ask that the Committee reconsider the fiscal year 1983 amount for USICA and allow $559 million, the level approved by the Senate Foreign Relations Committee on May 26. The Administration supports this adjustment.

An allowance of $482.3 million would eliminate all funds requested to augment VOA's transmitter capabilities in South Asia and Africa and to modernize its domestic studios. Further it would remove funds needed to participate in the Tsukuba Expo in Japan, to consolidate Agency operations in Washington, to transmit regularly by satellite important Presidential and other foreign policy statements, and to effect other program improvements. These initiatives were critical to the revitalization of this nation's principal instrument for communicating with foreign audiences.

The President and I share the Committee's views on the value of the exchange-of-persons program. This was demonstrated most recently as the President endorsed the new International Youth Exchange Initiative on May 24. However, the exchange-of-persons earmarks, within the $482.3 million overall budget level, would have an unintended and most damaging impact. The balance among our program components would be seriously distorted. Core functions of the Agency, already badly eroded from previous cuts, would have to be reduced further. Increases for exchanges would have to come at the expense of VOA broadcast operations and our overseas posts, including the support of authoritative speakers, printed and audio-visual program materials that our field officers require.

At this volatile moment in world affairs we need to do more, not less.

In its consideration of USICA's supplemental authorization needs for FY 1983, the Senate Foreign Relations Committee covered our essential requirements in its $559 million allowance. After considerable deliberation within the Administration we are happy to report that we can support that authorization amount along with the language changes accepted by the Conference Committee in its June 22 meeting. I hope that the Conference will reopen the issue of USICA funding for FY 1983 and adopt the $559 million amount.

I wish to express my sincere gratitude to you for your strong interest and support for this Agency's activities. With your continued assistance we will meet those national security needs that are lodged with this Agency.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this request.

With my best regards.

Sincerely,

CHARLES Z. WICK,
Director.

The committee of conference also notes that the conference substitute authorizes $504,100,000 for refugee and migration assistance

in fiscal year 1982 and $460 million in fiscal year 1983. The conference committee expects that funds from these amounts will be used, along with contributions from other donors, to help alleviate the desperate plight of the approximately 1.5 million ethnic Somali refugees who have fled fighting and repression in Ethiopia's Ogaden region. The conference committee requests the executive branch to implement procedures to insure that U.S. refugee assistance reaches the needy Somali refugees for whom it is intended and that such assistance is not diverted to other purposes.

The committee of conference also notes that many Members of Congress have received complaints from their constituents about the long delays encountered in the issuance of passports. Conferees are aware that the Department of State has made progress in solving this problem, the result of a series of simultaneous breakdowns and other factors, but that the backlog is still serious. It is the view of the conference committee that the Department should take the steps necessary to improve the passport situation by assigning more personnel, adjusting the workload among passport offices, reopening the Detroit passport office if possible, or taking whatever other steps are required.

REOPENING OF CERTAIN U.S. CONSULATES

The Senate bill earmarked $2.085 million for each of fiscal years 1982 and 1983 to be used to reopen, operate, and maintain consulates in Turin, Italy, Salzburg, Austria, Goteborg, Sweden, Bremen, Germany, Nice, France, Mandalay, Burma, and Brisbane, Australia.

The House amendment precluded the opening of any new U.S. consulates until the seven consulates mentioned above were reopened.

The conference substitute reprograms $400,000 in fiscal year 1982 to operate and maintain the seven consulates and retains the language of the House amendment precluding the opening of any new U.S. consulates until the seven are reopened. The committee of conference notes that these funds will be available without further congressional action. The Department of State estimates that approximately $1,500,000 will be used in fiscal year 1983 to operate and maintain these consulates. The committee of conference expresses the hope that this will be the last occasion for disagreement over the opening and closing of U.S. posts abroad. It is the view of the conferees that the broadest possible U.S. presence is desirable abroad. U.S. foreign policy and national security are not enhanced when U.S. contact with other countries and peoples is restricted.

RESTRICTION OF FUNDS FOR THE PALESTINE LIBERATION ORGANIZATION

The Senate bill prohibited the use of funds appropriated for international organizations for payment by the United States of assessments which would provide political benefits to the Palestine Liberation Organization or entities associated with it. The provision also required an annual report to the Congress on the programs and amounts withheld.

The House amendment contained no comparable provision.

The conference substitute is identical to the Senate provision.

PAYMENT OF ASSESSED CONTRIBUTIONS FOR CERTAIN INTERNATIONAL ORGANIZATIONS

The Senate bill earmarked $45,800,000 for fiscal year 1982 and $45,800,000 for fiscal year 1983 of the funds in the "International Organizations" account to be used to pay the U.S. full-calendar-year assessments in 1982 and 1983 to the Organization of American States. The specific purpose of this section was to exempt the OAS from the executive branch's deferral plan so as not to cause serious cash-flow problems for this organization, where the U.S. contribution is approximately 62 percent of the total.

The proposed deferral plan is a 4-year process which would change the timing of the payment of the U.S. assessed contributions to these organizations. The intent is to enable the Congress and the executive branch to prepare and act upon the annual budget request for U.S. assessed contributions after the budget for each international organization has been adopted, rather than in advance of adoption of the budget, as has been done in the past. Under the proposed change, the United States would not technically be in arrears to any of these organizations in any given calendar year, although the payments would be made at staggered times over the next 4 years. The transition to this new payment cycle is proposed to be fully accomplished in the fiscal year 1986 budget request.

The House amendment contained no comparable provision.

The conference substitute requires that the entire U.S. assessed contributions for the Organization of American States, the Pan American Health Organization, and the Inter-American Institute for Cooperation of Agriculture for fiscal years 1982 and 1983 be paid in calender years 1982 and 1983, respectively, without regard to the deferral plan for assessed contributions. This exemption is being made because the U.S. contribution to these inter-American organizations averages approximately 60 percent of the total. Should the deferral plan be extended to these organizations, the United States would precipitate a severe budgetary crisis.

In providing this exemption, the committee of conference expects that the Department of State will continue the policy of providing an orderly decrease in the percentage share the United States pays to the OAS, down to a level of 49 percent. While the nature of this inter-American organization justifies greater U.S. financial support than the 25-percent share mandated for most international organizations, the original 66-percent U.S. share was established when the countries in the hemisphere were much weaker economically than they are today. Hence, it is appropriate for the United States to seek a reduction in its percentage share of the OAS's assessed budget.

INTERNATIONAL COMMITTEE OF THE RED CROSS

The Senate bill earmarked $1,500,000 each in fiscal years 1982 and 1983 from the migration and refugee assistance account to be used only as a contribution to the International Committee of the

Red Cross (ICRC) to support the ICRC's program for the protection and assistance of political detainees.

The House amendment contained no comparable provision.

The conference substitute is identical to the Senate provision.

ASSISTANCE FOR REFUGEES SETTLING IN ISRAEL

The House amendment earmarked $12,500,000 for fiscal year 1982 and $15 million for fiscal year 1983 in the migration and refugee assistance account for assistance for the resettlement in Israel of refugees from the Soviet Union and from Communist countries in Eastern Europe.

The Senate bill earmarked $18,750,000 for each year for this purpose.

The conference substitute earmarks $12,500,000 in fiscal year 1982 and $16,875,000 in fiscal year 1983 to assist in the resettlement in Israel of refugees from the Soviet Union and Eastern Europe and extends the program to refugees entering Israel from other countries. In extending the program to "other countries," the committee of conference was particularly concerned about the plight of the Ethiopian Falasha Jewish and Iranian Jewish communities.

The committee of conference notes that such assistance is particularly important at this time. According to the latest State Department report on human rights practices in Ethiopia, Falasha Jews are facing increasingly harsh conditions at home. Iranian Jews have also been marked for execution by the Iranian regime. Consequently, the committee of conference urges the executive branch to employ all available diplomatic means and all appropriate intermediaries, including the United Nations, to help in the departure of those Ethiopian and Iranian Jews who wish to emigrate.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION (UNESCO)

The Senate bill expressed congressional opposition to efforts by UNESCO to attempt to regulate news content and the operations of the world press and efforts by some countries to control access to and dissemination of news, but contained no Presdential reporting requirement.

The House amendment expressed the sense of the Congress that UNESCO should cease its efforts to attempt to regulate news content and formulate regulations for the operation of the press. It also stated that the Congress opposes efforts by some countries to control access to and dissemination of news. It required a report from the President (1) assessing the relationship of UNESCO programs and U.S. financial contributions to UNESCO and to the U.S. national interest; (2) assessing UNESCO programs and activities, especially in the field of communications; (3) assessing the quality of U.S. participation and recruitment for employment by UNESCO, and (4) making recommendations regarding improvements which should be made in the quality and substance of U.S. representation in UNESCO.

The conference substitute is the same as the House amendment.

RESTRICTIONS ON CONTRIBUTIONS TO UNESCO

The Senate bill expressed the sense of the Congress that, for fiscal year 1982 or 1983, the U.S. contribution to UNESCO should be reduced by 25 percent of any amount UNESCO expends on activities which would impede the free flow of information.

The House amendment provided that none of the funds authorized by this act or any other act may be used for payment of the U.S. assessed contribution to UNESCO if that organization implements any policy which has the effect of licensing journalists or their publications, restricting the free flow of information within or among countries, or imposing mandatory codes of journalistic practice or ethics.

The conference substitute is identical to the House amendment.

ASIA FOUNDATION

The Senate bill provided an additional authorization of $4.5 million in fiscal year 1982 for the Asia Foundation above the amount requested for "Administration of Foreign Affairs."

The House amendment contained no comparable provision.

The conference substitute authorizes $4.5 million in fiscal year 1982 and in fiscal year 1983 for the Asia Foundation.

The committee of conference stresses that the earmarked funding for the Asia Foundation for fiscal years 1982 and 1983 is provided as a stopgap measure only. It is the strong consensus of the conferees, however, that in the future the Asia Foundation must have a more permanent funding structure. Noting that a study of the issue has been submitted to the House Foreign Affairs and Senate Foreign Relations Committees, the committee of conference suggests as a possible solution that, beginning in fiscal year 1984, funds for the Asia Foundation be requested as a separate line item within the Department of State budget and not through funds designated for operational or program expenses of the Department. Neither the accounts of the Department not the Asia Foundation should be placed in the position of competing with one another for funds. The Asia Foundation is a useful foreign policy tool and should be treated as such in budgetary terms. In the alternative, the Aisa Foundation budget might be handled as a separate item, similar to the Inter-American Foundation. The committee of conference expects a resolution of this question by the time the fiscal year 1984 budget is submitted.

BUYING POWER MAINTENANCE

The House amendment provided budget authority for such sums as may be necessary for a buying power maintenance fund to offset losses in other appropriations due to adverse fluctuations in foreign currency exchange rates or other overseas wage and price changes unanticipated in the budget. The House amendment also specified the establishment of an account specifically entitled "Buying Power Maintenance" account and authorized the Secretary of State to transfer money out of the buying power maintenance account to other accounts under "Administration of Foreign Affairs" in order to maintain approved levels of operation. Finally, the House

amendment provided clarifying language for USICA and BIB to insure authorization of the amount of appropriations necessary to offset adverse fluctuations in foreign currency exchange rates in order to maintain the authorized level of operations.

The Senate bill provided that $20 million of the funds authorized for the Department of State be used for buying power maintenance and provided for transfer of funds to that account from other appropriation accounts of the Department.

The conference substitute is identical to the House amendment, with an amendment to replace "may" with "shall" in subsection (b)(3), the effect of which is to require the transfer of funds to the account in appropriate cases, to prevent windfall gains.

DOCUMENTATION OF CITIZENSHIP

The House amendment provided that passports and the reports designated as "Report of Birth Abroad of a Citizen of the United States" shall be considered as evidence of U.S. citizenship in the same manner as are certificates of naturalization or citizenship.

The Senate bill contained no comparable provision.

The conference substitute is identical to the House amendment.

PRIVATE SECTOR REPRESENTATIVES ON U.S. DELEGATIONS TO INTERNATIONAL TELECOMMUNICATIONS MEETINGS AND CONFERENCES

The House amendment exempted from certain provisions of the Ethics in Government Act, private sector representatives who are asked to serve on U.S. delegations to certain international telecommunications meetings and conferences. The Secretary of State will, in all cases, certify the need for private sector participation and will also determine which conferences require participation by the private sector for purposes of implementing this provision.

The Senate bill contained no comparable provision.

The conference substitute is identical to the House amendment.

PROCUREMENT CONTRACTS

The House amendment authorized the Department of State, under certain circumstances, to enter into contracts for property and services on a multiyear basis, for a period not to exceed 5 years, subject to the availability of appropriations.

The Senate bill contained no comparable provision.

The conference substitute is identical to the House amendment.

COMPENSATION FOR DISABILITY OR DEATH

The House amendment exempted the Department of State from payng Federal workmen's compensation insurance for employees working under short-term contracts for the Department or the Foreign Service overseas.

The Senate bill contained no comparable provision.

The conference substitute is identical to the House amendment.

DUTIES OF A CHIEF OF MISSION

The Senate bill provided that each chief of mission shall have as a principal duty the promotion of U.S. goods and services for export to such country.

The House amendment contained no comparable provision.

The conference substitute is the same as the Senate provision.

The committee of conference agrees that the promotion of U.S. goods and services is a vital aspect of the job of our missions abroad. Toward this end, the Foreign Commercial Service became a part of the Foreign Service of the United States, yet its personnel are in the Commerce Department while Foreign Service economic officers are in the Department of State. While the question of whether these two functions should ever have been separated may remain open, it is inefficient to separate officers who work together overseas. Therefore, in the interests of effective foreign policy management, efficient promotion of U.S. economic and commercial interests, and Foreign Service morale generally, the committee of conference urges the return of the Foreign Commercial Service to the Department of State, together with the personnel and resources now provided to the Department of Commerce.

AMENDMENTS CORRECTING PRINTING ERRORS

The House amendment provided for the correction of two printing errors in the Foreign Service Act of 1980.

The Senate bill contained no comparable provision.

The conference substitute is identical to the House amendment.

SCIENTIFIC EXCHANGE ACTIVITIES WITH THE SOVIET UNION

The House amendment provided that, prior to renewal of the General Agreement on Contracts, Exchanges and Cooperation between the United States and the U.S.S.R., and prior to planning future exchange activities between the United States and the U.S.S.R., or by June 1, 1982, whichever occurs first, the Secretary of State is required to submit a report to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate. Such a report should include a description of the specific research and projects involved, the areas of cooperation, the man-hours spent in exchanges, the levels of funding by both the United States and the U.S.S.R., and an assessment of the equality or inequality in value of the information exchanged for all exchanges and activities conducted during fiscal years 1979, 1980, and 1981 pursuant to the 11 agreements for cooperation in specialized fields entered into by the United States and the U.S.S.R. between 1972 and 1974. The report was to be prepared in consultation and cooperation with the Secretary of Defense and other relevant agency heads. Subsection (c) cut off all funding after June 30, 1982, for any long-term scientific or technological exchanges between the United States and the U.S.S.R.

The Senate bill contained no comparable provision.

The conference substitute incorporates the House amendment with an amendment to (a) change the reporting requirement to require a report within 90 days after date of enactment of this bill;

(b) require a report on the exchanges and other activities conducted under these agreements in fiscal years 1981 and 1982 in consultation with the heads of the other involved agencies; and (c) delete the funding prohibition and require instead that a report be submitted by the Secretary of State no later than July 1 of each year on the Soviet nationals participating in the exchanges, their topics of study, and their places of study, as well as a determination by the Secretary, in consultation with the other agency heads involved in these exchange programs, that these exchange programs will not jeopardize U.S. national security interests.

FOREIGN MISSIONS ACT

The House amendment (the "Foreign Missions Act") established a new "Office of Foreign Missions" within the Department of State and authorized the Secretary of State to review and control the operations of foreign missions in the United States and the benefits available to them. "Benefit" was broadly defined to include any type of service or supply, including real property transactions, available from public or private sources. It empowered the Secretary to set terms and conditions upon which benefits may be provided; set forth the mechanism and criteria under which issues relating to the location of foreign missions in the District of Columbia are to be decided; provided for the preemptive effect of the exercise of Federal jurisdiction regarding the conferral or denial of benefits under this legislation; provided administrative authorities to enable the Office of Foreign Missions to operate under the direction of the Secretary of State, but not subject to control by the bureaus responsible for the day-to-day operations of the Department; granted authority to the Secretary to apply the foreign missions provisions to international organizations or official missions thereto; and limited to two persons per foreign mission any certification for purposes of issuance of diplomatic license plates.

The Senate bill contained no comparable provision. S. 854, passed by the Senate, is similar to the House amendment, but contained no provision on the location of foreign missions in the District of Columbia.

The conference substitute is similar to the House amendment with the following changes which were drawn primarily from provisions in S. 854: It adds language preserving the authority of the Secret Service to provide protective services; requires the Secretary of State to advise those proposing to enter into transactions with foreign missions whether the proposed transaction is prohibited by any regulation or determination of the Secretary under this legislation; broadens the definition of "international organization" to include those in which the United States does not participate; clarifies that the authorities of the bill shall be exercised in accordance with procedures and guidelines approved by the President; sets forth procedures and criteria under which issues relating to the location of foreign missions in the District of Columbia are to be decided; clarifies the preemptive effect of the exercise of Federal jurisdiction regarding the conferral or denial of benefits under this legislation; and provides that only amounts transferred or credited

to the working capital fund of the Department of State may be used in carrying out the functions under the Foreign Missions Act.

Among those House provisions deleted by the conference substitute were the provision granting authority to the National Capital Planning Commission to settle chancery issues and the provision establishing the Foreign Missions Act as the exclusive law governing foreign missions in the District of Columbia. The original preemption provision was replaced with more limited language, which does not require State or local authorities to take any affirmative action.

The conference substitute also deletes the House provision concerning diplomatic license plates. The committee of conference took careful note of past abuses by foreign diplomatic personnel stemming from their special status and immunity. Such abuse was especially prominent in the area of diplomatic license plate issuance. Careful note was also taken of an exchange of letters between Representative William S. Broomfield and Under Secretary of State Richard T. Kennedy on this matter. The committee of conference is reassured by the Department's forthright response and its commitment to pursue this matter in the future. Specifically, the Department has indicated its intent to scrutinize the issuance of diplomatic license plates; assist local jurisdictions, as appropriate, with their collection of parking fines and the pursuit of other motor vehicle violations; and to monitor generally the number of diplomatic license plates issued. The committee of conference notes that these matters come within the purview of the new Foreign Missions Act and that the Department therefore will be able to remove this problem from the Office of Protocol and turn it over to the Office of Foreign Missions for handling.

With respect to the location of chanceries in the District of Columbia, the conference substitute contains a provision replacing that contained in section 206 of the House amendment. This new section retains the existing D.C. zoning structure composed of the National Capital Planning Commission, the D.C. Zoning Commission, and the D.C. Board of Zoning Adjustment. For purposes of considering chancery issues, the substitute provides that the President may designate the Secretary of Defense, the Secretary of the Interior, or the Administrator of General Services to serve as the Federal representative on the Zoning Commission in lieu of the Director of the National Park Service, and that the individual so designated will also serve on the Board of Zoning Adjustment, as the Zoning Commission representative when the Board considers chancery matters. The substitute also provides for chanceries to be treated similarly to, and no less favorably than, office and institutional uses, and sets forth criteria for use in determining the chancery issues which take into consideration international obligations and the need to balance municipal and Federal interests.

ANALYSIS OF CERTAIN FOREIGN MISSIONS PROVISIONS

Chanceries in the District of Columbia

Section 206 affects chancery locations only in the Nation's Capital and, therefore, is set apart from other sections of the Foreign Missions Act which are of general application. Section 206(a) states

that the location, replacement, or expansion of chanceries in the District of Columbia shall be subject to this section.

Section 206(b)(1) permits chanceries to locate as a matter of right in any area zoned commercial, industrial, waterfront, or mixed-use, but not in medium-high or high-density residential zones. This means that a chancery wishing, for example, to locate in a mixed-use (commercial-residential) zone, may do so if it meets the same standards as to building height, bulk, et cetera, and acquires the necessary permits, as do other property users within that zone. Additional administrative steps would not be required. The principal change from the current situation is the inclusion of lower density commercial areas as a matter of right. These areas are often desirable for chancery uses, as they are for certain office and institutional uses. Indeed, the majority of chancery uses are small scale and lower density and therefore suitable for such areas, or in some cases require placement in such areas for security reasons. This subsection also includes the commercial-residential mixed-use areas and waterfront areas, which is not a change from current law, and adds industrial areas. The section does not authorize the location of chanceries as a matter of right in areas zoned residential.

Section 206(b)(2) permits chanceries, upon application, to locate, as at present, in areas zoned medium-high or high-density residential, as well as in other areas which include office and institutional uses, including mixed-use diplomatic and special purpose districts. All locations within these areas are subject to disapproval under the District of Columbia zoning process as provided in this section. This subsection will not permit chanceries to be located in any area which is essentially a residential use area.

Section 206(b)(3) precludes the imposition of limitations or conditions on chanceries greater than those placed on other office or institutional uses. This insures treatment for chancery uses equal to that accorded comparable uses in the same area.

Section 206(c)(1) provides for filing with the D.C. Board of Zoning Adjustment and public notice of all applications for chancery use or appeals by chancery applicants from adverse zoning determinations. This is consistent with current law.

Section 206(c)(2) provides for appropriate public participation in proceedings under this section. The D.C. Zoning Commission will have the responsibility for issuing the regulations governing public participation.

Section 206(c)(3) provides a limitation of 6 months for proceedings involving chanceries under this section. This is intended to insure an expeditious process which will avoid the extensive and overlapping proceedings which are required under existing law and regulations. A time limit of 6 months should, in most cases, be more than sufficient to complete the decisionmaking process. It is expected, however, that final decisions will, to the extent possible, be made in a shorter period.

Section 206(d) sets forth the criteria to be applied in the determination of chancery issues, which are intended to balance the municipal and Federal interests. In brief, these criteria include: (1) Recognition of the international obligation of the United States concerning the location of chancery facilities in the Nation's Capital; (2) historic preservation; (3) adequacy of parking and public

transportation; (4) availability of Federal security; (5) the municipal interest, as determined by the Mayor of the District of Columbia, which includes matters such as traffic, height, bulk, area impact, among others; and (6) the Federal interest, as determined by the Secretary of State, which includes matters such as national security, foreign relations concerns, and the reciprocal impact on U.S. missions abroad.

Section 206(e)(1) provides that regulations, proceedings, and other actions of the National Capital Planning Commission (NCPC), the D.C. Zoning Commission, and the Board of Zoning Adjustment of the District of Columbia, shall be consistent with the provisions of this section, including the criteria described above, in order to assure consistency among actions of the several bodies administering this section.

Section 206(e)(2) provides for referral to NCPC for review and comment of proposed actions of the Zoning Commission, as is required under existing law.

Section 206(f) provides that proceedings concerning chanceries under this section would be conducted under a rulemaking and not an adjudicatory procedure. This will provide a process compatible with the conduct of diplomatic relations between the sovereign nations involved, and the participation of their diplomatic representatives in these proceedings. Such rulemaking procedures are currently employed by the Zoning Commission of the District of Columbia in some of its proceedings.

Section 206(g) directs the Secretary of State to require substantial compliance with building and related codes by foreign missions, which is stricter than current practice under which these codes are not enforced with respect to foreign missions because of diplomatic immunity. This subsection permits the Secretary of State to accommodate special building requirements, generally involving security, communications, and related needs, which are often required to be adjusted in a similar manner for U.S. missions abroad.

Section 206(h) provides grandfather rights for existing chancery locations and uses, so that such issues need not be reopened.

Section 206(i)(1) authorizes the President to adjust Federal representation on the D.C. Zoning Commission for purposes of proceedings under this section, in order to reflect, as appropriate, national security and foreign policy concerns. Under existing law, one Federal agency representative is now a member of the Zoning Commission. The Zoning Commission of the District of Columbia is composed of three representatives appointed by the Mayor of the District, one Federal agency representative (currently the National Park Service), and the Architect of the Capitol. This authority neither increases the Federal representation nor affects the District majority thereon appointed to the Commission by the Mayor of the District of Columbia.

Section 206(i)(2) provides that for purposes of chancery issues, the Federal agency representative (who may be the existing official or one designated under the preceding subsection (i)(1)) shall also be the Zoning Commission representative on the Board of Zoning Adjustment. The Board of Zoning Adjustment of the District of Columbia is composed of three persons appointed by the Mayor of the

District, one representative of the Zoning Commission, and one representative of the National Capital Planning Commission. Under existing law and practice, one member of the Commission currently serves on the Board on a rotating basis. This provision therefore assures that the Federal interest will always be appropriately reflected in the performance of the Board's functions under this section. It does not affect the District majority appointed to the Board by the Mayor of the District of Columbia. This subsection also provides that in chancery proceedings, the NCPC representative serving on the Board shall be the Executive Director of the Commission, which conforms to the existing NCPC practice of appointing a staff member for such purposes.

Section 206(j) provides that other provisions of law shall apply to chanceries in the District of Columbia only to the extent they are consistent with this section. This is in lieu of the House provision which made the Foreign Missions Act the exclusive law governing foreign missions in the District.

Preemption

Section 207 expresses the preemptive effect of the right of the Federal Government, through the Secretary of State, to preclude the acquisition of any benefits by a foreign mission within the United States. A denial by the Secretary, for example, of a right of a particular foreign government to open or maintain a mission within the United States, or a condition limiting the number of their personnel or other factors relating to the mission, would be controlling. This is consistent with current practice and reflects the policy of Federal preemption in foreign relations. This subsection does not otherwise affect State or local law or regulations. Nothing in this section would require any State or local authority to take any affirmative action. The principal impact of its terms is to preclude reliance on local law, regulation, or practice by a foreign mission in an effort to secure benefits contrary to limitations imposed by the Secretary. This limited preemption is necessary in order to assure that the purposes of the Foreign Missions Act are carried out.

Of course, State and local governments are obliged to respect the rights of foreign missions to be granted certain benefits under international law and international agreements in force. The views of the Secretary of State on the requirements of international law are authoritative in this regard. Should a State or local governmental entity wish to deny benefits which it is not obliged to grant, contrary to a determination by the Secretary of State that such benefits should be granted, the matter would, as under present practice, be subject to resolution through discussions between the Department of State and the State or local governmental entity. The committee of conference notes that the interests of the Department in promoting foreign policy and national security interests and the interests of State and local governments in protecting local citizen interests are not necessarily incompatible and therefore looks forward to a productive working relationship between the Department of State and State and local authorities.

This section also requires coordination among Federal agencies, under the leadership of the Secretary of State, in order to achieve

an effective policy of reciprocity so as to fulfill the purposes of this legislation by precluding any Federal agency from taking any action inconsistent with the Foreign Missions Act. The provision has the effect of rendering unenforceable any rules or regulations of any Federal agency, to the extent that such rules or regulations would confer or deny benefits contrary to this title.

The committee of conference notes that the Foreign Missions Act is a new and unique piece of legislation which grants the Secretary of State significant authority over the activities and operations of foreign missions in the United States—authority which is long overdue. In order to carry out this authority effectively, the Office of Foreign Missions will need adequate numbers of trained personnel, as well as sufficient resources for the job. The committee of conference expects the Department of State to establish an effective and aggressive operation with a useful working relationship with the bureaus and offices of the Department, as well as with other interested agencies, but which maintains its distance from the day-to-day operations of the Department. In addition, the committee of conference cautions that a clear distinction must be made and maintained between the Office of Foreign Missions and the Office of Protocol, since their responsibilities may often be conflicting. The committee of conference expects, in particular, that certain responsibilities will be moved from the Office of Protocol to the Office of Foreign Missions, including such matters as: (1) the determination of eligibility and issuance of credentials of diplomatic, counsular, and other foreign government officers and employees with respect to rights, privileges, and immunities; (2) advising and acting as liaison to State and local government authorities on diplomatic privileges and immunities and related matters; (3) providing certifications of the immunity status of individuals for use in court cases; (4) requesting waiver of immunity in appropriate cases; (5) assisting in the negotiations of consular conventions and other treaties and agreements involving rights, privileges, and immunities of foreign government missions and personnel; and (6) providing advice and assistance to diplomatic missions.

In certain areas, the Secretary may find it appropriate to permit sharing of responsibilities between the two offices, but the committee expects the new office to resolve the inherent conflict between protocol duties and those duties involving regulation of foreign mission activities. Appropriate liaison between the offices should assure that conflicts are minimized.

REDESIGNATION OF THE U.S. INTERNATIONAL COMMUNICATION AGENCY

The House amendment provided that, as of January 1, 1982, the International Communication Agency would be redesignated as the United States Information Agency.

The Senate bill contained no comparable provision.

The conference substitute is identical to the House amendment, with an amendment changing the effective date to the date of enactment of this legislation.

SPECIAL INSURANCE COVERAGE

The Senate bill authorized the International Communication Agency to purchase a special errors and omissions insurance policy or similar coverage to meet any potential liability in order to facilitate the use by ICA of privately owned films, music, and other cultural or intellectual properties.

The House amendment contained no comparable provision.

The conference substitute incorporates the Senate provision with an amendment subjecting this authority to the availability of appropriations, to avoid creating "contract authority" in violation of the Congressional Budget Act.

INTERNATIONAL EXCHANGES AND NATIONAL SECURITY

The Senate bill stated that exchange-of-person programs promote U.S. security interests; expressed a "sense of Congress" conclusion that such programs should be expanded; and mandated executive branch action to triple such activities, in real terms, in the 4 years following enactment of this bill.

The House amendment contained no comparable provision.

The conference substitute retains the sense of Congress language of the Senate provision; mandates a doubling of the amount obligated for grants for exchange-of-persons activities by fiscal year 1986; earmarks specific amounts in fiscal year 1983 for the Fulbright Academic Exchange Program, the International Visitor Program, the Humphrey Program and for grants to private, nonprofit organizations; provides for proportional reductions in the earmarking in fiscal year 1983 if the appropriation is lower than the authorization; and permits the use of up to 5 percent of the earmarked amounts for other purposes, provided a justification for such reprograming is submitted to the Committees on Foreign Affairs and Foreign Relations.

The committee of conference notes that the specific earmarks are intended as a floor level for these exchange programs and should not preclude higher appropriations for exchange programs.

The Conference expects that, in the event appropriations for ICA are less than the amounts authorized for FY 1983, any reductions made in the non-earmarked programs of the Educational and Cultural Affairs Directorate shall be of no greater percentage than the percentage by which amounts appropriated for the entire agency are less than amounts authorized.

DISTRIBUTION WITHIN THE UNITED STATES OF CERTAIN ICA FILMS

The Senate bill provided for the domestic distribution of the ICA film entitled "In Their Own Words."

The House amendment provided for the domestic distribution of two other ICA films, "Reflections: Samuel Eliott Morison" and "And Now Miguel."

The conference substitute merges the two provisions. The committee of conference notes that the legal prohibition on dissemination of ICA materials within the United States necessitates an act of Congress every time a request is made to release an ICA product. This procedure is cumbersome and time consuming. Therefore,

the committee of conference directs the International Communication Agency to review the matter and make a full report to the Committees on Foreign Affairs and Foreign Relations, complete with recommendations and dissenting views, not later than January 31, 1983. One possible solution which should be analyzed is the formation of a panel composed of senior representatives of the relevant agencies, industries, and organizations to review requests to release ICA materials. This panel would make the necessary judgments to permit domestic distribution of ICA products, while protecting against copyright infringement, undue competition, and domestic political propaganda.

Another solution which the Congress may wish to consider is the policy and procedure adopted and followed by the Senate Foreign Relations Committee. The policy and procedure are as follows:

COMMITTEE POLICY

As a general policy, the committee will only consider release of films with special historical, educational or cultural merit and will not authorize the release of materials which seek to influence public opinion on contemporary issues. Also, as a general policy the committee will not authorize the domestic release of films until after foreign release.

COMMITTEE PROCEDURES

First. The committee will ask any Member who introduces a Senate resolution which authorizes release of an ICA film to provide the committee a description of the film and a detailed explanation of the benefits to be gained by domestic release.

Second. The committee will ask ICA to comment on the proposed domestic release with particular regard both to the committee policy permitting domestic release of films only with special historical, educational, or cultural merit, and the intent of existing law prohibiting domestic release of ICA materials which seek to influence public opinion on contemporary issues.

Third. The committee will arrange for a viewing of the film by committee members and staff and will not schedule a committee vote on the resolution authorizing domestic release until sufficient time for viewing has elapsed.

MERGER OF THE BOARD FOR INTERNATIONAL BROADCASTING AND THE BOARD OF DIRECTORS OF RFE/RL, INC.

The Senate bill requires identical membership between the Board for International Broadcasting and the Board of Directors of RFE/RL, Inc. (Radio Free Europe and Radio Liberty). The provision expanded the number of Presidentially appointed members of the BIB to nine voting members from the current five and charges the newly reconstitued Board of Directors of RFE/RL with the responsibility for oversight and operation of the radios.

The House amendment contained no comparable provision.

The conference substitute is the same as the Senate provision, but provides for an effective date of the merger requirement of 60 days following date of enactment of this legislation and clarifies

that the chief operating executive of the radios is a nonvoting member of both Boards.

The committee of conference notes that under this amendment, the nine voting members of the BIB will also serve as the Board of Directors of RFE/RL, Inc. Thus a single Federal Board will be able to make the major policy decisions affecting RFE/RL, including key managerial appointments, in expeditious fashion.

However, the BIB and RFE/RL, Inc., will and must remain very distinct and different institutions. RFE/RL, Inc., is a nonprofit broadcasting corporation; the BIB is a Federal oversight agency. The task of RFE/RL personnel is to prepare and transmit high-quality broadcasts. The statutory role of BIB is to oversee, assess, and evaluate the quality and effectiveness of those broadcasts in the context of broad U.S. foreign policy objectives, and to assure efficient management of public funds in accordance with legislative mandate.

The committee of conference raised questions as to how these objectives can be assured when the Presidentially appointed BIB members serve only part-time—the equivalent of 30 or perhaps in some cases 45 days a year. RFE/RL broadcasts 146 hours a day, 365 days a year, in 21 East European and Soviet languages from transmitter sites located in three West European countries. Federal oversight of such a complex and politically sensitive enterprise must be continuous; it cannot be suspended for weeks or months at a time while waiting for Board members to meet or to be appointed by new administrations. That is why the original legislation provided for a full-time Federal staff drawn from the competitive service. The present BIB staff has maintained that continuity of oversight over the years. It is the expectation of the committee of conference that this indispensable function of the BIB staff—totally separate from RFE/RL operational management—will continue to be exercised effectively under the new arrangement.

The committee on conference expects that the Board shall assure that RFE/RL, Inc., continues to observe the standards and restraints defined in the Board's Statement of Mission and the RFE/RL Program Policy Guidelines, as contained in the Board's Eighth Annual Report to the President and the Congress.

These standards are the product of careful bipartisan deliberation in several administrations; they reflect the national interest in the long-range credibility of RFE/RL broadcasts as trustworthy media of news and news analysis; and they should not be tampered with. This amendment is intended to facilitate the more efficient management of RFE/RL. It should *not* be interpreted as a license to manipulate RFE/RL for the purpose of short-term propaganda or sectarian ideological crusades.

Enactment of this amendment necessarily involves a higher degree of accountability to the Congress of the BIB members, appointed by the President by and with the advice and consent of the Senate. The BIB will be expanded from five to nine members. In appointing new members and filling current vacancies, the executive branch would be well advised to draw from among the highly qualified members of the RFE/RL private board, and—if it wishes to secure the bipartisan consensus of support for RFE/RL which has prevailed the past 8 years—the executive branch would also be

well advised to assure that the new BIB is broadly representative of the entire domestic political spectrum. This amendment makes it more, rather than less, necessary that BIB decisions be truly collegial and that the Congress exercise its oversight responsibilities in frequent and timely fashion.

RADIO BROADCASTING TO CUBA

The Senate bill provided that any funded program of the U.S. Government involving radio broadcasts to Cuba shall be designated as "Radio Free Cuba."

The House amendment contained no comparable provision.

The conference substitute provides that any U.S. Government radio broadcasts directed principally to Cuba shall be designated "Radio Marti." The section does not provide any authority to operate Radio Marti. The committee of conference notes that separate legislation authorizing radio broadcasting to Cuba is pending in the House and the Senate.

JAPAN-UNITED STATES FRIENDSHIP COMMISSION

The Senate bill would have permitted the Commission to spend contributions to the Japan-United States Trust Fund without the current 5-percent per-annum limitation on expenditures of the appropriated portions of this Fund. It would also allow the Commission to spend the interest those contributions earn while in the Fund, without further appropriation.

The House amendment contained no comparable provision.

The conference substitute is identical to the Senate provision.

INFANT FORMULA CODE

The Senate bill expressed concern with the U.S. negative vote on the World Health Organization (WHO) International code of Marketing Breastmilk Substitutes; endoresed the work of development agencies on problems of infant nutrition; encouraged continued efforts to combat infant illnesses, and urged the U.S. Government and the infant formula industry to support the basic aim of the code.

The House amendment expressed dismay at the negative vote cast by the United States on the WHO code; urged the executive branch to notify the WHO that the United States will cooperate with other nations in implementation of the code; and urged the U.S. infant formula industry to abide by the guidelines of the code, particularly with respect to exports and the activities of subsidiaries in developing countries. The findings section of the House amendment also noted that the use of infant formula is estimated to account for up to a million infant deaths per year.

The conference substitute expresses strong congressional support for the promotion by the United States of sound infant feeding practices; expresses concern over the sole negative vote cast by the United States against the International Code of Marketing Breastmilk Substitutes; and urges both the President and U.S. infant formula manufacturers to reexamine the U.S. and industry positions regarding the code.

A number of events have occurred since the House and Senate passed their respective provisions on this issue. Section 301(b) of the International Security and Development Cooperation Act of 1981, which became law on December 29, 1981, calls on the Agency for International Development to assist developing countries to improve infant feeding practices. The largest international merchandiser of infant formula in the Third World has announced that it will bring its marketing practices into substantial compliance with most provisions of the international code in countries which do not have specific legislation of their own covering the subject. A number of countries have modified provisions of the code to conform with their own national customs and practices and have incorporated them into domestic law or regulation.

The committee of conference urges the executive branch to continue to reflect on these developments in forming its position for the 26th World Health Assembly. It also urges the U.S. formula manufacturers to continue to review their positions regarding the code, in view of the apparent willingness of other producers to bring their marketing activities into general compliance with the code, and in light of the adverse national and international publicity generated by the strong opposition of the industry toward the code.

The committee of conference agreed to adopt new language which reflects these changed conditions and strong concerns. Implementation of the infant formula provision in the 1981 International Security and Development Cooperation Act and the executive branch's and U.S. infant formula industry's future positions on the code will continue to receive careful congressional scrutiny.

Repeal of Obsolete Provisions

The Senate bill provided for the repeal of various one-time reporting requirements and obsolete provisions of foreign affairs law.

The House amendment contained no comparable provision.

The conference substitute is the same as the Senate provision, but deletes the repeal of section 203 of the fiscal year 1979 authorization act for the International Communication Agency since the provision is not obsolete.

Other Provisions

In the pending House (H.R. 5998) and Senate (S. 2581) bills to authorize a supplemental appropriation for fiscal year 1983 for the International Communication Agency, three legislative provisions were proposed which, in the interests of time and efficiency, the committee of conference has adopted.

USE OF ENGLISH-TEACHING PROGRAM FEES

H.R. 5998 and S. 2581 contain identical language to authorize USICA to use tuition and other payments received in connection with the Agency's overseas English-teaching programs, to the extent that this is approved in appropriation acts.

The conference substitute adopts this provision.

BASIC SALARY RATES FOR THE SENIOR FOREIGN SERVICE

S. 2581 clarified the authority of the heads of the foreign affairs agencies to establish procedures for the movement of senior Foreign Service officers from one pay level to another within class, by administrative action, without the need for reconfirmation.

H.R. 5998 contained no comparable provision.

The conference substitute is identical to the Senate provision.

INTEREST EARNED BY INTER-AMERICAN FOUNDATION GRANTEES

H.R. 5998 exempted Inter-American Foundation grantees from the obligation to return to the Treasury interest earned on advances of appropriated funds. The provision applies to interest earned both before and after date of enactment of the section.

S. 2581 contained no comparable provision.

The conference substitute is identical to the House provision.

Educational Travel for Dependents

The Senate bill entitled dependents of foreign-based employees of the Department of State and the International Communication Agency who are separated from their parents in order to obtain an undergraduate college education to two round trips per year at Government expense. This would increase from one to two the number of allotted trips per year and would create an entitlement.

The House bill contained no comparable provision, although section 2308 of the Foreign Service Act of 1980 provides for one annual round trip for this purpose for dependents of all eligible Government employees stationed overseas.

The conference substitute contains no provision on this issue.

The committee of conference wishes to note that allowances and benefits under the Foreign Service Act are intended to ameliorate the demands placed on members of the Foreign Service. Since members of the Service, unlike civil service employees, are required to spend most of their careers overseas, this provision permitting educational travel for dependents serves the humanitarian, as well as practical, purpose of keeping families together. Nonetheless, the authority is meaningless if funds are not provided for the purpose. Therefore, the committee of conference expects that not only this educational travel allowance, but all allowances and benefits under the Foreign Service Act will be funded fully and fairly.

Arms Control and Disarmament Agency Act, Fiscal Years 1982-83

The Senate bill authorized appropriations of $18,268,000 for fiscal year 1982 and such sums as may be necessary for fiscal year 1983 for the Arms Control and Disarmament Agency. It also permitted the Agency to accept the results of security investigations conducted by the Departments of State and Defense in the case of persons detailed from other Government agencies. In addition, section 404 authorized the Agency to conduct research, development, and other studies with regard to antisatellite activities.

The House amendment contained no comparable provision. However, the House passed H.R. 3467, the Arms Control and Disarm-

ament Act Amendments of 1981, on June 8, 1981. This bill authorizes $18,268,000, and such additional amounts as may be necessary for increases in employee benefits and to offset adverse fluctuations in foreign currency exchange rates, for fiscal year 1982, and $19,893,852 for fiscal year 1983. This bill also contains provisions for use of security clearances of the Departments of State and Defense when applied to persons detailed to the Agency. H.R. 3467 also changes the Agency's name to read "United States Arms Control Agency."

The conference substitute contains no provision on these issues. However, the Senate Foreign Relations Committee has reported the House bill, as amended, to the full Senate.

Peace Corps Autonomy

The Senate bill provided for the reestablishment of the Peace Corps as an independent agency, effective upon enactment of this bill, and provides for the transfer of functions, personnel, property, et cetera to the Peace Corps.

The House amendment did not contain a comparable provision.

The conference substitute contains no provision on this issue, since Public Law 97-113, enacted after passage of the Senate bill, contains a similar provision.

Informational Media Guaranty Fund

The Senate bill provides for the use of foreign currencies derived under the Informational Media Guaranty Program prior to 1967.

The House amendment contains no comparable provision.

The conference substitute contains no provision on this issue, since the general authority to use foreign currencies such as these exists in current law.

Ex Gratia Payment

The Senate bill provided that $81,000 of the amount appropriated for fiscal year 1982 under the administration of foreign affairs be paid ex gratia to the Government of Yugoslavia for injuries sustained by a Yugoslav national as a result of an attack on him in New York in June 1977 while he was assigned to the Yugoslav mission to the United Nations.

The House amendment contains an identical provision.

The conference substitute deletes the provision as unnecessary in view of a district court judgment in favor of the Yugoslav national in the amount of $240,000.

Fiscal Year 1981 Supplemental Authorization for the Board for International Broadcasting

The House amendment authorized a supplemental appropriation of $100,300,000 for fiscal year 1981 for the Board for International Broadcasting.

The Senate bill contained no comparable provision, but earmarked $6,195,000 of the gain realized during fiscal year 1981 through upward fluctuations in foreign currency exchange rates,

for losses incurred as a result of the February bomb explosion at RFE/RL, Inc., Munich headquarters.

The conference substitute contains no provisions on these issues, since fiscal year 1981 ended prior to the meeting of the committee of conference.

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C. PELL,
JOE BIDEN,
JOHN GLENN,
Managers on the Part of the Senate.

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EXHIBIT C

Calendar No. 467

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-329

FOREIGN MISSIONS ACT OF 1982

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

TO ACCOMPANY

S. 854

TO PROMOTE THE ORDERLY CONDUCT OF INTERNATIONAL RELATIONS BY FACILITATING THE OPERATION OF FOREIGN MISSIONS IN THE UNITED STATES, THEREBY PROMOTING THE SECURE AND EFFICIENT OPERATION OF THE UNITED STATES MISSIONS ABROAD

together with

ADDITIONAL AND MINORITY VIEWS

APRIL 8, 1982.—Ordered to be printed
Filed under authority of the order of the Senate of April 1 (legislative day, February 22), 1982

U.S. GOVERNMENT PRINTING OFFICE
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Calendar No. 467

97TH CONGRESS 2d Session } SENATE { REPORT No. 97-329

FOREIGN MISSIONS ACT OF 1982

APRIL 8, 1982.—Order to be printed
Filed under authority of the order of the Senate of April 1 (legislative day, February 22), 1982

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 854]

The Committee on Governmental Affairs, to which was referred the bill (S. 854) as amended by the Foreign Relations Committee to promote the orderly conduct of international relations by facilitating the operation of foreign missions in the United States, thereby promoting the secure and efficient operation of United States missions abroad, having considered the same, reports favorably thereon as amended and recommends that the bill (as amended) do pass.

I. PURPOSE OF THE LEGISLATION

The purpose of S. 854 is to address a serious and growing imbalance between the treatment accorded in many countries to official missions of the United States, and that made available to foreign government missions in the United States. The bill creates within the Department of State an Office of Foreign Missions charged with the responsibility of assuring that treatment of United States missions abroad and the national security interests of our government within the United States are both taken into consideration when foreign governments seek to establish or operate missions with this country. As a result, the foreign governments represented by missions in the United States will have an incentive to provide fair, equitable and nondiscriminatory treatment to U.S. missions and personnel in their territory, thus contributing to significant savings in the costs of operating U.S. missions, improved working conditions for U.S. personnel, and mutual respect in

our foreign relations. The bill's authorities may also be applied to international organizations to the extent necessary to give effect to the policy of the bill.

While the ability to control the services provided to foreign missions within the United States is necessary for a policy of reciprocity, it is also essential that the Federal Government possess the authority and ability to carry out its international treaty obligations to facilitate the operation of foreign missions in the United States. Without this capability, the United States will find it difficult to insist on reciprocal treatment abroad. Therefore the bill creates mechanisms to assure that the substantial Federal interest in the location of foreign missions is weighed equally with municipal concerns.

II. Background

In an increasing number of countries, the United States is denied suitable locations for our missions or long-term rights to property or facilities, often resulting in diminished security, excessive or discriminatory costs, or inadequate facilities which significantly reduce the effectiveness of our missions.

In most cases, the Department lacks authority to impose similar restrictions or conditions on those or other countries in the United States. Instead it can only take far more extreme action such as barring the country concerned from using property it may acquire or declaring some persons persona non grata. These remedies are not suitable for such situations and are therefore rarely used.

The regulatory mechanisms contained in S. 854 are designed to provide the State Department with the leverage necessary to remove these unreasonable restraints and costs on U.S. missions abroad, and enhance national security domestically and overseas.

III. Major Provisions and Section-by-Section Analysis

SUMMARY

Specifically, S. 854 sets up an Office of Foreign Missions within the Department of State. The office is to be headed by a Director appointed by the Secretary of State. The Director will carry out his or her responsibilities under the general supervision and direction of the Secretary. The Secretary is prohibited from delegating supervisory authority over the Director to any official below the rank of Under Secretary.

This organizational structure seeks to reconcile two competing policy interests. On the one hand, the operation of foreign missions in the United States is an important aspect of the conduct of foreign affairs and should be directly under the supervision of the Secretary of State. On the other hand, responsibility for the hard decisions to deny or impose conditions on benefits desired by foreign missions should be somewhat insulated from the operating bureaus in the State Department which deal with foreign missions on substantive issues on a daily basis. These concerns will be met effectively by placing the responsibility in the State Department's Office of Foreign Missions

whose function will be to provide guidance on reciprocity and national security issues.

The Office will be staffed by Foreign Service officers, other government employees, experts and consultants as necessary.

The Secretary of State will set the terms and conditions under which benefits may be granted or denied a foreign mission. Such actions will be governed by the need for reciprocity or other factors in our relations with other nations. The purposes served include the following:

—facilitating relations between the United States and a sending State;
—protecting U.S. interests;
—adjusting for costs and procedures of obtaining benefits for missions of the United States abroad; and
—assisting in resolving disputes involving a foreign mission or sending State.

In carrying out the provisions of the bill, the Director is authorized to assist Federal, State and municipal governments with regard to ascertaining and according benefits, privileges and immunities to foreign missions. The activities covered include the execution or performance of any contract or agreement, the acquisition or retention of any real property, or the application for or acceptance of any benefit, including benefits from any Federal, State or municipal authority, or any entity providing public services (e.g., utility and telephone companies).

The bill specifically provides in section 204 that the terms and conditions set by the Secretary may include a requirement to pay the Director a surcharge or fee, which would be deposited in the working capital fund of the Department of State to be used in carrying out the provisions of the bill. In addition, the Secretary may require a waiver by any foreign mission of any recourse against any governmental authority, public service entity, agent or employee thereof, in connection with actions taken under the provisions of the bill. This will protect companies from lawsuits and will thus enable the Director to carry out the provisions of the bill more effectively.

SECTION 206

The bill also provides that issues concerning the location of foreign missions in the District of Columbia be settled by a newly created Foreign Missions Commission of the District of Columbia.

The Foreign Missions Commission is intended to assure that the Federal interest in the location of foreign missions is weighed along with local concerns in Washington, D.C. Currently, municipal decisions are taken without fully balancing foreign policy and national security questions. Consequently, the committee concluded that these concerns could be balanced best through the Foreign Missions Commission mechanism contained in section 206.

The Federal interest in the location, size, and operation of foreign government operations in this country stems from the Federal Government's constitutional responsibilities for foreign policy and the national defense. The Federal Government's interest is particularly

manifest in Washington, D.C., which, as the Nation's Capital, has special and unique obligations involving the Federal Government. Consequently, the rationale behind the mechanism in section 206 is not based on an analysis of particular cases. The need for Federal participation in decisions concerning foreign missions in the United States is fundamental because of the effect of those decisions on Federal responsibilities.

Chancery facilities of foreign governments accredited to the United States are special facilities, with security, communications and representation requirements that are very different than other types of institutional or office uses. Arrangements made for these governments in Washington directly affect U.S. interests abroad. The great majority of these government missions are relatively small in size, which together with the special security requirements involved often require location in low-density, mixed-use areas. They also need to be concentrated so that limited Federal protection resources can provide security. Because of the combination of these factors foreign missions impact on only a few areas of the District of Columbia.

Section 206, as reported by the committee, would permit these uses in mixed-use areas which already contain combinations of institutional, residential or commercial uses. Section 206 would not permit chancery locations in any area which is residential only.

While there is a need to assure that the Federal impact and national security concerns involved are part of the process, which is not now the case under municipal procedures, the proposed new District of Columbia Foreign Missions Commission would by statute apply all the normal criteria used in existing zoning procedures. The difference from present procedure is that Federal interests involving national security and reciprocity will be considered and the Federal impact weighed along with municipal concerns.

The Committee recognizes the legitimate concerns of Washington, D.C. residents about the location of foreign missions. The Committee stresses its intention that local concerns will remain an integral and substantial part of the considerations of the Foreign Missions Commission. To accommodate Home Rule concerns, the Committee accepts the compromise amendment of S. 854 as introduced creating the Foreign Missions Commission under the jurisdiction of the District of Columbia.

Participation by residents and neighborhood groups will be assured through rulemaking proceedings by the proposed Commission. Although hearings are not required, the Committee expects that they will be held to ensure adequate public participation. In addition, land use planning changes affecting international activity must also be reviewed by the National Capital Planning Commission.

LIMITED FEDERAL JURISDICTION

During the committee process a question was raised as to the effect of the section 207 preemption language on State or municipal land use processes, in connection with regulation of the location and size of the foreign missions. The committee agrees with an interpretation of the preemption language provided by Assistant Secretary Thomas M. Tracy in a letter to Chairman Roth.

U.S. DEPARTMENT OF STATE,
Washington, D.C., March 4, 1982.

Hon. WILLIAM V. ROTH,
Chairman, Governmental Affairs Committee, U.S. Senate.

DEAR MR. CHAIRMAN: In connection with consideration of S. 854, the proposed Foreign Missions Act now pending before the Governmental Affairs Committee, I would like to clarify the statutory intent of one provision of the bill, Section 207.

A question has been raised as to the effect of the Section 207 preemption language on state or municipal land use processes, in connection with regulation of the location and size of the foreign missions.

The answer clearly is that state and municipal authorities are not affected, with the exception that the Secretary of State under this bill may disqualify a foreign government from obtaining or retaining official facilities in any location in the United States. There are separate provisions relating to the District of Columbia because of the significant federal interest in the nation's capital.

The provisions of Section 207 require preemption only as to authorities set out in the Act itself. The only jurisdiction in which the Act provides authority for direct federal involvement in land use decisions is the nation's capital. Thus, if a foreign government is not disqualified under this Act from obtaining a location in any other jurisdiction, discretion as to land use decisions remain wholly within appropriate state or local authorities as to any particular location for a foreign mission.

If I can provide further information, please do not hesitate to call me.

Sincerely,

THOMAS M. TRACY,
Assistant Secretary of State for Administration.

The answer is that State and municipal authorities are not affected, with the exception that the Secretary of State under this bill may disqualify a foreign government from obtaining or retaining official facilities in any location in the United States. There are separate provisions relating to the District of Columbia because of the significant Federal interest in the Nation's capital.

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SECTION-BY-SECTION ANALYSIS

Section 1(a) designates the existing provisions of the State Department Basic Authorities Act of 1956 as "Title II—Basic Authorities Generally."

Section 1(b) provides for a new Title II of that Act to be designated "Authorities Relating to the Regulation of Foreign Missions." The remainder of Section 1(b) contains the text of a new Title II which consists of 12 sections:

Section 201—Declaration of findings and policy

Section 201 sets forth congressional findings and policies concerning the operations, activities, and obligations of foreign missions in the United States, and the international legal obligation of nations to provide assistance to missions within their territories.

Section 201(a) restates the established jurisdiction of the Federal Government over the operation in the United States of foreign missions and public international organizations and official missions to such organizations.

Foreign mission activities in the United States are presently regulated in significant ways by treaties and other international obligations of the United States, such as the 1961 Vienna Convention on Diplomatic Relations. Certain mission activities are now subject to domestic regulation under existing Federal laws such as the 1978 Diplomatic Relations Act and the 1976 Foreign Sovereign Immunities Act. Foreign missions and their personnel are admitted into the United States only with the approval of the U.S. Government, and may be required at any time to depart the United States.

Thus, foreign missions and their personnel do not possess the status of private persons or organizations within the United States. In some cases their rights may be greater, and in some cases more limited.

The privileges of entry into the United States, and the authority to conduct activities in the United States, which clearly may be withheld altogether, will be subject to a wide range of conditions under this title. Such regulation of foreign missions is squarely within the foreign relations power of the United States and, therefore, a proper subject for Federal legislation.

Section 201(b) enunciates U.S. policy to support and facilitate the secure and efficient operation of U.S. missions abroad and of foreign missions and international organizations in the United States. It further declares U.S. policy to assist in obtaining appropriate benefits, privileges, and immunities for foreign missions and international organizations in the United States and to require them to observe corresponding obligations in accordance with international law. These statements reflect the purpose of this provision to authoritatively improve the ability of the Secretary of State to give effect to existing policy.

Section 201(c) mandates the consideration of benefits, privileges, and immunities accorded to U.S. missions abroad in determining the assistance to be accorded to foreign missions in the United States in the specific application of the general policy enunciated in subsection (b). This element of reciprocity, while not necessarily determinative in all cases, is a key feature of the system envisioned by this title. The concept requires the Secretary of State to be cognizant of the treatment of U.S. missions and personnel in foreign countries and to take that treatment into account in determining how foreign missions are to be treated in the United States. In making such determinations, the Secretary will also take into consideration national security concerns.

Section 202—Definitions

Section 202 defines terms used in the foreign missions title and specifies the role of the Secretary of State in determining their interpretation and applicability.

Subsection 202(a)(1) defines "benefit" to a foreign mission as any acquisition or authorization for an acquisition in the United States by or for a foreign mission, including such benefits as real property, public services, supplies, including maintenance and transportation, local staff, travel and related services, and protective services. It should be noted that this enumeration is merely illustrative and not exhaustive. In fact, this provision explicitly grants the Secretary of State authority to designate what constitutes a "benefit" for purposes of this title. The term "utility" should be broadly construed to include gas, electricity, oil, telephone or other communications facility or instrumentality, trash disposal, water and sewer services, and the like.

Section 202(a)(2) defines a "chancery" as the principal offices of a foreign mission used for diplomatic or related purposes (e.g., consular functions), as well as annexes, ancillary offices, support facilities, and any building site for such purposes. This means, for example, that buildings used only as residences by a foreign mission would not be included in the term "chancery." It is intended that the term be construed to include only those structures, facilities, and sites used by a foreign mission to conduct its business in the United States.

Section 202(a)(3) defines "Director" as the Director of the Office of Foreign Missions in the Department of State. That office is established under section 203(a) below.

Section 202(a)(4) defines a "foreign mission" as any official mission to the United States involving diplomatic, consular, or other governmental activities of a foreign government or another foreign organization (other than an international organization) which has been granted privileges and immunities under U.S. law. In addition to traditional diplomatic and consular establishments, this term includes such special missions as that of the Commission of the European Communities and diplomatic liaison offices which have been granted privileges and immunities pursuant to special legislation (22 U.S.C. 288h). It could also be applicable to state trading organizations operated by some governments, to the extent that the trading organization performs governmental functions. The term includes both the personnel and property of the mission.

Section 202(a)(5) defines the term "real property" to include any right, title, or interest in or to, or the beneficial use of, any real property in the United States. This would include situations where property has been acquired, for example, by a separate corporation controlled by a foreign mission, or by an organization which intends to make such property available for activities of a foreign mission. The term not only includes rights acquired by purchase, but also interests acquired by lease or otherwise.

Section 202(a)(6) defines "Secretary" to mean the Secretary of State.

Section 202(a)(7) defines "sending state" as the foreign government, territory, or political entity represented by a foreign mission. Similar terms are commonly used in international agreements concerning foreign missions, such as the 1961 Vienna Convention on Diplomatic Relations (23 U.S.T. 3227, TIAS 7502) and the 1963 Vienna Convention on Consular Relations (21 U.S.T. 77, TIAS 6820).

Section 202(a)(8) defines "United States" to mean the several States, the District of Columbia, the Commonwealth of Puerto Rico,

and the territories and possessions of the United States. This definition outlines the geographic application of the provision to make clear that it is intended to cover foreign missions situated in any such location and activities carried out in any such location.

Section 202(b) commits the interpretation and application of the terms defined in subsection (a) to the discretion of the Secretary of State. The provision is intended to avoid conflicting interpretations that might detract from the efficient implementation of this title or might adversely affect the management of foreign affairs. A determination, for example, as to what constitutes diplomatic, consular, or related official activity, may affect similar determinations by foreign states concerning functions of U.S. missions abroad. Such determinations might also affect implementation of multilateral treaties. Accordingly, they should not be left open to diverse interpretations under the foreign missions title. Nothing in this legislation would preclude appropriate judicial review of any action committed to the discretion of the Secretary.

Section 203—Office of Foreign Missions

Section 203 provides for establishment of a new office in the Department of State to administer the foreign missions provisions.

Section 203(a) directs the Secretary of State to establish the Office of Foreign Missions as an "Office" in the Department of State. This Office is to be headed by a Director appointed by the Secretary, who will perform under the Secretary's supervision and direction. The Secretary is prohibited from delegating supervisory authority over the Director to any official below the rank of Under Secretary.

This organization structure seeks to reconcile two competing policy interests. On the one hand, regulation of the operation of foreign missions in the United States is an important aspect of the conduct of foreign affairs and should be directly under the supervision of the Secretary of State. On the other hand, this responsibility should not be imposed on the operating bureaus in the State Department which deal with foreign missions on substantive issues on a day-to-day basis. These concerns will be met effectively by placing responsibility in a separate office within the State Department.

Guidance as to reciprocity and national security issues will be provided by the Office of Foreign Missions. The Office of Protocol will continue to perform its traditional functions involving relationships with and assistance to all foreign missions in the United States. In matters involving significant reciprocity considerations, guidance will be provided by the Office of Foreign Missions and steps necessary to assure equality of treatment will be taken by that office after consultation with the Office of Protocol, appropriate regional bureaus, and agencies charged with promoting and protecting our national security. The committee believes that this management concept will assure effective administration of the purposes and intent of this legislation.

Section 203(b) identifies the major responsibilities that the Secretary may delegate to the Director, and authorizes the Secretary to assign other functions to the Director as the Secretary may determine necessary in furtherance of the policy of the foreign missions provision.

Section 204—Provision of benefits

Section 204 contains the key provisions empowering the Secretary of State to implement the policy of the foreign missions provision by setting terms and conditions upon which benefits may be provided for any foreign mission. Additional specific authority to impose conditions on or to regulate the acquisition or use of real property is set forth in section 205 below.

Section 204(a) specifically provides authority for the Director to assist foreign missions, at their request, to obtain benefits. The Secretary of State may approve terms and conditions for such benefits.

The committee notes that this authority is intended both to enable the United States to exercise more effective control over the granting of privileges, immunities, and other benefits to foreign missions and to enhance the ability of foreign missions to conduct their representational duties in the United States.

Section 204(b) authorizes the Secretary to require a foreign mission to comply with such terms as the Secretary may establish in order to obtain or utilize any benefits or to take certain other actions. In addition, this subsection empowers the Secretary to require a foreign mission to obtain benefits from or through the Office of Foreign Missions. The Secretary is authorized to impose substantive and procedural constraints on the basis of reciprocity or otherwise, in accordance with the criteria set forth in paragraphs (1) through (4) of this subsection. These criteria include such matters as facilitating U.S. diplomatic relations, protecting the interests of the United States, assisting in the resolution of disputes affecting U.S. interests, or adjusting for costs and procedures imposed on missions of the United States abroad.

Section 204(c) sets forth certain conditions which the Secretary may impose on foreign missions in order for them to obtain benefits. Section 204(c)(1) provides that a requirement may be imposed for a surcharge to be paid to the Director by a foreign mission for the receipt of any specified benefit, regardless from whom the benefit is obtained. This provision will enable the United States to adjust for the often arbitrary imposition of costs overseas, or to provide leverage in cases where exact reciprocity may not be available, or may be insufficient to induce appropriate treatment of U.S. interests abroad. The surcharge would be paid directly to the Office of Foreign Missions, over and above any other costs or conditions set by any contractor or other party with whom the foreign mission is involved in acquiring the benefit in question. Payment of the surcharge could be a condition precedent for the mission to be allowed to obtain or retain specified benefits from private or public sources. Thus, there would generally not be any direct effect on the terms or conditions set in private contracts or by persons providing benefits to such missions.

Section 204(c)(2) provides for a waiver of recourse by a foreign mission generally against any governmental authority, entity providing public services, or other person in connection with any action (including an omission) determined by the Secretary to be in furtherance of the purposes of the title. In the absence of such a provision, public agency officials, private party contractors, or persons acting for publicly regulated utilities, among others, could be ex-

posed to suits challenging their authority to carry out such actions, or to suits for damages for complying with a requirement of the Secretary under the foreign missions title. Section 208(b), discussed below, provides further protection against suit in this regard.

Section 204(d) provides that the Secretary may designate the Director of the Office of Foreign Missions, or any other officer of the Department of State, as the agent of a foreign mission for the purpose of executing the required waiver. This authority is necessary to assure that the U.S. person acting in response to the Secretary's direction will not incur liability to a foreign mission.

Subsection (f) was added to section 204 during Senate Foreign Relations Committee mark-up at the request of the Department of the Treasury to accommodate the needs of the Secret Service. The concept of providing benefits on the basis of reciprocity does not extend to those protective services provided by the U.S. Secret Service under the authority of Section 202 of Title 3, United States Code, with respect to foreign diplomatic missions, or under the authority of Section 3056 of Title 18, U.S. Code, with respect to a visiting head of a foreign state or government or certain distinguished foreign visitors. This subsection makes it clear that it is not the intent of this legislation to impact upon or change in any way the authority or procedures of the U.S. Secret Service. Nor is it the intent of this legislation to influence the policy of the U.S. Secret Service to provide protection at a level which is commensurate with protective requirements.

The Secret Service is one federal agency charged with protecting foreign governments property in the U.S. National security concerns for providing such security must be factored into locational decisions very early in the process.

The Committee encourages the Department of State and the Office of Foreign Missions to promptly inform the Secret Service of the intentions of foreign governments for chancery space, once those intentions are made known to the Department.

The Committee believes the Office of Foreign Missions established in Section 203 should work closely with the Secret Service and other appropriate agencies to assure that foreign missions are adequately protected and that the security concerns of the Secret Service about chancery locations be taken into account at an early point in the process of determining terms or conditions for a foreign government.

Section 205—Property of foreign missions

Section 205 recognizes that the location and use of foreign mission facilities in the United States and the process by which those facilities are obtained, clearly affect the Federal interest, and have a direct impact on the security and adequacy of treatment of U.S. mission abroad.

Section 205(a)(1) authorizes the Secretary to require that a foreign mission provide notice prior to any acquisition, alteration, sale, or other disposition of any real property (as defined in sec. 202(a)(5)). The notice requirement could cover any beneficial usage of property, regardless of the means by which such right of usage is acquired, or whether acquired by the mission directly or by an employee or agent thereof, or by a third party. The Secretary then has 60 days within which to disapprove the proposed action and may establish conditions

which, if met, will remove the disapproval. The Secretary may as a discretionary matter, shorten the 60-day period.

This procedure precedes any further approvals which may be necessary from State or municipal authorities. The committee notes that this review procedure will be useful to State and municipal authorities as an additional indication of the acceptability of the proposed action. In view of the significant Federal interest involved, section 206 further governs the process by which location approvals are made in the Nation's capital.

Section 205(a)(2) defines acquisition for purposes of the section to include any action relating to real property such as acquisitions, alterations, additions, or changes in the purpose for which the property is used.

Section 205(b) authorizes the Secretary to restrict a foreign mission from using, or retaining, real property interests which are not acquired in accordance with this section, or which exceed limitations placed on real property available to the United States abroad. This subsection, together with section 204, is designed to provide necessary discretion for the Secretary to adjust enforcement provisions in order to take into account the many differing legal and political systems in other countries, as well as the necessary flexibility to take into account treatment accorded U.S. missions and personnel on related bilateral issues as well as national security concerns. In many countries, for example, foreign governments are not able to acquire title to property. The United States in such a case could obtain sufficient long-term lease rights for U.S. mission facilities in exchange for permitting the acquisition of property in the United States. Alternatively, the Secretary could require a foreign mission to limit its property interests in the United States to a specific term of years, or in some cases provide a right of reversion to the United States of such property, in the event that U.S. property rights or interests in the sending state were reduced or rendered less effective by acts or omissions of that state.

The enforcement provisions of this section which may be applied against the foreign mission include the divesting of property or foregoing use of the property. The inclusion of specific enforcement provisions in this section, as compared with the general authority to impose conditions on foreign governments under section 204, is intended to assure that State and local real property laws not be construed to accord procedural or substantive rights which preclude implementation of the foreign missions title.

Section 205(c) is designed to assure that the Federal Government will be able to protect and preserve property of foreign governments under circumstances when a protecting power or other agent does not assume responsibility. In addition, this subsection authorizes the Secretary to dispose of such property after the expiration of a 1-year period from the date such foreign mission has ceased using the property for official activities. The right of disposition is intended to be exercised only in unusual cases where resumption of official activities is not likely to occur within a reasonable period of time, or where, for other reasons, the Secretary determines that it is not in the Federal interest to continue to preserve such property. Considerations such as the status of U.S. property interests in the country involved might also enter into such determinations.

Section 206—Location of foreign missions in the District of Columbia

Section 206 provides that issues concerning the location of foreign missions in the District of Columbia will be settled by a newly created District of Columbia Foreign Missions Commission, on which the Federal and municipal interests are balanced. The procedures set forth in this section insure that all interested parties will be involved in the decisionmaking process, and that a proper balancing of interests will occur. The committee recognizes the concerns which have been expressed regarding the peculiar impact that foreign chanceries have on both the District of Columbia as well as national security.

Section 206(a) recognizes that the location of foreign missions in the Nation's capital, and the procedures involved in determining these locations, have a substantial impact on Federal interests both here and abroad.

Chanceries are the primary representational and functional offices of sovereign states accredited to the United States, which are required to be located in the capital city. Chanceries are inviolable, perform government functions requiring special communications and security, and are entitled to special protection by virtue of treaty obligations.

The United States Government has an international obligation to facilitate the acquisition of acceptable and secure chancery locations in the capital city, which is directly related to reciprocal treatment of United States missions abroad, as well as to national security concerns here.

Furthermore, national security issues are often involved both in the United States and overseas, so a procedure wherein the Federal interest is properly balanced with community impact is an important element of this title. This section therefore places the authority to determine the location of foreign missions in the capital with the District of Columbia Foreign Missions Commission. The subsection applies only to that real property of a foreign mission which is used by the mission to carry out diplomatic, consular, or other governmental acitivities of the foreign mission. Real property which is held by a foreign mission, but is not used for the above-stated purposes, such as commercial holdings, would not be subject to the requirements of this section.

Section 206 is intended to advance Federal as well as municipal concerns in the following key areas:

(1) Criteria for approving foreign mission locations which achieve a proper balancing of important federal and municipal concerns;

(2) A decisional body which in its composition reflects both Federal and municipal concerns relevant to the issue in Section 206;

(3) Procedures which are both expeditious and compatible with the conduct of our Nation's official relations between sovereign countries; and

(4) Availability of lower and medium density mixed-use areas for chancery use.

Section 206(b)(1) creates a new District of Columbia Foreign Missions Commission. The composition of the proposed new Foreign Missions Commission of the District of Columbia would result in a 7-person commission, composed of the 5 present members of the Dis-

trict Zoning Commission, plus 2 new Federal appointees, one of whom would be the chairperson of the National Capital Planning Commission (NCPC). This results in 3 Federal agency representatives, 3 appointees of the Mayor, and the Architect of the Capitol, who is currently an ex-officio member of the Zoning Commission and who would be in a position to represent the views of Congress.

Section 206(b)(2) provides for appropriate compensation for the Chairman of the National Capital Planning Commission during the period that individual is performing his or her duties on the Commission. The other members of the Commission are appointees either of the District of Columbia or employees of the Federal government and therefore receive no additional compensation.

Section 206(b)(3) provides that personnel, space, and facilities will be provided by the District of Columbia Government, as the Commission is a District of Columbia Government agency.

Section 206(c) requires establishment of areas within the District of Columbia in which chanceries may be located as a matter of rights, as is the case with many uses in current zoning practice. Security, representation and related factors necessitate that chancery uses be located in lesser density areas and generally in proximity to each other where possible. Security and representational functions also preclude in most cases general usage of higher density structures, such as office buildings, except for additional space needed from time to time to accommodate official activities which cannot fit into the main chancery facilities. It should be noted that areas devoted to higher density commercial or residential uses are in most cases inappropriate for low density chancery uses, and are well beyond the financial reach of 85 percent of the foreign nations accredited to the United Sates, and from whom the United States must seek appropriate space within their capitals.

Section 206(c) also specifically precludes discriminatory treatment of chanceries vis-a-vis other non-residential uses, by prohibiting limitations on chancery uses which are greater than those placed on other non-residential uses. For example, existing regulations in some cases preclude chancery uses while at the same time permitting all other office uses to locate as a matter of right without exception or limitation.

Section 206(d) requires that rulemaking procedures under the District of Columbia Administrative Procedure Act will be applicable to such determinations in a manner consistent with this Act. Among other things, this insures notice and opportunity to comment for interested members of the public. While public hearings are not required, the committee expects that they will be held when necessary to insure adequate public comment.

Section 206(e) sets forth the criteria to be applied to determinations by the Foreign Missions Commission.

The Commission will be authorized to and is expected to require hearings that will allow all interested parties, public and private, including neighborhood associations, to present their views. In addition, the committee notes that similar hearings have been held by the National Capital Planning Commission, in connection with proposed modifications to the Comprehensive Plan.

The committee notes that chancery facilities are in most cases lower density land uses, which for security and representational purposes are normally required to be located in separate and individually controlled

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structures. Larger commercial office structures are in many cases unacceptable for security and related reasons. Federal security requirements have also increased the need to concentrate these uses in areas in which they are already in place. It is, therefore, the purpose of this section to avoid the following regulatory actions which have failed to accommodate Federal as well as local concerns.

Chanceries are now less favorably treated under District regulations in comparison to other permitted institutional or commercial uses in almost all zones, except for high density commercial or residential zones which are often unacceptable for security reasons. For example, in the lesser density commercial districts, which may be most suitable for smaller chancery uses, over 50 stated uses are permitted as a matter of right, including all office uses with the single exception of chanceries. In districts of slightly higher density a substantially wider list of uses is again permitted as a matter of right, including all office uses, but chancery users are required to undergo a special exception type procedure, which effectively makes chanceries a disfavored use.

The only areas chanceries are allowed as a matter of right are the higher density "C" or other districts permitting high density development, which are in many cases inappropriate for chancery use.

In the same manner chanceries are a disfavored use in all "R" districts where they are technically permitted. In all "R" districts permitting chanceries, other non-residential uses may be allowed as a matter of right, whereas chanceries again must undergo a special exception type of procedure.

The overlay Diplomatic "D" zones failed to provide for matter of right location as required by the Foreign Missions Element of the Comprehensive Plan issued by the National Capital Planning Commission.

Paragraphs (1) through (8) of subsection (e) set forth the criteria applicable to chanceries and chancery annexes which are intended to balance Federal and municipal interests. These criteria take into account the Federal interest, which involves international obligations of the United States and the accompanying security requirements involved as well as concern for the impact on local matters such as transportation, housing, and environment.

Subsection (e)(1) sets forth the standard of "adequate and secure facilities" which reflects one of the fundamental purposes of the Office of Foreign Missions and the international obligations of the United States.

Subsection (e)(2) reflects the need to continue to locate such missions in existing mixed-used areas, in which current uses already include institutions, commercial, or governmental activities, and residential uses. The obligation to provide security for foreign missions dictates the need to locate these missions in proximity to each other and in areas of lesser density. The committee notes that areas in which the Foreign Missions Commission determines current uses are entirely residential would not become available for chancery use under this amendment, except for medium-high density or high-density apartment zones.

Section 206(e)(3) assures the continued application of historical preservation measures to facilities of foreign missions under regulations issued by the new Commission.

Sections 206(b)(4) through (6) relate to transit, parking, public facilities and services, and special security requirements. Section 206 (b)(4) also constitutes a recognition that special security factors affect parking requirements, and that similar considerations are taken into account in connection with the location of United States facilities abroad.

Sections 206(b)(7) and (8) specifically provide for determinations of the general municipal and Federal interests by the Mayor of the District of Columbia and the Secretary of State, respectively. Finally, the Commission is required to apply the criteria of Federal and municipal interests, historical preservation, the need for adequate and secure facilities, and adequacy of protection to other official property uses by foreign governments covered by this section.

Section 206(f) is intended to preserve the existing relationship between the National Capital Planning Commission and municipal authorities with regard to land use.

Section 206(h) is intended to assure that chancery applicants are not subjected to a process inconsistent with the conduct of official relations between nations.

Section 206(i) is intended to assure the establishment of an expeditious decisionmaking process, which will preclude overlapping and time-consuming proceedings which can result under existing law and regulations. It also emphasizes the Congressional purpose in enacting this section to assure proper facilities for foreign governments consistent with international obligations.

Section 206(j) places an obligation on the Secretary to promote compliance with reasonable code requirements, taking into account special security, communications and other factors involved in foreign government facilities in the United States, as well as with United States facilities abroad.

Section 206(k) is intended to clarify the right of the United States to intervene or bring an action concerning the activities of the new Commission, either on its own behalf or on behalf of a foreign government.

Section 206(l) provides "grandfather" rights with regard to existing chancery locations or uses. This subsection is necessary to protect rights and uses which were acquired prior to enactment of this section.

Section 206 establishes procedures and regulatory guidelines which provide a proper balance of Federal and local interests with respect to the location of foreign missions in the District of Columbia. This is necessary in order for the Federal Government to comply with its international obligations, and to assure that the local process accords due respect to the Federal impact of its decision.

The original section 206 as introduced in S. 854 and the House-passed amendment to S. 1193, the State Department authorization bill, had proposed to place authority for such decisions in a quasi-federal agency, the National Capital Planning Commission (NCPC), which has substantial city representation on it. As a result of concern expressed by the city, a compromise section 206 was worked out between the House District of Columbia and the Foreign Affairs Committees. It should be noted that this compromise was arrived at in consultation with representatives of the D.C. Government and the Department of State. However the D.C. Government has not agreed to support this

compromise. The new section which was adopted by the House of Representatives in H.R. 4814 and by the Senate Foreign Relations Committee leaves jurisdiction in the District of Columbia, which is the principal home-rule issue, and sets up statutory criteria and procedures for the decisional process, which balances Federal as well as local interests.

If important Federal concerns are not a significant part of the process in which the foreign government chanceries are located within the capital, the United States will find it difficult to insist on reciprocal treatment abroad. The City of Washington, remains the Federal capital of our government, and there are obligations local officials must assume as a result which involve accommodating various Federal responsibilities in the capital. Anything less will undermine the Congressional purpose of this legislation.

Section 207 declares that no State, Federal or municipal law shall be effective to confer or deny benefits to a foreign mission if such law is inconsistent with the authority granted by this title. With respect to all jurisdictions outside the District of Columbia, this legislation is intended to grant the Director of the Office of Foreign Missions a "veto power" over the location of foreign missions outside of the District of Columbia. The Secretary could prohibit a foreign nation from acquiring or utilizing real property in such a jurisdiction or place conditions on the use of such property.

However, it is not the intent of Section 207 to authorize the Secretary of State to in any way alter or amend state or municipal laws and ordinances, including land use or other regulations. Therefore, the authority granted to the Director of the Office of Foreign Missions to "assist agencies of Federal, State and municipal government with regard to ascertaining and according benefits, privileges and immunities to which a foreign missionary be entitled" under section 203(b)(1) is strictly advisory.

A letter to the committee from Thomas M. Tracy, Assistant Secretary of State for Administration, describes the Administration's view of the intent of this Section:

> A question has been raised as to the effect of the Section 207 preemption language on state or municipal land use processes, in connection with regulation of the location and size of the foreign missions.
>
> The answer clearly is that state and municipal authorities are not affected, with the exception that the Secretary of State under this bill may disqualify a foreign government from obtaining or retaining official facilities in any location in the United States. There are separate provisions relating to the District of Columbia because of the significant federal interest in the nation's capital.

During the discussion of S. 854, there was a great deal of concern on the part of some committee members that the interpretation of the intent of Section 207 as outlined by Mr. Tracy is not reflected in the actual language of the Section. The language of the Section specifically says that "no act" of any State or local government can be enacted or remain in force if that act would have the effect of conferring or denying benefits to any foreign government in conflict with the provisions of Title II which S. 854 would amend. In effect, the language of S. 854 implies a Federal preemption of State and local laws which

Mr. Tracy's letter describes a "negative veto" process in which the Secretary of State would approve or disapprove the application of a foreign government to locate in the United States and State and local laws would continue to prevail once an approval by the Secretary had been granted. In effect, once the Secretary said "yes" to a foreign mission in the United States, State and local zoning, and regulatory policies would control its location and scope.

The committee agrees with Mr. Tracy's interpretation of the provisions of Section 207.

With respect to the activities of foreign missions in the District of Columbia, a broader preemptive authority is envisioned. The new powers granted to the District of Columbia Foreign Missions Commission do authorize it to preempt and alter District of Columbia zoning and land use regulations. In addition, actions of the Commission could limit or modify the application of District of Columbia "building and related codes" (section 206(j)) and District of Columbia and Federal laws governing historic preservation (206(e)(3)) to foreign missions. However, in all other respects, District of Columbia laws and ordinances, including tax and penal codes, cannot be preempted by this legislation.

Section 208—General provisions

Section 208 contains general administrative provisions to enable the Office of Foreign Missions to operate as an adjunct of the Department of State, not affected by the day-to-day operations of the Department. It also provides protection for persons against liability for actions taken in good faith under this title. Protection is also accorded assets of or under the control of the Office of Foreign Missions.

Section 208(a) authorizes the Secretary to issue regulations to implement the policy of the title. These regulations will be controlling in determining the application of this title.

Section 208(b) provides protection against liability for persons acting in good faith to implement the title. This is intended particularly as a protection to private companies and individuals who would, in the normal course of doing business with foreign missions, be liable for breach of contract or other violations of duly constituted agreements. In all cases involving actions under this title by the Office of Foreign Missions, and good faith compliance by any persons involved, it is the committee's intent that no liability should attach to those persons.

The committee notes that the term "person" is intended to cover any juridical person, including any corporation or organization, as well as individuals. "Direction" by the Secretary is intended to include any official request for action or inaction.

This provision is derived from the Trading with the Enemy Act and the International Emergency Economic Powers Act and is to be construed as broadly as the corresponding provisions of those acts.

Section 208(c) provides the necessary authorities to hire personnel and acquire necessary services in order to meet any atypical needs of administering this title. The functions and personnel requirements of the Office of Foreign Missions may require employee services beyond those available to the Department of State, and which could be required on an intermittent or temporary basis. Examples include prop-

erty and zoning specialists, individuals to perform specialized liaison activities with State and local authorities or public utilities, or to provide travel or other services to implement constraints on foreign missions, and the like. The committee accepted the deletions of sections 208 (c) (1) and (c) (2) proposed by the Foreign Relations Committee.

Section 208(d) provides authority for contracts for supplies and services, other than personal services covered by subsection (c) above. This subsection contains flexible contracting authority necessary to meet the requirements of this title, which in some cases may not be covered by standard procedures for supplies and services for general office purposes. Furthermore, these needs cannot always be anticipated in time to permit the operation of normal advertising and procurement processes. In addition, security requirements may necessitate special procurement procedures in some cases.

The committee notes that the procurement laws generally applicable to government agencies are intended to cover the needs of those agencies for supplies and services at the taxpayers' expense. By contrast, the Office of Foreign Missions will, on many occasions, procure supplies and services for foreign missions which will be paid for by those missions. Unlike present practice, where the Secretary of State exercises little or no control over procurement of supplies and services for foreign missions, this new procedure will permit such control. An example of such a requirement would be the need to find a local employment service which a foreign mission would be required to use to hire local employees. The authority of this subsection will be used only when necessary and will permit these unusual requirements to be met in a timely manner.

Section 208(e) provides authority to the Office of Foreign Missions to obtain property or services from, or provide services or assistance to, other Federal agencies. This is intended to maximize interagency cooperation and to increase the efficiency and effectiveness of the Office of Foreign Missions.

Section 208(f) provides assurance that any assets held by or under the control of the Office of Foreign Missions will be exempt insofar as attachment, execution, and judicial process are concerned. This is necessary to assure that the functions of a foreign mission may not be interrupted by judicial process as a result of the Office's involvement with the interests of a foreign mission in the discharge of the Office's duties and responsibilities under this title.

Section 208(g) parallels the provisions of section 202(b) with respect to the authority of the Secretary to make determinations. This is necessary in order to avoid inconsistent interpretations or policies. As is the case with the Secretary's authority to make determinations with respect to the meaning and applicability of terms under section 202, this discretionary authority is subject to judicial review.

Aside from the proceedings before the Commission, which necessarily involve full public participation, actions and determinations under this title are in most cases political in nature, involving considerations of foreign policy and national security. Therefore, this subsection also provides that, except for the procedural requirements under section 206 in connection with hearings and other proceedings before the District of Columbia Foreign Missions Com-

mission, determinations otherwise required under the title shall be limited to a requirement to adhere to appropriate administrative processes established by the Department, or by other agencies or officials vested with such responsibility. Exercise of the authority granted to the Department of State is not subject to the rulemaking requirements of section 553 of title 5.

Section 208(h) provides that fiscal needs of the Office of Foreign Missions and funding procedures for implementation of this title may be managed by the Secretary of State as part of the Department's working capital fund, established by section 13 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2684). This method of funding and audit control under established procedures of the working capital fund is appropriate for activities for which procurement and fiscal requirements cannot be anticipated in advance or on a scheduled basis. In addition, the committee believes that because the funds received from foreign missions will be used to provide benefits to foreign missions, the use of the working capital fund offers a practical way for the Office of Foreign Missions to be responsive to changing requirements. Therefore, this subsection provides for the use of the fund at the Secretary's discretion in lieu of otherwise applicable procedures concerning receipts and expenditures by the Government. The committee will continue to monitor the operations of the working capital fund, as it has done in the past.

Section 209—Application to public international organizations and official missions to such organizations

Section 209 grants authority to the Secretary to apply provisions of this title to international organizations or missions thereto, where it is deemed appropriate to carry out the purposes of the title. This section recognizes the special relationship of the United States to the international organizations with headquarters in this country, and the separate international agreements applicable to that relationship.

Section 209(a) specifically authorizes the Secretary of State to make any provision of this title applicable to an international organization to the same extent that it applies to a foreign mission. "Consultation" is expected to include such informal processes as shall not unnecessarily delay implementation of this Act.

The term "international organization" is defined in section 209(b) as a public international organization designated as such pursuant to the International Organizations Immunities Act or other law. For the most part, such organizations are identified in Executive Order 9698, and subsequent Executive orders (22 U.S.C. 288 note). This definition also includes missions to international organizations which, although they usually represent individual sending states, are dealt with primarily in the context of relations between the United States and the international organizations. The committee expects that paricular provisions of the title will be applied to particular organizations if it is deemed necessary in order to carry out the policy of this legislation. The international obligations of the United States to assist and regulate the operations of international organizations are equally as important as the obligations attaching to missions of sending states accredited to the United States.

Section 210—Privileges and immunities

This section declares that nothing in this title, including the congressional declaration of findings and policy in section 201, is intended to amend or supersede international obligations undertaken by the United States or other obligations required by U.S. law in connection with the conduct of activities by foreign missions and international organizations. Constraints placed pursuant to this title upon the conduct of foreign missions in the United States are not incompatible with permission granted by the Federal Government to conduct diplomatic and related activities in the United States. It is expected that implementation of this title will encourage a proper balancing of treatment of the foreign missions involved and will, in fact, enhance the ability of the United States to discharge its international treaty and other legal obligations. Finally, the last sentence of this subsection prevents a waiver of immunity by implication, in a manner consistent with the Foreign Immunities Act of 1976 and the Vienna Convention on Diplomatic Relations.

Section 211—Enforcement

Section 211 applies to parties dealing with foreign missions, and limits enforcement by the Federal Government generally to equitable or other appropriate relief through the Federal courts. This section also provides notice to third parties of the possible invalidity or impairment of contract provisions entered into in violation of this title. In view of the large number of circumstances which could arise, it is necessary to leave to applicable judicial remedies the resolution of questions with respect to the enforceability and effect of contracts or performance thereunder which the Secretary finds are in violation of this title. The committee fully expects the Secretary of State to minimize the need for judicial remedy by making it clear that foreign missions should, as a normal practice, consult with the Department of State before making commitments. Since the process of consultation by a foreign mission with the Department is an integral aspect of bilateral relations today, this places no real burden on foreign missions. Instead, it will afford greater protection to their operations, and should result in improvement of their representational activities.

Section 212—Severability

Section 212 contains a standard severability clause. Inclusion of this clause is appropriate in view of the new authorities granted the Government and the resulting possibility of litigation. Thus, if a particular provision of the title or its application in a given case is held to be invalid, the remainder of the title or the application of its provisions will not be affected thereby. This will provide greater flexibility for a reviewing court to interpret broadly the provisions of the title in order to carry out its purposes. The foreign missions title is remedial in nature and is intended to provide redress in areas in which the Secretary of State finds that the Federal interest has been adversely affected.

Section 1(c) of the bill amends section 13 of the State Department Basic Authorities Act of 1956 to include the relevant functions in the foreign missions title as part of the State Department's working capital fund authorities.

Section 1(d) contains amendments clarifying certain provisions of the Diplomatic Relations Act, which was reported by the Committee on Foreign Affairs and enacted by the Congress in 1978.

Section 1(d)(1) amends the definition of "members of a mission" in section 2(1)(A) of the Diplomatic Relations Act to add explicit reference to members who, although not "diplomatic staff" (as that term is used in the Vienna Convention on Diplomatic Relations), have been granted equivalent status pursuant to law. This will avoid any questions about the rights and corresponding obligations under the act of the senior staff of nondiplomatic missions who, under special legislation, are accorded the same privileges and immunities as the senior staff of a diplomatic mission.

Section 1(d)(2) adds explicit reference to the mission itself in section 3(b) of the Diplomatic Relations Act which specifies that the Vienna Convention on Diplomatic Relations shall be the governing standard in the United States with respect to privileges and immunities for nonparties to the Vienna Convention. As presently worded, section 3(b) does not specifically refer to privileges and immunities such as inviolability of premises, which apply to the mission rather than to any individual member thereof.

Section 1(d)(3)(A) similarly adds an explicit reference to the mission itself in section 4 of the Diplomatic Relations Act, which authorizes more favorable or less favorable treatment in the United States on the basis of reciprocity. Like section 3(b), discussed above, section 4 of the Diplomatic Relations Act presently refers only to individuals, giving rise to the same questions of interpretation. These amendments to section 3(b) and 4 of the act are in accord with the State Department's interpretations of the present law and are merely designed to correct an earlier drafting oversight.

Section 1(d)(3)(B) also amends section 4 of the Diplomatic Relations Act to delete the reference to "any sending state." This will assure that section 4 applies to missions or entities other than "sending states," such as that of the Commission of the European Communities, which are also intended to be covered by the Diplomatic Relations Act.

Section 1(d)(4) amends title 28 of the U.S. Code, by making applicable thereto the definition of "mission" contained in the Diplomatic Relations Act, rather than the definition contained in the Vienna Convention on Diplomatic Relations. This broadening of the definition will eliminate the present unintended disparity between the "missions" which are obliged to maintain liability insurance under section 6 of the Diplomatic Relations Act and the "missions" whose insurers may be named as defendants in direct actions by accident victims.

Section 1(e) repeals the Chancery Act of 1964. That Act states:

> No foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery where official business of such government is to be conducted * * * within any district or zone restricted in accordance with this Act to use for residential purposes except medium high density apartment districts and high density apartment districts.

IV. Chronology of the Legislation

The Foreign Missions Act (S. 854) differs from the Diplomatic Reciprocity Act (S. 2866) introduced in the 96th Congress on June 24, 1980.

THE DIPLOMATIC RECIPROCITY ACT (S. 2866)

The Diplomatic Reciprocity Act had the same purposes as the Foreign Missions Act. However, the earlier bill established a "Diplomatic Services Corporation" within the executive branch to perform virtually the same functions as the proposed Office of Foreign Missions, subject to the approval of the Secretary of State.

A hearing was held on July 26, 1980 by the House Foreign Affairs Subcommittee on International Operations on the substance of S. 2866.

Witnesses were: The Honorable Thomas M. Tracy, Assistant Secretary of State for Administration; Harold S. Burman, Office of the Legal Advisor, Department of State; and Sylvan Marshall, partner in Marshall, Leon, Weill, and Mahony, attorneys at law.

THE FOREIGN MISSIONS ACT (S. 854)

S. 854 was introduced on April 1, 1981, and referred to the Committee on Foreign Relations with a 45 day sequential referral to the Committee on Governmental Affairs.

On July 24, 1981, the Committee on Foreign Relations held a public hearing on the bill.

Witnesses were: The Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, accompanied by: Mr. James O. Gibson, Assistant City Administrator for Planning & Development. The Honorable Thomas M. Tracy, Assistant Secretary for Administration, Department of State, accompanied by: Mr. James H. Michel, Acting Legal Adviser. The Honorable Arrington L. Dixon, Chairman, Council of the District of Columbia. Mr. Sylvan M. Marshall, Marshall, Leon, Weill & Mahoney, Washington, D.C. Mr. Whayne S. Quin, Wilkes & Artis, Chartered, Washington, D.C. Mr. George Blow, Patton, Boggs & Blow, testifying on behalf of Sheridan-Kalorama Neighborhood Council & Ad Hoc Committee on the Foreign Missions bill. Mr. John Lawrence Hargrove, Citizens Planning Coalition of the District of Columbia, Inc.

On November 10, 1981, the Committee met in public session to mark up S. 854. At that time, an amendment offered by Senator Mathias to delete section 206 and the references to the Chancery Act of 1964 was defeated by a vote of 9 to 7. Those voting in favor of the amendment were: Senators Hayakawa, Mathias, Kassebaum, Pell, Biden, Sarbanes, and Cranston. Those voting against the amendment were: Senators Percy, Baker, Helms, Lugar, Boschwitz, Pressler, Zorinsky, Tsongas, and Dodd.

The committee then adopted a series of perfecting amendments offered by Senator Percy by a voice vote with a quorum of the committee present.

One of those amendments substitutes a 7 member "Foreign Missions Commission" for the originally-proposed National Capital Planning Commission as the agency to rezone the District of Columbia for business offices of foreign governments (chanceries).

The bill, as amended, was ordered favorably reported to the Senate by a voice vote with a quorum of the committee present and voting.

THE FOREIGN MISSIONS ACT (S. 1818)

This bill provided for an Office of Foreign Missions within the State Department to confer or deny privileges, benefits, and immunities on foreign missions within the United States.

It did not make any change in the present composition or procedure of the D.C. Zoning Commission or Board of Zoning Adjustment. Nor did it repeal the Chancery Act of 1964.

This bill was referred to the Committee on Foreign Relations. No hearing has been held.

DEPARTMENT OF STATE AUTHORIZATION ACT FISCAL YEARS 1982 AND 1983 (H.R. 3518)

The State Department authorization bill, H.R. 3518, was introduced in the House on May 12, 1981.

Section 119 of that bill contains most of the provisions of S. 854, the Foreign Missions Act.

On May 19, 1981, the House Committee on the District of Columbia was sequentially referred Section 119 because of its impact on the District of Columbia Home Rule charter.

On June 4, 1981, the House Committee on the District of Columbia held a hearing on the provision.

On June 18, 1981, the House Committee on the District of Columbia by voice vote reported H.R. 3518 with an amendment. The amendment struck the provisions of the bill, which place zoning authority for chanceries in the NCPC and also dropped a repeal of the Chancery Act of 1964.

On September 17, 1981, the State Department Authorization bill was debated in the House of Representatives. When the House District Committee's amendment to strike was offered, a substitute amendment was offered by the Chairman of the House Foreign Affairs Subcommittee on International Operations, Mr. Fascell.

The substitute provided for zoning for chanceries to be determined by a 7-member Foreign Missions Commission, consisting of 3 Federal representatives and 3 District of Columbia representatives and the Architect of the Capitol. In addition, the substitute repealed the Chancery Act of 1964.

The substitute was agreed to by voice vote. The full bill, however, failed to pass on September 17, 1981.

On October 29, 1981, the House amended and passed the Senate version of the State Department Authorization Act, S. 1193.

The House-passed version of S. 1193 contains the same text with regard to foreign missions as S. 854, as reported by the Senate Foreign Relations Committee.

The Senate-passed version of S. 1193 does not contain a foreign mission section.

The House asked for a conference on S. 1193 on October 29, 1981. The Senate agreed to a conference on November 13.

CHANGING THE D.C. ZONING PROCESS FOR EMBASSIES AND CHANCERIES (H.R. 3714)

H.R. 3714 was introduced in the House on May 28, 1981 by the Chairman of the House Committee on the District of Columbia.

The bill retained zoning jurisdiction in the two existing D.C. Zoning bodies. It required the State Department to make recommendations on individual chancery zoning cases to those bodies and set time limits for such decisions.

It also provided for the State Department to appeal Zoning Commission decisions to the NCPC, without reference to the Administrative Procedures Act.

No hearings were held on this legislation.

V. Regulatory Impact

In accordance with Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the Committee finds that this legislation may result in some new federal regulations by the Office of Foreign Missions which would have an impact on American businesses such as suppliers of goods and services to representatives of foreign missions.

This legislation may require notification to third parties, both businesses and government at all levels, of the terms and conditions under which certain benefits to specific foreign governments would be conferred or denied. Thus, conceivably there could be federal regulations instructing suppliers of goods and services, or other government bodies as to how they should proceed with respect to certain foreign governments.

VI. Cost Estimate

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the Committee provides the cost of S. 854, the Foreign Missions Act.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., March 26, 1982.

Hon. William V. Roth, Jr.,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 854; a bill to promote the orderly conduct of international relations by facilitating the operation of foreign missions in the United States, thereby promoting the secure and efficient operation of United States missions abroad; as ordered reported by the Senate Governmental Affairs Committee on March 9, 1982.

This legislation creates an Office of Foreign Missions within the Department of State and a Foreign Missions Commission as an independent agency of the District of Columbia. Start up and operating costs of the Office and Commission are estimated to be less than one million dollars per year.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

VII. Committee Action

The Subcommittee on Governmental Efficiency and the District of Columbia held a hearing on S. 854 on January 25, 1982.

Witnesses were: The Honorable Walter Fauntroy, Delegate from the District of Columbia; the Honorable Marion S. Barry, Jr., Mayor of the District of Columbia; the Honorable Thomas M. Tracy, Assistant Secretary for Administration, Department of State, accompanied by Mr. Walter F. Weiss, Deputy Assistant Secretary for Administration and Mr. Harold S. Burman, Office of the Legal Advisor; Mr. Harvey S. Pryor, Chief, Uniformed Division, U.S. Secret Service; Dr. Walter B. Lewis, Chairman. D.C. Zoning Commission, accompanied by Mr. Charles R. Norris, Chairman of the Board of Zoning Adjustment and Mr. Steven E. Sher, Executive Director of the D.C. Zoning Secretariat; Dr. Daniel R. Mandelker, Stamper Professor of Law, Washington University, St. Louis; Mr. John Lawrence Hargrove, Citizens Planning Coalition of the District of Columbia and the Ad Hoc Committee on the Foreign Missions Bill.

The subcommittee also received written testimony from the Honorable Stewart McKinney, the District of Columbia League of Women Voters, the Washington Board of Trade, and the chairman of the D.C. City Council.

The Subcommittee on Governmental Efficiency and the District of Columbia unanimously reported S. 854 to the full committee with four principal amendments. These were deletion of Section 206, the references to the Fulbright Act of 1964, the exemption from Federal rulemaking procedures (Title 5, U.S.C., Sec. 553) for the Secretary of State and the Office of Foreign Missions within the State Department, and revision of section 207.

On March 9, the committee voted to report S. 854 as amended by the Subcommittee on Governmental Efficiency and the District of Columbia. The committee conducted one vote on reporting S. 854. Those who supported reporting S. 854 as amended by the Subcommittee on Governmental Efficiency and the District of Columbia voted "yea." Those supporting the bill as referred to the committee and unamended by the subcommittee voted "nay." In compliance with section paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the vote on this matter was as follows:

Yeas—5	*Nays*—7
Mathias	Percy
Rudman	Danforth
Eagleton	Cohen
Sasser	Durenberger
Levin	Chiles
	Nunn
	Glenn

By this vote, the committee indicated its support for reporting the bill as referred to it from the Committee on Foreign Relations.

VIII. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as

reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

STATE DEPARTMENT BASIC AUTHORITIES ACT OF 1956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That the Secretary]

TITLE I—BASIC AUTHORITIES GENERALLY

SECTION 1. THE SECRETARY of State is authorized to establish, maintain, and operate passport and despatch agencies.

* * * * * * *

SEC. 13. (a) There is hereby established a working capital fund for the Department of State, which shall be available without fiscal year limitations, for expenses (including those authorized by the Foreign Service Act of 1980) and equipment, necessary for maintenance and operation in the city of Washington and elsewhere of (1) central reproduction, editorial, data processing, audiovisual, library and administrative support services; (2) central services for supplies and equipment (including repairs); (3) such other administrative services as the Secretary, with the approval of the Bureau of the Budget, determines may be performed more advantageously and more economically as central services; [and] (4) medical and health care services*; and (5) services and supplies to carry out title II of this Act.* The capital of the fund shall consist of the amount of the fair and reasonable value of such supply inventories, equipment, and other assets and inventories on order, pertaining to the services to be carried on by the fund, as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations, together with any appropriations made for the purpose of providing capital. The fund shall be reimbursed, or credited with advance payments, from applicable appropriations and funds of the Department of State, other Federal agencies, and other sources authorized by law, for supplies and services at rates which will approximate the expense of operations, including accrual of annual leave and depreciation of plant and equipment of the fund. The fund shall also be credited with other receipts from sale or exchange of property or in payment for loss or damage to property held by the fund. There shall be transferred into the Treasury as miscellaneous receipts, as the close of each fiscal year, earnings which the Secretary determines to be excess to the needs of the fund.

(b) The current value of supplies returned to the working capital fund by a post, activity, or agency may be charged to the fund. The proceeds thereof shall, if otherwise authorized, be credited to current applicable appropriations and shall remain available for expenditures for the same purposes for which those appropriations are available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories.

* * * * * * *

TITLE II—AUTHORITIES RELATING TO THE REGULATION OF FOREIGN MISSIONS

DECLARATION OF FINDINGS AND POLICY

SEC. 201. (a) The Congress finds that the operation in the United States of foreign missions and public international organizations and the official missions to such organizations, including the permissible scope of their activities and the location and size of their facilities is a proper subject for the exercise of Federal jurisdiction.

(b) The Congress declares that it is the policy of the United States to support the secure and efficient operation of United States missions abroad, to facilitate the secure and efficient operation in the United States of foreign missions and public international organizations and the official missions to such organizations, and to assist in obtaining appropriate benefits, privileges, and immunities for those missions and organizations and to require their observance of corresponding obligations in accordance with international law.

(c) The assistance to be provided to a foreign mission in the United States shall be determined after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission.

DEFINITIONS

SEC. 202. (a) For purposes of this title—

(1) "benefit" (with respect to a foreign mission) means any acquisition, or authorization for an acquisition, in the United States by or for a foreign mission, including the acquisition of—

(A) real property by purchase, lease, exchange, construction, or otherwise,

(B) public services, including services relating to customs, importation, and utilities, and the processing of applications or requests relating to public services,

(C) supplies, maintenance, and transportation,

(D) locally engaged staff on a temporary or regular basis,

(E) travel and related services, and

(F) protective services,

and includes such other benefits as the Secretary may designate;

(2) "chancery" means the principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), and includes the site and any building on such site which is used for such purposes;

(3) "Director" means the Director of the Office of Foreign Missions established pursuant to section 203(a);

(4) "foreign mission" means any official mission to the United States involving diplomatic, consular, or other governmental activities of—

(A) a foreign government, or

(B) an organization (other than an international organization, as defined in section 209(b) of this title) representing a territory or political entity which has been granted diplo-

matic or other official privileges and immunities under the laws of the United States.

including any real property of such a mission and including the personnel of such a mission;

(5) "real property" includes any right, title, or interest in or to, or the beneficial use of, any real property in the United States. including any office or other building;

(6) "Secretary" means the Secretary of State;

(7) "sending state" means the foreign government, territory, or political entity represented by a foreign mission; and

(8) "United States" means, when used in a geographic sense, the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(b) Determinations with respect to the meaning and applicability of the terms used in subsection (a) shall be committed to the discretion of the Secretary.

OFFICE OF FOREIGN MISSIONS

SEC. 203. (a) The Secretary shall establish an Office of Foreign Missions as an office within the Department of State. The Office shall be headed by a Director, appointed by the Secretary, who shall perform his or her functions under the supervision and direction of the Secretary. The Secretary may delegate this authority for supervision and direction of the Director only to the Deputy Secretary of State or an Under Secretary of State.

(b) The Secretary may authorize the Director to—

(1) assist agencies of Federal, State, and municipal government with regard to ascertaining and according benefits, privileges, and immunities to which a foreign mission may be entitled;

(2) provide or assist in the provision of benefits for or on behalf of a foreign mission in accordance with section 204; and

(3) perform such other functions as the Secretary may determine necessary in furtherance of the policy of this title.

PROVISION OF BENEFITS

SEC. 204. (a) Upon the request of a foreign mission, benefits may be provided to or for that foreign mission by or through the Director on such terms and conditions as the Secretary may approve.

(b) If the Secretary determines that such action is reasonably necessary on the basis of reciprocity or otherwise—

(1) to facilitate relations between the United States and a sending State,

(2) to protect the interests of the United States,

(3) to adjust for costs and procedures of obtaining benefits for missions of the United States abroad, or

(4) to assist in resolving a dispute affecting United States interests and involving a foreign mission or sending State.

then the Secretary may require a foreign mission (A) to obtain benefits from or through the Director on such terms and conditions as the Secretary may approve, or (B) to comply with such terms and conditions as the Secretary may determine as a condition to the execution or per-

formance in the United States of any contract or other agreement; the acquisition, retention, or use of any real property; or the application for or acceptance of any benefit (including any benefit from or authorized by any Federal, State, or municipal governmental authority, or any entity providing public services).

(c) Terms and conditions established by the Secretary under this section may include—

(1) a requirement to pay to the Director a surcharge or fee, and

(2) a waiver by a foreign mission (or any assignee of or person deriving rights from a foreign mission) of any recourse against any governmental authority, any entity providing public services, any employee or agent of such an authority or entity, or any other person, in connection with any action determined by the Secretary to be undertaken in furtherance of this title.

(d) For purposes of effectuating a waiver of recourse which is required under this section, the Secretary may designate the Director or any other officer of the Department of State as the agent of a foreign mission (or of any assignee of or person deriving rights from a foreign mission). Any such waiver by an officer so designated shall for all purposes (including any court or administrative proceeding) be deemed to be a waiver by the foreign mission (or the assignee of or other person deriving rights from a foreign mission).

(e) Nothing in this section shall be deemed to preclude or limit in any way the authority of the United States Secret Service to provide protective services pursuant to section 202 of title 3, United States Code, or section 3056 of title 18, United States Code, at a level commensurate with protective requirements as determined by the United States Secret Service.

PROPERTY OF FOREIGN MISSIONS

SEC. 205. (a) (1) The Secretary may require any foreign mission to notify the Director prior to any proposed acquisition, or any proposed sale or other disposition, or any real property by or on behalf of such mission. If such a notification is required, the foreign mission (or other party acting on behalf of the foreign mission) may initiate or execute any contract, proceeding, application, or other action required for the proposed action—

(A) only after the expiration of the sixty-day period beginning on the date of such notification (or after the expiration of such shorter period as the Secretary may specify in a given case); and

(B) only if the mission is not notified by the Secretary within that period that the proposal has been disapproved; however, the Secretary may include in such a notification such terms and conditions as the Secretary may determine appropriate in order to remove the disapproval.

(2) For purposes of this section, "acquisition" includes any acquisition or alteration of, or addition to, any real property or any change in the purpose for which real property is used by foreign mission.

(b) The Secretary may require any foreign mission to divest itself of, or forgo the use of, any real property determined by the Secretary—

(1) not to have been acquired in accordance with this section; or

(2) to exceed limitations placed on real property available to a United States mission in the sending state.

(c) If a foreign mission has ceased conducting diplomatic, consular and other governmental activities in the United States and has not designated a protecting power or other agent approved by the Secretary to be responsible for the property of that foreign mission, the Secretary—

(1) until the designation of a protecting power or other agent approved by the Secretary, may protect and preserve any property of that foreign mission; and

(2) may authorize the Director to dispose of such property at such time as the Secretary may determine after the expiration of the one-year period beginning on the date that the foreign mission ceased those activities, and may remit to the sending state the net proceeds from such disposition.

LOCATION OF FOREIGN MISSIONS IN THE DISTRICT OF COLUMBIA

SEC. 206. (a) In order to ensure the fulfillment of the international obligations of the United States and the policy of this title, the location, replacement, or expansion of any building or other real property in the District of Columbia which is used for the diplomatic, consular, or other governmental activities (except property used exclusively for residential purposes) of a foreign mission shall be subject to the approval of the District of Columbia Foreign Missions Commission as provided in this section.

(b)(1) There is hereby created, as an independent agency of the District of Columbia, the District of Columbia Foreign Missions Commission (hereafter in this section referred to as the "Foreign Missions Commission") which shall consist of the five members of the Zoning Commission for the District of Columbia (as such members are designated by section 492(a) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 5-412)), the Chairman of the National Capital Planning Commission, and the Secretary of Defense, or such alternate as each such person may be designated from time to time.

(2) While actually engaged in the performance of duties as a member of the Foreign Missions Commission, the Chairman of the National Capital Planning Commission (or the alternate designated by the Chairman) shall be compensated by the District of Columbia in the manner and at the rates applicable to the members of the Zoning Commission for the District of Columbia who are appointed by the Mayor.

(3) The Mayor of the District of Columbia shall furnish such facilities and administrative services, and shall assign such employees, to the Foreign Missions Commission as may be required by the Commission to carry out this section.

(c) The Foreign Missions Commission shall—

(1) establish areas within which chanceries may be located as a matter of right, and

(2) establish additional areas within which chanceries may be located.

Limitations on chancery uses shall not exceed those applicable to any other nonresidential use in the areas so established.

(d) Any determination by the Foreign Missions Commission pursuant to this section, including the establishment of areas in accordance with paragraphs (1) and (2) of subsection (c), shall be considered rulemaking under the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501—1-1510).

(e) Any determination by the Foreign Missions Commission with respect to chanceries pursuant to this section, including the establishment of areas in accordance with paragraphs (1) and (2) of subsection (c), shall be based solely on the following criteria:

(1) The obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

(2) The chancery is in or adjacent to an area, determined on the basis of existing or planned uses, of (A) commercial use, or (B) mixed uses, including residential, commercial, office, or institutional use.

(3) Historic preservation, as determined by the Foreign Missions Commission in carrying out this section; except that substantial compliance with District and Federal laws governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks, in order to ensure compatibility with historic landmarks and districts.

(4) The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary.

(5) The extent to which the area will have adequate public facilities, utilities, and services, including streets, street lighting, water, sewer, electricity, telephone, and refuse collection.

(6) The extent to which the area is capable of being adequately protected, as determined by a Federal agency authorized to perform protective services.

(7) The municipal interest, as determined by the Mayor of the District of Columbia.

(8) The Federal interest, as determined by the Secretary.

Any other determination by the Foreign Missions Commission pursuant to this section shall be based solely on the criteria specified in paragraphs (1), (3), (6), (7), and (8), and such other criteria as the Commission may by regulation establish.

(f)(1) The regulations, proceedings, and other actions of the Foreign Missions Commission pursuant to this section shall not be inconsistent with Federal elements of the comprehensive plan for the National Capital. All elements of the comprehensive plan relating to the location of foreign missions shall be based solely on the criteria set forth in this section and shall reflect the policy of this title.

(2) Proposed determinations by the Foreign Missions Commission shall be referred to the National Capital Planning Commission for review and comment.

(g) The Foreign Missions Commission shall promulgate such regulations as it determines are necessary for it to carry out this section.

(h) This section shall not be construed to authorize, and the regulations of the Foreign Missions Commission shall not provide for or require, procedures in the nature of a special exception or administrative proceedings of an adjudicatory nature.

(i) In any proceeding with respect to approval of the location, replacement, or expansion of real property of a foreign mission pursuant to this section, the final determination by the Foreign Missions Commission shall be made not later than six months after the date of filing an application for such approval. Any such determination shall not be subject to administrative proceedings of any other agency or official except as provided in this title. Any such determination by the Foreign Missions Commission shall ensure the fulfillment of the obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions and shall take into account special security requirements as determined by the Secretary.

(j) The Secretary shall require foreign missions to comply substantially with District of Columbia building and related codes in a manner determined by the Secretary to be not inconsistent with the international obligations of the United States.

(k) The United States, acting on its own behalf or on behalf of a foreign mission—

(1) has standing to bring an action for judicial review of a determination by the Foreign Missions Commission under this section or, where appropriate, for judicial enforcement of the requirements of this section applicable to the Commission; and

(2) has standing to intervene in any such action which is otherwise pending.

(l) Approval by the Foreign Missions Commission under this section or, except as provided in section 205, by any other agency or official is not required—

(1) for the location, replacement, or expansion of real property of a foreign mission to the extent—

(A) that authority to proceed with respect to such location, replacement, or expansion was granted to the foreign mission before the date of enactment of this section, or

(B) that rights or interests with respect to such location, replacement, or expansion were otherwise acquired by the foreign mission before the date of enactment of this section; or

(2) for continuing use of real property by a foreign mission for diplomatic, consular, or other governmental activity to the extent that such property was being used by that foreign mission for that activity on the date of enactment of this section.

PREEMPTION

SEC. 207. Notwithstanding any other provision of law, no act of any Federal agency or of any State or municipal governmental authority shall be effective to confer or deny any benefits with respect to any foreign mission contrary to this title.

GENERAL PROVISIONS

SEC. 208. (a) The Secretary may issue such regulations as the Secretary may determine necessary to carry out the policy of this title.

(*b*) *compliance with any regulation, instruction, or direction issued by the Secretary under this title shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court or administrative proceeding for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued by the Secretary under this title.*

(*c*) *For purposes of administering this title, the Secretary may—*

(*1*) *employ experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the rate payable for grade GS–18 level; and*

(*2*) *accept details and assignments of employees of Federal agencies to the Office of Foreign Missions on a reimbursable or nonreimbursable basis (with any such reimbursements to be credited to the appropriations made available for the salaries and expenses of officers and employees of the employing agency).*

(*d*) *Contracts and subcontracts for supplies or services (except for personal services), made by or on behalf of the Director, shall be made after advertising, in such manner and at such times as the Secretary shall determine to be adequate to ensure notice and opportunity for competition, except that advertisement shall not be required when (1) the Secretary determines that it is impracticable or will not permit timely performance to obtain bids by advertising, or (2) the aggregate amount involved in a purchase of supplies or procurement of services does not exceed $10,000. Such contracts and subcontracts may be entered into without regard to laws and regulations otherwise applicable to solicitation, negotiation, administration, and performance of government contracts. In awarding contracts, the Secretary may consider such factors as relative quality and availability of supplies or services and the compatability of the supplies or services with implementation of this title.*

(*e*) *The head of any Federal agency may, for purposes of this title—*

(*1*) *transfer or loan any property to, and perform administrative and technical support functions and services for the operations of, the Office of Foreign Missions (with reimbursements to agencies under this paragraph to be credited to the current applicable appropriation of the agency concerned); and*

(*2*) *acquire and accept services from the Office of Foreign Missions, including (whenever the Secretary determines it to be in furtherance of the purposes of this title) acquisitions without regard to laws normally applicable to the acquisition of services by such agency.*

(*f*) *Assets of or under the control of the Office of Foreign Missions, wherever situated, which are used by or held for the use of a foreign mission shall not be subject to attachment, execution, injunction, or similar process, whether intermediate or final.*

(*g*) *Except as otherwise provided, any determination required under this title shall be committed to the discretion of the Secretary. Except as provided in the first sentence of section 206(b), actions taken under the authority of this title shall not be considered rule-*

making within the meaning of section 553 of title 5, United States Code.

(h) (1) In order to implement this title, the Secretary may transfer such amounts available to the Department of State as may be necessary to the working capital fund established by section 13 of this Act.

(2) All revenues, including proceeds from gifts and donations, received by the Director or the Secretary in carrying out this title may be credited to the working capital fund established by section 13 of this Act and shall be available for purposes of this title in accordance with that section.

APPLICATION TO PUBLIC INTERNATIONAL ORGANIZATIONS AND OFFICIAL MISSIONS TO SUCH ORGANIZATIONS

SEC. 209. (a) The Secretary may make section 206, or any other provisions of this title, applicable with respect to an international organization to the same extent that it is applicable with respect to a foreign mission if the Secretary determines, after consultation with the international organization, that such application is necessary to carry out the policy set forth in section 201(b) and to further the objectives set forth in section 204(b).

(b) For purposes of this section, "international organization" means—

(1) a public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. 288—288f-2) or other law authorizing such status; and

(2) an official mission (other than a United States mission) to such a public international organization,

including any real property of such an organization or mission and including the personnel of such an organization or mission.

PRIVILEGES AND IMMUNITIES

SEC. 210. Nothing in this title shall be construed to limit the authority of the United States to carry out its international obligations, or to supersede or limit immunities otherwise available by law. No act or omission by any foreign mission, public international organization, or official mission to such an organization, in compliance with this title, shall be deemed to be an implied waiver of any immunity otherwise provided for by law.

ENFORCEMENT

SEC. 211. It shall be unlawful for any person to make available any benefits to a foreign mission contrary to this title. This section shall be enforceable in any appropriate district court of the United States by injunctive or other equitable relief upon application by the Attorney General.

SEVERABILITY

SEC. 212. If any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to any other person or circumstance shall not be affected thereby.

DIPLOMATIC RELATIONS ACT

AN ACT To complement the Vienna Convention of Diplomatic Relations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SHORT TITLE

SECTION 1. This Act may be cited as the "Diplomatic Relations Act".

DEFINITIONS

SEC. 2. As used in this Act—

(1) the term "members of a mission" means—

[(A) the head of a mission and members of the diplomatic staff of a mission,]

(A) the head of a mission and those members of a mission who are members of the diplomatic staff or who, pursuant to law, are granted equivalent privileges and immunities,

(B) members of the administrative and technical staff of a mission, and

(C) members of the service staff of a mission,

as such terms are defined in Article 1 of the Vienna Convention;

(2) the term "family" means—

(A) the members of the family of a member of a mission described in paragraph (1)(A) who form part of his or her household if they are not nationals of the United States, and

(B) the members of the family of a member of a mission described in paragraph (1)(B) who form part of his or her household if they are not nationals or permanent residents of the United States.

within the meaning of Article 37 of the Vienna Convention;

The term "mission" includes missions within the meaning of the Vienna convention and any missions representing foreign governments, individually or collectively, which are extended the same privileges and immunities, pursuant to law, as are enjoyed by missions under the Vienna Convention; and

(4) the term "Vienna Convention" means the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227), entered into force with respect to the United States on December 13, 1972.

ESTABLISHMENT OF THE VIENNA CONVENTION AS THE UNITED STATES LAW ON DIPLOMATIC PRIVILEGES AND IMMUNITIES

SEC. 3. (a)(1) Sections 4063 through 4066 of the Revised Statutes of the United States (22 U.S.C. 252–254) are repealed.

(2) The section analysis of title XLVII of the Revised Statutes of the United States is amended by striking out the items relating to sections 4063 through 4066.

[(b) Members of the mission of a sending state which has not ratified the Vienna Convention, their families, and the diplomatic couriers of such state, shall enjoy the privileges and immunities specified in the Vienna Convention.]

(b) With respect to a nonparty to the Vienna Convention, the mission, the members of the mission, their families, and diplomatic couriers shall enjoy the privileges and immunities specified in the Vienna Convention.

AUTHORITY TO EXTEND MORE FAVORABLE OR LESS FAVORABLE TREATMENT

SEC. 4. The President may, on the basis of reciprocity and under such terms and conditions as he may determine, specify privileges and immunities for *the missions, the* members of the mission, their families, and the diplomatic couriers [of any sending state] which result in more favorable treatment or less favorable treatment than is provided under the Vienna Convention.

* * * * * * *

TITLE 28, UNITED STATES CODE

* * * * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION

* * * * * * *

§ 1364. Direct actions against insurers of members of diplomatic missions and their families

(a) The district courts shall have original and exclusive jurisdiction, without regard to the amount in controversy, of any civil action commenced by any person against an insurer who by contract has insured an individual, who is a member of a mission ([as defined in the Vienna Convention on Diplomatic Relations] *within the meaning of section 2(3) of the Diplomatic Relations Act (22 U.S.C. 254a(3))*) or a member of the family of such a member of a mission, or an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, against liability for personal injury, death, or damage to property.

(b) Any direct action brought against an insurer under subsection (a) shall be tried without a jury, but shall not be subject to the defense that the insured is immune from suit, that the insured is an indispensable party, or in absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was cancelled before the claim arose.

* * * * * * *

ACT OF JUNE 20, 1938

AN ACT Providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and of the uses of land in the District of Columbia, and for other purposes

* * * * * * *

SEC. 6. [(a)] The permissible height of buildings in any district shall not exceed the maximum height of buildings now authorized upon any street in any part of the District of Columbia by the Act of Congress approved June 1, 1910, and amendments thereto, regulating the height of buildings in the District of Columbia.

[(b) After the date of enactment of this subsection a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building anywhere in the District of Columbia, other than a district or zone restricted in accordance with this Act to use for industrial purposes, for use by such government as an embassy.

[(c) After the date of enactment of this subsection, except as otherwise provided in subsection (d) of this section, no foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery where official business of such government is to be conducted on any land, regardless of the date such land was acquired, within any district or zone restricted in accordance with this Act to use for residential purposes.

[(d) After the date of enactment of this subsection a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use a chancery within any district or zone restricted in accordance with this Act to use for medium-high density apartments or high density apartments if the Board of Zoning Adjustment shall determine after a public hearing that the proposed use and the building in which the use is to be conducted are compatible with the present and proposed development of the neighborhood. In determining compatibility the Board of Zoning Adjustment must find that—

[(1) in districts or zones restricted in accordance with this Act to use for medium-high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each twelve hundred square feet of gross floor area; and

[(2) in districts or zones restricted in accordance with this Act to use for high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each one thousand eight hundred square feet of gross floor area; and

[(3) the height of the building does not exceed the maximum permitted in the district or zone in which it is located; and

[(4) the architectural design and the arrangement of all structures and off-street parking spaces are in keeping with the character of the neighborhood.

[(e) As used in this section, the term—

[(1) "embassy" means a building used as the official residence of the chief of a diplomatic mission of a foreign government.

[(2) "chancery" means a building containing business offices of the chief of a diplomatic mission of a foreign government where official business of such government is conducted, and such term shall include any chancery annex, and the business offices of attachés of a foreign government who are under the personal direction and superintendence of the chief of mission of such government. Such term shall not include business offices of nondiplomatic missions of foreign governments such as purchasing, finan-

cial, educational, or other missions of comparable nondiplomatic nature.

[(3) "person" means any individual who is subject to direction by the chief of mission of a foreign government and is engaged in diplomatic activities recognized as such by the Secretary of State.]

* * * * * * *

SEC. 16. The provisions of this Act shall not apply to Federal public buildings: *Provided, however*, That, in order to insure the orderly development of the National Capital, the location, height, bulk, number of stories, and size of Federal public buildings in the District of Columbia and the provision for open space in and around the same will be subject to the approval of the National Capital Park and Planning Commission. *In addition, the provisions of this Act shall not apply to any real property to which section 206(a) of the State Department Basic Authorities Act of 1956 (relating to foreign missions) is applicable.*

* * * * * * *

IX. MINORITY VIEWS OF MESSRS. MATHIAS, EAGLETON, RUDMAN, LEVIN, AND SASSER

When S. 854 was voted upon by the Governmental Affairs Committee, we voted for a series of amendments to avoid an unneeded, unprecedented and unwise interference with time-honored powers exercised by hundreds of local governments, including the District of Columbia. Those amendments were reported unanimously by the Subcommittee on Governmental Efficiency and the District of Columbia. By a divided vote, with five abstentions, the Committee on Governmental Affairs did not agree with the recommendations of its Subcommittee. The result is that S. 854 is reported to the Senate without amendment by the Governmental Affairs Committee.

We agree with the overall purpose of S. 854 to provide a better enforcement mechanism for the United States to confer, deny, and set terms and conditions for privileges, benefits, and immunities for foreign governments in the United States. The proposed creation of an Office of Foreign Missions in Section 203 and its authorities in Sections 204 and 205 are necessary to achieve a better balance in the treatment of U.S. missions abroad and of foreign missions in the United States. We believe the establishment of such an Office within the Department of State is fully sufficient to achieve the purposes of this bill.

The conduct of diplomatic relations is properly one of quiet negotiation with due respect for the history, laws, and customs of the governments involved. Sections 206 and 207 of this bill are inappropriate federal instruments to ensure that decisions by the Office of Foreign Missions are enforced by state and local governments.

So that our colleagues can understand the seriousness of the problem raised by S. 854 as reported and the need for remedial amendments, we are setting forth our views on this matter at some length.

After consideration by the Foreign Relations Committee, S. 854 was referred to the Committee on Governmental Affairs and, in turn, its Subcommittee on Governmental Efficiency and the District of Columbia. Of particular concern to the Subcommittee on Governmental Efficiency and the District of Columbia was Section 206 which creates a federally-weighted commission to decide the location and use of land for chanceries (the business offices of foreign governments) in the District of Columbia, abrogating the limited Home Rule powers of the D.C. government. This issued was the initial focus on the Subcommittee's inquiry, which included a public hearing on January 25, 1982, examining the nature of the problem which the bill seeks to address, research into selective federal preemption of federal, state, and municipal law; into U.S. and international law on diplomatic relations; and a comparative analysis of zoning practices and law for facilities of foreign governments in major U.S. cities as well as other world capitals.

As explained more fully in the discussion that follows, we believe that the federal interest is adequately represented on the existing zoning bodies in the District of Columbia and that the Department of State has not documented the need for change. We reject Section 206 of the bill as unnecessary, duplicative, expensive, and violative of the Home Rule principles which Congress intended when, in 1973, it restructured the relations between the federal government and the District of Columbia.

Referral of S. 854 to the Governmental Affairs Committee also permitted us to focus on the broad federal preemption of Section 207 and its impact on state and local authorities. The 213 U.S. cities and towns whose home rule authorities in a vast array of areas are preempted by this section have a stake in the outcome of this bill as well.

The Subcommittee devoted attention to the wide discretion which S. 854 would give to the Secretary of State to preempt federal, state, and municipal laws on vague grounds. The Subcommittee received testimony and expressions of concern about this preemption language from the U.S. Conference of Mayors, the National League of Cities, and several State Attorneys General.

We support alternative language to Section 207 because we share the concerns of those organizations and because we believe such a sweeping federal preemption is unnecessary to accomplish the purposes of diplomatic reciprocity. We do not believe the Vienna Conventions or the Diplomatic Relations Act contemplated that foreign governments would be exempt from complying with the laws of the United States, including state and municipal law.

We believe there are four principal flaws in this bill which must be addressed by remedial amendments as offered by the Subcommittee:

1. It deleted the proposed federally-dominated "Foreign Missions Commission" to act as a special purpose zoning body for the District of Columbia. (Sec. 206.)

2. It revised the Preemption language to protect the decisionmaking prerogatives of municipal, as well as state and federal bodies with regard to foreign governments, while requiring them to give "substantial weight" to the views of the Secretary of State in making such decisions. (Sec. 207.)

3. It deleted the repeal of The Chancery Act of 1964. (Sec. (e).)

4. It removed the exemption from Title V rulemaking procedures for the Secretary of State.

Our reasoning for these changes is as follows:

1. "FOREIGN MISSIONS COMMISSION"

We disagree with the proposed creation of a federally-dominated "Foreign Missions Commission" in the District of Columbia to serve as a special purpose zoning board for foreign mission chanceries.

This proposal abrogates the Home Rule Act by removing zoning authority and decisionmaking over chancery locations from the D.C. Zoning Commission and Board of Zoning Adjustment. It would place this authority in a "Foreign Missions Commission", a 7 member body composed of 4 Federal members and 3 D.C. appointees.

We reject this proposal on the following grounds:

1. The federal interest is already adequately represented on both the D.C. Zoning Commission and the Board of Zoning Adjustment in their respective memberships.

The D.C. Zoning Commission, a 5 member board, has two federal members: the Architect of the Capitol and the Director of the National Park Service.

The D.C. Board of Zoning Adjustment, a 5 member board, has at least one federal member at all times, a representative of the National Capital Planning Commission. The fifth member rotates from the D.C. Zoning Commission. So, at some time, he may be a federal appointee, and, at other times, a D.C. appointee.

No other municipal zoning body in the United States has federal representatives on it. The Congress, in establishing the composition of the D.C. Zoning Commission and the D.C. Board of Zoning Adjustment, recognized the special federal interest that exists in the District of Columbia.

2. No compelling case has been made that the current D.C. zoning process fails to balance adequately the federal interest.

Since the 1978 adoption by the D.C. Zoning Commission of the Diplomatic Overlay Zone, 12 cases have come before the Board of Zoning Adjustment. Eleven have been granted. One has been denied. The one denial was a unanimous decision by the Board, including the federal member.

3. The proposed task of the "Foreign Missions Commission" would be redundant.

The proposed commission is charged with rezoning the District of Columbia for chancery uses.

This very process was completed in 1978 by the National Capital Planning Commission, a federal planning agency for the National Capital Region, and by the D.C. Zoning Commission, a process in which the State Department participated and concurred.

To date, that rezoning has not been challenged in court. Nor has the State Department formally expressed its dissatisfaction with the Diplomatic Zone to the D.C. Zoning Commission or the Board of Zoning Adjustment.

4. The proposed "Foreign Missions Commission" is inconsistent with the practices of numerous other foreign nations.

In many other foreign nations chancery locations are determined pursuant to local zoning law. Nor are there many foreign nations which have special purpose national commissions to determine chancery locations.

The State Department's own response to Subcommittee questions concerning how chancery locations are handled in 25 other foreign countries indicated that, in all but two nations (both state-directed economies), there exists no specal commission to deal with chancery locations and uses. In virtually all of the foreign nations reviewed, chancery uses are subject to local zoning. And in most of those foreign nations, both authoritarian and democratic, the zoning body is local in composition, either appointed, statutorily designated, or civil servants.

5. The proposed commission would add to the proliferations of special-purpose, independent agencies in the District of Columbia.

In an era of governmental reorganization and reduction, we do not believe the creation of yet another governmental agency is justified.

6. Due process would be seriously compromised in the procedures of the proposed commission.

No opportunity for a hearing on the proposed rezoning for chanceries would be mandated. Thus, District citizens and other interested parties would be denied the opportunity to present their views in person.

7. Federal legislation is not the proper forum for the State Department to redress its grievances if it perceives problems with the present D.C. zoning process.

The D.C. Zoning Commission, charged with mapping and regulating land uses, is the proper forum for any proposed amendments to the map or process. That avenue has not been pursued by the Department.

II. FEDERAL PREEMPTION

We object to the broad federal preemption language of Sec. 207 of the bill.

We believe the effect of this provision would be to override not only District of Columbia, but other municipalities' and states' laws concerning such things as zoning for consulates; building, plumbing, electrical, and fire codes for consulates; tax codes; police powers and penal codes; historic preservation; motor vehicle registration and traffic laws; consumer protection laws, and others.

This is a "home rule" issue in a much larger sense. As shown in Table 1, foreign missions maintain consulates in 213 U.S. cities and towns. Their laws, as well as D.C. law, would be preempted by this provision.

When, at the discretion of the Secretary of State, the U.S. wishes to confer or deny any of the kinds of "benefits" enumerated above, regardless of the requirements of local or state law, the foreign government would have such benefits conferred or denied.

At the federal level, this preemption may have an effect on enforcement of laws such as the Registration of Foreign Agents Act.

We believe Articles 21 and 41(1) of the Vienna Convention on Diplomatic Relations do not require, nor do they intend, such a sweeping preemption of federal, state, and local law in order to accomplish the purpose of diplomatic reciprocity. We believe the Vienna Convention appealed to all signatory nations to "respect the laws and regulations of the receiving State." Similarly, the receiving States were obligated to observe their own laws in providing for the accommodation of foreign governments.

The legislative history of the Diplomatic Relations Act also makes clear Congressional intent on respect for the laws of the host State by the foreign mission:

> This legislation reflects the intent both of the Vienna Convention on Diplomatic Relations and the Committee on International Relations that the diplomatic community understand clearly that its members are expected to obey the laws and regulations of the United States and of the local jurisdictions in

> which they live and work. The need to provide certain privileges and immunities to insure the effective functioning of a foreign mission should not obscure the duties of guests of the United States not to abuse the hospitality of its citizenry.[1]

We believe our bilateral and other foreign relations can best be accomplished within a democratic framework that assures due process for all parties.

We do not share the view expressed in this Committee Report that the language of the Preemption section would only apply as a negative preemption. Apparently, the Committee bases its view on assurances made in a letter to the Committee Chairman from the Assistant Secretary of State for Administration that a negative preemption was all that was intended.

That is to say, that in situations where a foreign government proposed to locate a consulate in another U.S. city (other than the District of Columbia), or when such consulate proposed to contract for certain goods or services provided by a state or local government, such as motor vehicle registration, police and fire protection, or tax immunity, that only in instances where the Office of Foreign Missions said "no", would its position be final, regardless of local or state law.

Such an assurance notwithstanding, the language of Sec. 207 on federal preemption is not so narrowly drawn.

On the other hand, the State Department maintains the preemption would not overturn a prohibitory local or state law even if the Office of Foreign Missions said "yes". If a negative preemption is all that is intended, we question why the Department has resisted efforts to clarify this in the legislation itself.

Even if the preemption would only be a negative one, there would be great potential for continuing, serious interference with functions which our constitutional democracy has always entrusted to local or state law.

Clearly, the reading of this section is open to many interpretations.

We are sensitive to the expressed concerns of the National League of Cities, the U.S. Conference of Mayors, and several State Attorneys General that the present preemption language is overly broad.

The Maryland Attorney General, for example, has written:

> Clearly, under a plain reading of the bill, this preemption provision could have a significant impact on local government.
>
> Zoning ordinances, building, plumbing, and electrical codes, and police services could be affected.
>
> And nothing is salvaged by the Senate Foreign Relations Committee Report's assertion that Section 207 does not preempt municipal zoning "so long as those requirements do not interfere with the exercise of the Secretary's discretion." S. Rept. No. 97-283, 97th Cong., 1st Sess. (1981)
>
> As we both know, a court is more likely to pay attention to the plain language of Section 207 than to open-ended *dicta* in a Committee report.
>
> In addition to preempting local law, S. 854 could affect important provisions of State law. The State, of course, has

[1] Report 95-526 of the House Committee on International Relations to accompany H.R. 7819, the Diplomatic Relations Act.

promulgated a model building, electrical, and plumbing code for local governments. See Md. Code, Art. 41, S 257J.

In addition, the protections and procedures embodied in Maryland's real property laws and even its Consumer Protection statute could be impacted by S. 854 in its present form.

The California Attorney General, in a letter to the Subcommittee on the preemption section, noted:

> We are concerned that this would allow federal government to override traffic, motor vehicle, even some penal sanctions at the state and local level.
>
> We do not believe this preemption clause is necessary to guarantee diplomatic reciprocity.

The U.S. Conference of Mayors has noted:

> Local governments throughout the United States have always demonstrated a keen concern for the needs of the United States in the conduct of foreign affairs . . .
>
> Local government officials are in unique positions to advise the Secretary on a host of local concerns and how best to effectuate his desired result.
>
> Among other issues, local officials can assist the Secretary in coordinating with zoning and land-use decisions, the adequacy of parking and the availability of all other public services the foreign mission will need.

The Subcommittee's amendment to this section to revise the preemption language would have required federal, state, and municipal governments to give "substantial weight" to the recommendations of the Office of Foreign Missions. It is our view that this revised language, which we intend to offer when this bill comes before the Senate, will ensure that the federal interest will be balanced in decision-making by not only District of Columbia, but other federal, state and municipal governments. At the same time our amendment respects the integrity of those other laws, including the D.C. Home Rule Act.

TABLE 1.—*Cities with consular offices*[1]

Alabama	Mobile, Birmingham, Montgomery.
Alaska	Anchorage, Juneau.
Arizona	Phoenix, Tucson, Scottsdale, Douglas, Nogales.
Arkansas	Little Rock.
California	Los Angeles, San Francisco, San Diego, Atherton, Concord, Culver City, Bakersfield, Berkeley, Burlingame, Beverly Hills, Burbank, Fresno, Hollywood, La Habra, Monterey, Oakland, Palm Springs, Pasadena, Long Beach, Sacramento, Santa Monica, San Mateo, San Jose, Santa Barbara, San Bernardino, San Fernando, San Gabriel, Stanford, Stockton, Calexico.
Colorado	Denver, Boulder.
Connecticut	Bridgeport, Norwich, Hartford, Greenwich, New Haven, Waterbury, Stamford.
Delaware	Wilmington.
Florida	Miami, Tampa, Jacksonville, Orlando, Ft. Lauderdale, Coral Gables, Ft. Pierce, Gainesville, Hollywood, Miami Beach, Panama City, Sarasota, South Miami, West Palm Beach, Lake Worth, Pensacola, Sarasota, Palm Beach, Key Biscayne, St. Petersburg.

Georgia	Atlanta, Savannah.
Hawaii	Honolulu, Kailua.
Idaho	Nampa, Boise.
Illinois	Moline, Belleville, Wheaton, Evanston, Chicago.
Indiana	Mishawaka, East Chicago, Ft. Wayne, Indianapolis, Evansville.
Iowa	Des Moines.
Kansas	Kansas City, Wichita.
Kentucky	Louisville, Lexington.
Louisiana	New Orleans, Baton Rouge, Lake Charles, Metairie, Lafayette.
Maine	Portland.
Maryland	Baltimore, Rockville, Annapolis.
Massachusetts	Boston, Springfield, Gloucester, Fitchburg, Fall River, Marlboro, New Bedford, Worcester.
Michigan	Detroit, Lansing, Grand Rapids, Hancock, Ishpeming.
Minnesota	St. Paul, Minneapolis, Duluth, Rochester.
Mississippi	Jackson, Gulfport.
Missouri	St. Louis, Kansas City.
Montana	Great Falls, Butte, Missoula, Billings.
Nebraska	Omaha, Lincoln.
Nevada	Las Vegas, Reno.
New Hampshire	Manchester.
New Jersey	Newark, Trenton, Orange.
New Mexico	Albuquerque, Santa Fe.
New York	New York City, Albany, Buffalo, Rochester, Yonkers.
North Carolina	Charlotte, Wilmington, Goldsboro, Raleigh.
North Dakota	Bismarck, Fargo.
Ohio	Cleveland, Columbus, Ashtabula, Cincinnati, Oxford, Dayton.
Oklahoma	Oklahoma City, Tulsa.
Oregon	Portland, Astoria, Salem.
Pennsylvania	Philadelphia, Pittsburgh, State College, Wyndmoor, Easton, Harrisburg, Carnegie.
Rhode Island	Providence, Coventry.
South Carolina	Charleston, Lake City, Spartanburg.
South Dakota	Sioux Falls.
Tennessee	Nashville, Memphis.
Texas	Houston, Dallas, Galveston, Corpus Christi, Ft. Worth, Austin, Laredo, San Antonio, Amarillo. Abilene, Brownsville, San Juan, Port Arthur, Del Rio, Eagle Pass, El Paso, Lubbock, McAllen, Presidio, Beaumont, Point Comfort, Prairie View.
Utah	Morgan, Provo, Salt Lake City.
Vermont	Burlington.
Virginia	Norfolk, Richmond, Alexandria, Newport News, Hampton.
Washington	Seattle, Pullman, Spokane.
West Virginia	Wheeling, Clarksburg.
Wisconsin	Milwaukee, Madison, Oshkosh.
Wyoming	Rock Springs.

[1] Source: 1981 Congressional Directory.

III. THE CHANCERY ACT OF 1964

We oppose the repeal of the Chancery Act of 1964.

The Chancery Act of 1964 is a federal law which amended the D.C. zoning law to protect low density residential neighborhoods by prohibiting chanceries in those zones. The act permitted them in all other zones in the city, including medium and high density residential areas.

When a foreign mission proposes to locate a chancery in a medium or high density residential zone, the site and building plan must be reviewed by the D.C. Board of Zoning Adjustment (BZA). This "special exception" process is a common zoning procedure to review normally incompatible land uses in certain zones. Land use theory and zoning practice throughout the United States consider office uses incompatible in residential neighborhoods. Therefore, office uses are not permitted in neighborhoods zoned for residential use, unless they can demonstrate a relationship and compatibility with those neighborhoods.[2]

Since adoption of the Diplomatic Zone in 1978, the BZA has heard 12 chancery cases. Of those, 11 were granted; 1 was denied; 1 has been postponed at the request of the foreign government.

IV. FEDERAL RULEMAKING PROCEDURES

We do not believe the Office of Foreign Missions created within the State Department by this bill should be exempt from federal rulemaking procedures (Title 5, U.S.C.: Sec. 553).

The Administrative Procedures Act of 1946, as amended, contains a categorical exemption from notice-and-comment rulemaking procedures "to the extent that there is involved . . . a military or foreign affairs function of the United States." (5 U.S.C. 553(a)(1)).

The Committee notes that this broad exemption from rulemaking procedures was proposed to be narrowed by the Senate in S. 1080, the Regulatory Reform Act. This Committee in its report accompanying that bill made the following observation:

> While some rules involving military and foreign affairs functions need no public input and may even require an element of secrecy in their development, others present a far less compelling case for exemption.[3]

We believe there is no sufficiently compelling diplomatic reciprocity reason for exempting the Office from federal rulemaking.

Indeed, such an exemption may work against the purposes of the bill.

Implicit in the effective operation of an Office of Foreign Missions is notification to third parties. If the Office wishes to constrain a foreign government from purchasing certain services or goods, it must be able to notify the businesses supplying them that "x" foreign mission is to be traded or contracted with, only on certain terms and conditions or not at all.

The most readily available means of notifying such suppliers is through publication in the Federal Register.

MAJOR D.C. HOME RULE ISSUES

The D.C. Home Rule Act created a Zoning Commission for the District of Columbia composed of five members:

—three Mayoral appointees
—the Director of the National Park Service
—the Architect of the Capitol

[2] Anderson, Robert M., *American Law of Zoning*. Second Ed., Vol. 3.
[3] *Senate Report 97–305 to accompany S. 1080, The Regulatory Reform Act*, pp. 16–18.

The Commission is charged with zoning for land-use in the District of Columbia, after holding a public hearing on proposed maps and regulations.

The Home Rule Act further states:

> Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital . . .

In 1977, the National Capital Planning Commission (NCPC), a 12 member federal agency charged with planning for federal facilities in the National Capital Region, adopted a federal element to the comprehensive plan known as "The Foreign Missions and International Agencies" element. By law, NCPC must adopt such a comprehensive plan for federal facilities in the National Capital Region.

This element of the comprehensive plan for the Nation's capital stated the basic federal policies and general location where foreign missions were to locate their facilities.

The State Department participated in and concurred with the adoption of that plan element.

Pursuant to that plan, the D.C. Zoning Commission in 1978 adopted a Mixed-Use Diplomatic Overlay Zone for the District of Columbia which identified locations where the business offices (chanceries) of foreign missions could locate. Both the State Department and the NCPC participated in that process.

In June of 1981, the NCPC adopted a resolution supporting the present D.C. zoning process for chanceries. The NCPC resolution states:

> The Commission believes that it has not yet been demonstrated to the Commission that there is a problem in the operation of the District zoning process for providing for the location of foreign missions and international agencies. In this context, the Commission reaffirms that the Commission's policy on the location of foreign missions and international agencies is that contained in the "Foreign Missions and International Agencies Element of the Comprehensive Plan for the National Capital" which the Commission adopted on October 6, 1977, as amended, which provides that the proper method of implementation is through the local zoning process, specifically in sections 313.82 and 313.96 which provide that the criteria and plan policies for facilities for foreign missions and international agencies will be implemented through the Zoning Regulations of the District of Columbia and the zoning maps forming a part thereof, an instruction which the Zoning Commission of the District of Columbia subsequently has carried out.

That 1978 rezoning has never been challenged in court, nor has the State Department requested either the NCPC or the D.C. Zoning Commission to amend those documents.

There also exists a D.C. Board of Zoning Adjustment, a five member board, composed of:

—one NCPC representative
—three Mayoral appointees
—one rotating member of the D.C. Zoning Commission

The Board hears and decides applications for special exceptions to the zoning regulations of the District of Columbia.

Because chanceries are office uses of diplomatic missions, when they propose to locate in residential-zoned districts, their site and building plans are subject to review by the BZA, a normal zoning procedure throughout the United States.

In addition, all special exception zoning cases for chancery use are reviewed and commented upon to the BZA by the NCPC for its federal interest impact.

The American Law of Zoning, a basic text on the subject, explains the special exception process:

> Special permit procedures are a product of the need for flexibility in the administration of the zoning regulations . . .
>
> Nearly all zoning ordinances make some use of special-permit procedures. Most ordinances impose a broad division of land uses and, in addition, provide that specified uses may be established or maintained in named districts, only pursuant to a special permit issued with the approval of the Board of Adjustment. These regulations empower the boards to issue permits after notice, hearing, and specified findings. They detail certain standards which must be met before a permit may be issued; commonly, they authorize or require the board to impose conditions designed to protect abutting landowners and perserve the character of the neighborhood. The special permit technique is employed to control uses which are regarded as especially troublesome, and to soften the impact of certain uses upon areas where they will be incompatible unless conditioned in a manner suitable to a particular location . . .
>
> Parking lots, drive-in theaters, rock festivals, some industrial uses, and funeral homes commonly are required to obtain special permits . . .
>
> These uses may be subjected to conditions which protect the neighborhood from the noise and traffic congestion which commonly attend such uses. The special permit requirement has been imposed upon medical offices, dormitories, stables, animal hospitals, mobile home parks, quarries, junkyards, and a variety of unlike uses which pose a miscellany of threats to their neighbors.[4]

Since adoption of the Diplomatic Zone in 1978, the BZA has had before it 12 chancery applications. Eleven have been granted and one was denied. One other case has been postponed at the request of the foreign government.

It should be noted there is no requirement that chanceries locate only in the District of Columbia. Foreign governments have complied with the State Department's policy to locate in the District however, out of respect for the host State's wishes and also for their own self-interest: closer proximity to U.S. agencies and other foreign governments with which they do business and better Secret Service protection and response time.

[4] *American Law of Zoning*, Second Ed., Vol. 3, Robert M. Anderson, pp. 359–360; pp. 366–367.

MAJOR ELEMENTS OF DIPLOMATIC RECIPROCITY

The principal international agreements relating to the conduct of international relations are the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations.

Article 21(1) of the Vienna Convention on Diplomatic Relations provides that:

> The receiving State shall either facilitate the acquisition on its territory, *in accordance with its laws* by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way. (emphasis added)

Article 41(1) of the Vienna Convention on Diplomatic Relations and Article 55(1) of the Vienna Convention on Consular Relations, state in identical language:

> Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State . . .

Article 30(1) of the Vienna Convention on Consular Relations provides that:

> The receiving State shall either facilitate the acquisition on its territory, *in accordance with its laws and regulations* by the sending State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way. (emphasis added)

We are of the view that the conduct of diplomatic relations should respect existing laws and regulations of the host nation. This observation of the host country's laws includes existing municipal zoning law and regulations.

SUBCOMMITTEE HEARING

The Subcommittee on Governmental Efficiency and the District of Columbia held a hearing on S. 854 on January 25, 1982.

Witnesses were: The Honorable Walter Fauntroy, Delegate from the District of Columbia; the Honorable Marion S. Barry, Jr., Mayor of the District of Columbia; the Honorable Thomas M. Tracy, Assistant Secretary for Administration, Department of State, accompanied by Mr. Walter F. Weiss, Deputy Assistanct Secretary for Administration and Mr. Harold S. Burman, Office of the Legal Advisory; Mr. Harvey S. Pryor, Chief, Uniformed Division, U.S. Secret Service; Dr. Walter B. Lewis, Chairman, D.C. Zoning Commission, accompanied by Mr. Charles R. Norris, Chairman of the Board of Zoning Adjustment and Mr. Steven E. Sher, Executive Director of the D.C. Zoning Secretariat; Dr. Daniel R. Mandelker, Stamper Professor of Law, Washington University, St. Louis; Mr. John Lawrence Hargrove, Citizens Planning Coalition of the District of Columbia and the Ad Hoc Committee on the Foreign Missions Bill.

The Subcommittee heard from several witnesses representing the District of Columbia that the existing zoning process for locating foreign mission chanceries was working smoothly and that careful consideration was given by both bodies to the viewpoint of the U.S. De-

partment of State. It was also pointed out that both D.C. zoning authorities had federal membership, unlike the membership of other municipalities' zoning authorities, which are entirely local in composition.

The Subcommittee learned that in 1977 and 1978 the National Capital Planning Commission adopted a Foreign Missions and International Agencies federal element of the comprehensive plan. That element set out the general locations and policies to be followed by the D.C. Zoning Commission in subsequently adopting the Mixed Use Diplomatic Overlay Zone.

Dr. Mandelker raised serious questions about the proposed federally-dominated Foreign Missions Commission and the criteria it was to use in rezoning the District of Columbia for chancery use. Because of the vague language of the proposed criteria, Dr. Mandelker predicted extensive litigation would ensue to determine their meaning.

In questioning the State Department representatives about the nature of the problem the Department was seeking to address in the creation of a new special zoning agency, the witnesses were unable to cite more than two specific cases since 1978 where a foreign government was denied its application to locate chancery space.

Questions about due process protections were raised by Subcommittee members about the proposed Foreign Missions Commission. When the Subcommittee pointed out that the five member D.C. Zoning Commission has two federal members, one of whom is the Architect of the Capitol, the State Department representative stated that those federal members do no adequately reflect the views of the Department of State. The Department was unable to explain why it did not propose placing itself on the proposed new commission rather than the Defense Department and NCPC.

The Subcommittee received written testimony from the Honorable Stewart B. McKinney, Ranking Minority Member of the House Committee on the District of Columbia.

The Subcommittee also received written testimony from the D.C. League of Women Voters, the Washington Board of Trade, and the Chairman of the D.C. City Council urging deletion from the bill of the proposed federally-dominated Foreign Missions Commission (Sec. 206) as well as deletion of the proposed repeal of The Chancery Act of 1964.

On the issue of federal preemption (Sec. 207), the Subcommittee received written correspondence from the U.S. Conference of Mayors, the National League of Cities, the California and Maryland Attorneys General expressing concerns that the language was overly broad and could have an adverse impact on the workings of state and local governments.

The Subcommittee also raised questions about how the proposed Office of Foreign Missions within the State Department would enforce its conferring or denying of benefits to foreign governments. The Department witness responded there would be notification to businesses who supplied goods or services to foreign missions, as well as to municipal, state, and other federal government agencies. The witness also responded that the U.S. may also declare a member of a foreign mission *persona non grata* if the mission violated the provisions of its benefits.

The State Department witness testified that the security of foreign missions has become a matter of increasing concern to the Department

and that one of the efforts the Department is making is to cluster foreign missions more effectively in the Nation's Capital.

The Subcommittee pointed out, however, that if that were the Department's intentions along with gaining greater control over the terms and conditions for the location of foreign mission chanceries, the bill, as proposed, would work against that purpose. The bill, as reported by the Senate Foreign Relations Committee, would expand the areas of the District of Columbia where chanceries could locate as a matter-of-right. Such a rezoning would further enlarge the areas where a foreign government could locate without a review of its site and building plans. Thus, there would be less control over the location of chanceries under S. 854 as reported.

Of particular concern to the Subcommittee was the testimony of the U.S. Secret Service Uniformed Division concerning its involvement in the development of the Foreign Missions federal element of the comprehensive plan; in the development of the Diplomatic Overlay Zone; in the daily process of foreign governments seeking to locate facilities; and in the drafting of S. 854.

The Subcommittee was told that the Uniformed Division was virtually unaware of the development by NCPC and the State Department of a Foreign Missions and International Agencies element of the plan. When its advice was sought by NCPC one meeting was held with NCPC staff on November 18, 1976 concerning the general operations and protection concerns which the Secret Service has for foreign missions. At no point, did the Secret Service offer specific comments on the proposed map of locations for foreign missions included in the plan element.

The Secret Service testified that it was not asked, nor did it comment on the Diplomatic Overlay zone adopted by the D.C. Zoning Commission. Nor does it participate in chancery cases coming before the Board of Zoning Adjustment.

The witness testified that the Secret Service was not consulted during the drafting of S. 854 for its security and protection concerns.

It also became clear to the Subcommittee that while there may be some contact between the State Department and Intelligence Division of the Secret Service on the location and configuration of facilities for foreign governments, the Uniformed Division is usually the last to know of such plans. Better intergovernmental communication and cooperation are essential at an early stage in the foreign mission planning and building process if the security and protection concerns of the Secret Service are to be factored into the building's location and design.

Section 204 of the bill restates the authority of the U.S. Secret Service to protect foreign mission property.

We are concerned about the apparent poor intergovernmental cooperation between the Department of State and the Secret Service, particularly the Uniformed Division, concerning the location and relocation of chancery facilities in the District.

The Secret Service is the federal agency charged with protecting foreign governments' property in the U.S. Their concerns for providing such security must be factored into locational decisions very early in the process.

We believe the Department of State and the Office of Foreign Missions should promptly inform the Secret Service of the intentions

of foreign governments for chancery space, once those intentions are made known to the Department.

We believe the Office of Foreign Missions established in Section 203 should work closely with the Secret Service to assure that foreign missions are adequately protected and that the security concerns of the Secret Service about chancery locations be taken into account at an early point in the process of determining terms or conditions for a foreign government.

We are also concerned about the level of intergovernmental coordination particularly with regard to the locating of foreign mission chanceries in the District of Columbia and the locating of consulates in cities throughout the United States.

Foreign governments maintain consulates in every State of the Union including 213 cities.

In the case of the D.C. Board of Zoning Adjustment and the D.C. Zoning Commission, we strongly recommend that when cases involving a foreign government come before the BZA or Zoning Commission, that the Board or Commission notify and seek comments from the Office of Foreign Missions, the U.S. Secret Service, the D.C. Metropolitan Police Department, and the D.C. Fire Department. These four agencies are directly involved in the protection and security of such buildings and should be consulted prior to a final zoning decision.

We believe that by requiring not only District of Columbia, but other federal, state, and municipal governments to give "substantial weight" to the recommendations of the Office of Foreign Missions, the federal interest will be balanced in reaching decisions involving foreign governments while at the same time respecting the integrity of other federal, state, and local laws, including the D.C. Home Rule Act.

The Subcommittee on January 25, 1982, marked up the bill and unanimously agreed to the following four amendments:

1. Deletion of Sec. 206, "Foreign Missions Commission."
2. Revision of Sec. 207, "Preemption."
3. Deletion of the repeal of The Chancery Act of 1964.
4. Deletion of the exemption from federal rulemaking procedures for the State Department.

Voting for the amendments were Senators Mathias, Eagleton, and Rudman.

In sum, we believe there are substantial reasons for concern about S. 854 as presently drafted. We have tried to set out our views in a concise, comprehensive manner, yet we recognize that this is a complicated, perhaps even arcane, subject.

In the final analysis, however, the issue facing the Senate is this: should the need for a more effective enforcement mechanism for diplomatic reciprocity be used as the basis for an unjustified and unprecedented intrusion into the authority vested in state and local governments, including the District of Columbia?

Simply put, we do not believe it should.

CHARLES MCC. MATHIAS, JR.
THOMAS F. EAGLETON.
WARREN RUDMAN.
CARL LEVIN.
JIM SASSER.

X. ADDITIONAL VIEWS OF MR. DURENBERGER

Although I generally support the provisions of S. 854, I am concerned about Section 207 of the Foreign Missions Act, and the way that it would affect state and local government discretion in the location of foreign missions within their respective jurisdictions.

Section 207 of the Act, which contains a preemption clause, raises issues concerning the authority of federal, state and local governments to determine the location of foreign missions in municipalities across the nation. The immediate impact of this preemption clause might be interpreted to preempt all state and local land use regulations regarding the location of foreign missions.

While the area of foreign affairs is properly a federal role, the area of land use has been traditionally within state and local control. The Act reported from this Committee purports to restore balance to foreign relations by granting the United States more reciprocity in the conferring of benefits and privileges to foreign missions. I do not believe, however, that the preemption of state and local zoning ordinances is a necessary means to the accomplishment of this worthwhile end.

Rather, a review of the Act indicates that adequate authority to confer or deny benefits to foreign missions has been delegated to the Department of State through a newly created Office of Foreign Missions. The issue, thus, becomes one of how extensive the State Department's authority should be after it has conferred or denied a benefit to a foreign mission in a particular locality.

The Act resolves this issue for the District of Columbia. In all other jurisdictions, state and local zoning processes and regulations should remain unaffected by the proper exercise of federal authority to confer or deny foreign mission benefits.

It is clear that there must be a balance of the federal, state and local interests affected. Discretion may be granted to the Secretary of State or to the Director of the Office of Foreign Missions to deny a benefit to a foreign mission. However, in the case where a determination has been made to confer a benefit to a foreign mission, state and local land use regulations should control. Ultimate decisions regarding the location of foreign missions must be made by local zoning boards where citizens of a municipality can be represented, and their interests protected.

Despite my reservations about the overreaching effects of Section 207, I want to express my support for the general principles embodied in this legislation. I am pleased to see S. 854 reported favorably by the Committee on Governmental Affairs, and I look forward to an opportunity to correct the deficiencies of Sec. 207 in the floor debate.

DAVE DURENBERGER.

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EXHIBIT D

3

There are more than 170 countries across the globe with foreign missions in Washington, DC. These missions assist the U.S. government in maintaining positive diplomatic relations with the international community.

LU-3.4 Foreign Missions [318]

There are more than 170 countries across the globe with foreign missions in Washington, DC. These missions assist the U.S. government in maintaining positive diplomatic relations with the international community. By international treaty, the U.S. government is obligated to help foreign governments in obtaining suitable facilities for their diplomatic missions. This obligation was reinforced through the Foreign Missions Act of 1982, which established an Office of Foreign Missions within the Department of State and empowered the secretary of state to set criteria relating to the location of foreign missions in the District. As noted in the section entitled Washington's Foreign Missions, foreign missions are housed in many different types of buildings, ranging from row houses and mansions to custom-designed office buildings. [318.1]

The number of foreign missions in the District is dynamic, with some growth likely. In addition, some of the existing missions are likely to relocate as they outgrow their facilities, respond to increased security requirements, and move beyond their traditional diplomatic functions. The Federal Elements of the Comprehensive Plan indicate that sites for as many as 100 new and relocated chanceries may be needed during the next 25 years. The availability of sites that meet the needs of foreign missions within traditional diplomatic areas is limited and the International Chancery Center on Van Ness Avenue has no available sites remaining. A portion of the Walter Reed campus is planned for chancery use, but additional areas may be needed for chancery use, and it may be necessary for foreign missions to look beyond traditional diplomatic enclaves. [318.2]

The facilities that house diplomatic functions in Washington, DC are commonly referred to as embassies. To differentiate the functions that occur in buildings occupied by foreign missions, a variety of designations are used:

- Chanceries, colloquially referred to as embassies, are the principal offices used by a foreign mission.
- Chancery annexes are used for diplomatic purposes in support of the mission, such as cultural attaches or consular operations.
- Ambassadors' residences are the official homes of ambassadors or chiefs of missions. [318.3]

Many foreign governments occupy chanceries, chancery annexes, and ambassador's residences in more than one location. In 2004, the federal government indicated that there were 483 separate facilities in the District serving these functions. [318.4]

Since 1982, chanceries have been allowed to locate in most of Washington, DC's non-residential zone districts as a matter-of-right. They are also permitted in higher-density residential and special purpose (SP) zones, as well as in less dense residential areas covered by a diplomatic overlay district. [318.5]

Historically, chanceries have been concentrated in Northwest Washington, particularly along Massachusetts Avenue NW (also known as Embassy Row), and in the adjacent Sheridan-Kalorama and Dupont Circle neighborhoods. There are also 16 chanceries on a large federal site adjacent to the Van Ness-UDC Metro station, specifically created to meet the demand for foreign missions. 318.6

The Foreign Missions Act of 1982 established procedures and criteria governing the location, replacement, or expansion of chanceries in the District. The act identifies areas where foreign missions may locate without regulatory review (matter-of-right areas), including all areas zoned commercial, industrial, waterfront, or mixed-use. These areas are located in all quadrants of Washington, DC, and include large areas south of the National Mall and in Wards 7 and 8. The 1982 act also identifies areas where foreign missions may locate subject to disapproval by the District of Columbia Foreign Missions Board of Zoning Adjustment (FMBZA). These include areas zoned medium-high and high-density residential, SP, and areas within a diplomatic overlay zone. 318.7

As a result of the analysis accomplished in support of the Foreign Missions Act, a methodology was developed in 1983 to determine the most appropriate areas for foreign missions to locate, subject to FMBZA review. The 1983 methodology allows foreign missions to locate in low- and moderate-density District blocks (squares) in which one-third or more of the area is used for office, commercial, or other non-residential uses. In some cases, a consequence of the square-by-square determination has been an unanticipated increase in chanceries. 318.8

In 2015, NCPC updated the Federal Elements of the Comprehensive Plan, including the Foreign Missions and International Organization Element. The Foreign Mission Element recognizes "a key challenge with locating chanceries is balancing the need to plan secure locations for diplomatic activities while being sensitive to residential neighborhoods." The Foreign Mission Element acknowledges that the State Department is preparing a master plan for a new foreign mission center to be developed on the former Walter Reed Medical Center site and suggests that new chanceries be encouraged to locate first in areas where their use is considered a matter-of-right under local zoning. Working with NCPC and the State Department, clarified zoning regulations were written regarding applications to locate, replace, or expand a chancery use not otherwise permitted as a matter-of-right. The new zoning standards were adopted as part of the 2016 amendments to the zoning regulations. 318.9

Policy LU-3.4.1: Chancery Encroachment in Low-Density Areas

Encourage foreign missions to locate their chancery facilities where adjacent existing and proposed land uses are compatible (i.e., office, commercial, and mixed-use), taking special care to protect the integrity of residential areas.

Discourage the location of new chanceries in any area that is essentially a residential use area to the extent consistent with the Foreign Missions Act. 318.10

Policy LU-3.4.2: Target Areas for New Chanceries

Encourage the development of new chancery facilities in locations where they would support neighborhood revitalization and economic development goals, particularly in federal enclaves and east of 16th Street NW. Work with the Department of State, the NCPC, and other organizations to encourage foreign missions to locate in these areas. 318.11

Policy LU-3.4.3: Compatibility of New Chanceries

Promote the design and maintenance of chanceries in a manner that protects open space and historic resources, mitigates impacts on nearby properties, is compatible with the scale and character of its surroundings, and enhances Washington, DC's international image as a city of great architecture and urban design. 318.12

Action LU-3.4.A: Foreign Mission Mapping Improvements

On an ongoing basis, accurately inventory foreign mission locations, distinguishing, chanceries, ambassador's residences, and institutional land uses. 318.13

LU-3.5 Federal Facilities 319

When streets and highways are subtracted out, about one-third of the land area of the District is owned by the federal government. Most of this land is managed by the NPS, but a significant amount—more than 2,700 acres—consists of federal installations, offices, military bases, and similar uses. This acreage includes nearly 2,000 buildings, with more than 95 million square feet of floor space. Federal uses occupy a range of physical settings, from self-contained enclaves, such as Joint Base Anacostia-Bolling, to grand office buildings in the heart of Downtown Washington, DC. Federal uses operate in all quadrants of the District, often amid residential neighborhoods. Since they are largely exempt from zoning, coordination and communication are particularly important to ensuring land use compatibility. 319.1

Many of the District's federal uses have unique security requirements and operational needs. This became particularly apparent after September 11, 2001, as streets around the U.S. Capitol were permanently closed and major federal offices and monuments were retrofitted to improve security. Security needs are likely to create further changes to the District's landscape; the ongoing relocation of thousands of Homeland Security workers to the west campus of St. Elizabeths Hospital is just one example. 319.2

The size of the federal workforce in the District is not expected to grow substantially during the next decade, following more than 25 years of downsizing. The District supports continued adherence to a 1968 federal policy to maintain 60 percent of the region's federal employees within

EXHIBIT E

Council of the District of Columbia
Report

441 4th Street, N.W. One Judiciary Square Washington, D.C. 20001

To: Members of the Council of the District of Columbia

From: Linda W. Cropp, Chairman, Committee of the Whole LWC

Date: March 16, 1999

Subject: Bill 13-108, the "Comprehensive Plan Technical Corrections and Response to NCPC Recommendations, and Closing of a Public Alley in Square 1189, S.O. 98-150, Act of 1999"

The Committee of the Whole, to which Bill 13-108, the "Closing of a Public Alley in Square 1189, S.O. 98-150, Act of 1998," was referred, reports favorably on the bill, as amended, and recommends its adoption by the Council of the District of Columbia.

Statement of Purpose and Effect

The amendment in the nature of a substitute to Bill 13-108 modifies the Comprehensive Plan Amendment Act of 1998 ("D.C. Act 12-609") in response to findings adopted by the National Capital Planning Commission ("NCPC") that certain amendments to the Comprehensive Plan would have a negative impact on the functions or interests of the Federal establishment.

The amended Bill 13-108 also includes technical corrections to the Comprehensive Plan which were previously approved on first reading by the Council as part of an omnibus technical amendments measure ("Bill 13-61"). These technical amendments are included in Bill 13-108 (and will be stricken from Bill 13-61 on final reading) to consolidate amendments to D.C. Act 12-609 in one enactment.

In a separate title, the amendment in the nature of a substitute, like Bill 13-108 as introduced, provides approval of the closing of a public alley in Square 1189, bounded by 31st Street, N.W., K Street, N.W., Wisconsin Avenue, N.W., and South Street, N.W., in Ward 2. The alley closing facilitates a mixed use development by EastBanc/Millennium Partners of the Georgetown incinerator site with residential, hotel, movie theater and health club uses.

Legislative History

December 16, 1998	Bill 12-99, "Comprehensive Plan Amendment Act of 1998," approved on final reading by the Council
December 31, 1998	Bill 12-99 signed by the Mayor, becomes D.C. Act 12-609
January 8, 1999	Act 12-609 transmitted to NCPC for Federal interest review pursuant to sections 203 and 423 of the Home Rule Act; Act 12-609 transmitted to Financial Authority pursuant to section 203 of the Home Rule Act
January 19, 1999	Bill 13-61, "Criminal Code and Clarifying Technical Amendments Act of 1999," which includes technical corrections to Act 12-609, introduced by Chairman Cropp
January 29, 1999	Notice of Bill 13-61 published in D.C. Register
January 29, 1999	Financial Authority, having reviewed Act 12-609, does not disapprove the Act nor have any recommendations for modifications to it
February 16, 1999	Committee of the Whole mark-up of Bill 13-61
February 17, 1999	Bill 13-108, "Closing of a Public Alley in Square 1189, S.O 98-150, Act of 1999," introduced at request of Mayor
February 26, 1999	Notice of Bill 13-108 published in D.C. Register
March 2, 1999	Bill 13-61 approved by Council on first reading
March 4, 1999	NCPC adopts resolution certifying findings that Act 12-609, with three exceptions, "will not have a negative impact on the interests or functions of the Federal Establishment in the National Capital"
March 9, 1999	Committee of the Whole public roundtable on Bill 13-108
March 16, 1999	Committee of the Whole mark-up of Bill 13-108, with Square 1189 alley closing in one title, with Bill 13-61's technical amendments to Act 12-609 included in a separate title, and with NCPC-recommended amendments to Act 12-609 included in a separate title

Impact of NCPC-Recommended Modifications to Comprehensive Plan on Existing Law

On March 4, 1999, the National Capital Planning Commission ("NCPC") adopted a resolution certifying findings of the federal interest impacts of Act 12-609, the Comprehensive Plan Amendment Act of 1998. A copy of the NCPC resolution and accompanying staff report is attached to this Committee Report.

NCPC review of amendments to the District elements of the Comprehensive Plan is required pursuant to sections 203 and 423 of the Home Rule Act. The Home Rule Act makes clear that any amendment to the District elements of the Comprehensive Plan, about which NCPC certifies a finding of "negative impact" on the functions or interests of the Federal establishment, "shall not be implemented."

The Home Rule Act requires the Council to respond to NCPC's "negative impact" findings, and the Council's review is limited to the NCPC-certified negative findings. In the past, with regard to the relatively few amendments (amongst the hundreds adopted by the Council in each cycle) which have been the subject of such negative impact findings by NCPC, the Council has responded by modifying the Comprehensive Plan as recommended by NCPC in order to: (1) ensure that the Comprehensive Plan enactment does not contain non-implementable provisions; and (2) protect the Comprehensive Plan enactment during the Congressional review period and thereby avoid possible delays in implementation of other Comprehensive Plan amendments.

Although the Committee does not agree with the findings of negative federal interest impact adopted by NCPC concerning Act 12-609, the Committee recommends Council acceptance of modifications to Act 12-609 to address the negative impact findings. The Committee's recommendation is based largely on the fact that the Council has no meaningful choice in this matter. While the Home Rule Act provides that the Council may "accept" or "reject" findings of negative federal interest impact, the Home Rule Act also provides, as previously indicated, that those provisions about which NCPC finds negative impact "shall not be implemented."

In this Comprehensive Plan amendment cycle, as in past cycles, NCPC has found only a few amendments in the entirety of the Council's action to have negative impacts, largely because NCPC has had extensive opportunity for input throughout the District's Plan amendment process. As in the past, NCPC has recommended specific modifications or deletions to avoid the few certified negative impacts. Although the Committee does not agree that the federal interest concerns expressed by NCPC rose to the level of necessitating a negative impact finding, the Committee has no objection to the modifications requested by NCPC. The Committee has balanced a desire to stand by a few non-implementable sections on principle with a much more compelling interest in seeing hundreds of other implementable amendments to the Comprehensive Plan become law as soon as possible. To this end, the Committee recommends the following modifications of Act 12-609 as requested by NCPC.

Hay-Adams Hotel

Act 12-609 includes two new provisions in the Land Use Element to "encourage" the expansion of existing hotel uses, "including the addition of one floor, approximately sixteen feet in height, to the Hay-Adams Hotel." These provisions are contained in section 1108.1(t) as a new policy in support of the commercial areas objectives, and in section 1120.2 (d) as a new policy in support of the Lower 16th Street Special Treatment Area.

NCPC requests modification of these provisions to make any Hay-Adams expansion subject to coordination with the security needs of the United States Secret Service, and to refer to the Hay-Adams expansion as a rooftop enclosure rather than an additional story. NCPC staff has raised security and design concerns with the provisions as adopted, because the Hay-Adams Hotel faces Lafayette Square and overlooks the White House.

The Hay-Adams Hotel currently uses its rooftop terrace for various parties and functions, except during inclement weather, and often with a tent that reaches to a height of sixteen feet. The hotel currently coordinates its use of the terrace with the United States Secret Service. Any enclosure of this rooftop would require both zoning and historic preservation review and approval. The Committee also notes that the new policy encouraging expanded hotel uses in the Lower 16th Street Special Treatment Area is balanced by another new policy adopted in section 1120.2 (b), which reads:

"Require public review of infill development to ensure that the proposed building will be compatible with the special character and scale of 16th Street and the immediate urban design context. The review should include consideration of the policies for designated Special Streets in the Urban Design Element and any urban design and architectural features criteria that may be developed for the area."

Security of Embassy Properties along Tilden and Van Ness Streets, N.W.

Act 12-609 includes a new policy in the Ward 3 Plan, in a section (1409.7(e)) describing the objectives and policies for public and institutional land uses, which cites the security needs of foreign embassies that are concentrated along Tilden and Van Streets, N.W., as the basis for preventing new high-rise structures adjacent to these properties.

NCPC requests modification of this section to eliminate any discussion of the security needs of embassies or related facilities covered by the Foreign Missions and International Organizations Element of the Comprehensive Plan, which is contained in the Federal Elements adopted by NCPC. NCPC and the State Department prefer that all policies relating to embassies be contained in this Federal Element, stating that it is "inappropriate to address such federal-interest issues in a ward plan."

The Committee therefore recommends deletion of all references to the security considerations of embassy properties in this section of the Ward 3 Plan. However, the Committee recommends the retention of language in this section referencing the existence of this concentration of land uses along Tilden and Van Ness Streets. The Committee also recommends the retention of the policy discouraging new high-rise structures adjacent to these properties, but changes the basis for the policy from one of the embassy's security needs to one that expresses concern for the adverse impact of such new structures on existing residential uses in the area.

The Committee notes that Act 12-609 contains a newly adopted provision concerning chanceries (i.e., the commercial offices of embassies), which is contained in the section of the Land Use Element which sets forth policies in support of the residential neighborhood objectives. Section 1104.1(t) reads:

"Discourage the location of new chanceries and the expansion of existing chanceries in any area that is essentially a residential use area, consistent with section 206(b)(2) of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 286; D.C. Code § 5-1206(b)(2))

Although this newly adopted language on chanceries is similar to language which was originally adopted in the Comprehensive Plan Amendments Act of 1989, but which was subsequently repealed in response to a "negative impact" finding by NCPC at the time, the Committee is pleased that NCPC staff did not recommend such a finding with regard to the newly adopted policy in the Land Use Element regarding chanceries.

Location Criteria for Solid Waste/Trash Transfer Stations

Act 12-609 includes a new policy setting forth location criteria for solid waste handling facilities/trash transfer stations, which is stated in 3 different elements of the Comprehensive Plan. New section 1138.1(v) of the Land Use Element and new section 404.4 of the Environmental Protection Element each call for a prohibition against the location of solid waste facilities within 500 feet of "any other use" -- language that is consistent with the policy previously adopted by the Council in legislation establishing a regulatory framework for such facilities. However, new section 1711.1(q) of the Ward 6 Plan calls for a prohibition against the location of such facilities within 500 feet of "residential uses."

NCPC, in its comments last year on the zoning case regarding solid waste facilities, recommended a 500-foot buffer between solid waste facilities and "any non-industrial use." NCPC requests modification of section 1711.1(q) of Act 12-609 so that the buffer restriction for solid waste facilities is "at least from 'any non-industrial use' rather than 'residential neighborhoods' in order to reflect the Commission's previous determination of federal interest in the siting of such facilities."

Therefore, the Committee recommends modifying section 1711.1(q) of the Ward 6 Plan

to conform with the more stringent "any other use" buffer already contained in the Land Use and Environmental Protection Elements.

Central Employment Area

The Committee notes that NCPC, by a 5-5 vote, failed to adopt the NCPC staff recommendation to find a negative federal interest impact of the amendment contained in Act 12-609 which excluded certain properties in Foggy Bottom from the Central Employment Area ("CEA"). Properties that would be removed from the CEA (including properties occupied by the Pan American Health Organization, the American Red Cross, the Associated General Contractors, and the International Finance Corporation) are exactly those about which NCPC certified a negative impact finding in 1994 when the Council had adopted an identical amendment to the Comprehensive Plan.

Impact of Square 1189 Alley Closing on Existing Law

The Street and Alley Closing and Acquisition Procedures Act of 1982 (D.C. Law 4-201; D.C. Code § 7-421 *et seq.*) ("Act") establishes procedures for closing streets and alleys, opening new streets and alleys, naming public spaces, and other miscellaneous procedures. The Act authorizes the Council to close all or part of a street or alley and establishes one standard for reviewing a street or alley closing application: whether the street or alley is determined by the Council to be needed for street or alley purposes. The Act also authorizes the Council to make approval of a street or alley closing contingent upon: (1) the dedication of land for street or alley purposes if the public interest would be served by the action; (2) the granting to the District of specific easements for public purposes; or (3) any other condition that the Council considers necessary.

Under rules implementing the Act, street and alley closing applications are submitted to the Surveyor, who assigns a Surveyor's Office (S.O.) number and collects applicable fees. The Surveyor requests comments from executive branch agencies and public utilities. If there are no objections from the agencies, a plat is prepared and the application is forwarded through the Department of Public Works to the Office of Intergovernmental Relations, which also solicits comments from executive branch agencies. When these reviews are satisfied, the application is transmitted to the Council in the form of a bill from the Mayor. Although the Council may initiate action on an alley or street closing by introducing a bill, the Act provides that the Council cannot consider such a bill until the required reviews have been completed.

The Act establishes notice requirements for street and alley closing legislation. The Council is required to publish notice in the District of Columbia Register for each street or alley closing public hearing. The Council is required also to give written notice of each street or alley closing to the affected advisory neighborhood commission. The applicant is required to give

written notice to all property owners abutting a block or alley affected by street or alley closing legislation. In addition, the applicant is required to post signs at each end of a block or each entrance to an alley affected by street or alley closing legislation. The applicant is required to give the Council a certification of compliance with these requirements.

After street or alley closing legislation becomes law and all conditions required by the Council and the Act have been satisfied, the Surveyor records a copy of the act and plat in the Office of the Surveyor. Thereafter, the street or alley is deemed closed and title to the land reverts or vests in fee simple to the record owners as shown on the plat. The land becomes subject to tax and zoning laws. The right of the public to use the street or alley and any proprietary interest of the United States or the District of Columbia in the street or alley ceases. If a closing plat shows an easement or dedication of land for public purposes, the land encompassed by the easement or dedication becomes available for specified public purposes.

Bill 13-108 provides approval of the closing of a public alley in Square 1189 as authorized by the Act. The approval is contingent upon the applicants certifying to the District, prior to the issuance of a building permit for the development facilitated by the alley closing, that the applicant has: (1) satisfied the easement and other conditions required by Washington Gas; and (2) provided relocation assistance to eligible retail tenants displaced by the development facilitated by the alley closing as required by section 209 of the Act. In approving Bill 13-108, the Committee finds that the requirements of the Act have been satisfied.

Planning Issues (Regarding Square 1189 Alley Closing)

The applicant for this alley closing, Millenium Georgetown Development, seeks closure of a public alley in Square 1189, bounded by 31st Street, N.W., K Street, N.W., Wisconsin Avenue, N.W., and South Street, N.W. in Ward 2, which is known as the Georgetown incinerator site. The applicant requests closure of the 12-foot alley that runs east-west in the middle of the square to allow for the construction of a major mixed use development containing residential, hotel, cinema and other retail uses within the square. The area of the proposed alley closing allows the developer to increase the theater and commercial portion of the project.

The development will include: 25-30 large luxury condominiums occupying a total of approximately 85,000 square feet, which will range in size from two bedrooms to four bedrooms and be marketed in the price range of $600,000 to $1.5 million; a luxury boutique hotel with 100-125 rooms, comprising approximately 112,000 square feet; a 3,000-seat stadium-style movie theater; significant retail space, including restaurants; a small health club for residents and hotel guests; and 548 underground parking spaces.

The Georgetown incinerator project has been the subject of numerous public reviews and approvals by the local and Federal governments and the affected community, including historic preservation, public works and large tract planning approvals. (See attached list). The Council

in 1998 approved a resolution declaring this property to be surplus and approving of this disposition of the property, for which the District will receive $4 million in sales proceeds.

The historic incinerator building will be part of the main entry to the hotel's lobby and public restaurants from the north side of the project. Driveway access for residents and hotel guests only will be from South Street, while pedestrian access will be from Wisconsin Avenue. The movie theater, health club, parking garage will be accessed from K Street., and all of these uses will be constructed below grade. Continuous retail frontage will exist along Wisconsin Avenue and K Street.

Approximately 776 full-time equivalent jobs will be generated during the construction of this project, and approximately 270 full- and part-time permanent jobs will be created as a result of the operations of the hotel, theater, shops and parking garage. As part of the alley closing process, the applicant has committed to hire from among District residents at least 51% of these construction and permanent jobs. The applicant has also committed to utilize the District's first source employment program in filling any jobs created as a result of the alley closing.

The Comprehensive Plan generalized land use map designates the subject square of the alley closing and the immediately surrounding area within a mixed-use, moderate density residential and commercial land use category. The area is zoned W-1, which permits as a matter of right a maximum height of 40 feet, a maximum floor area ratio of 2.5, and a maximum lot occupancy of 80%. No zoning changes or variances are being requested in conjunction with the project. The Committee finds that the proposed alley closing and mixed-use development facilitated by Bill 13-108 support land use, housing, economic development and historic preservation policies adopted in the Comprehensive Plan.

Section-by-Section Analysis

Section 1 provides an amended short title of Bill 13-108.

Title I makes technical amendments to the District of Columbia Comprehensive Plan Amendment Act of 1998, signed by the Mayor on December 31, 1998 (D.C. Act 12-609; 46 DCR 1441 *et seq*), by: correcting spelling, typographical and grammatical errors; restoring language inadvertently deleted during enrollment; correcting and clarifying inaccurate and imprecise boundary descriptions in the definition of the central employment area; and conforming language in the land use element with identical language in the historic preservation element. These technical amendments are currently contained in but will be deleted from Bill 13-61, the Criminal Code and Clarifying Technical Amendments Act of 1999, in order to consolidate these amendments with the NCPC-recommended amendments contained in Title III of Bill 13-108.

Section 101(a)(1) provides the following corrections to the definition of "Central

Employment Area" contained in section 199 of the Comprehensive Plan:

Paragraph (A) replaces an erroneous designation of 9th Street, N.E. with the correct designation of 9th Street, N.W. in a boundary in the central employment area. Paragraph (B) strikes part of Massachusetts Avenue from the boundary of the central employment area to conform with the amendment moved at final reading to extend the eastern boundary north of Massachusetts Avenue to 3rd Street instead of 4th Street. Paragraphs (C) through (G) clarify or correct imprecise or inaccurate boundary descriptions in the expanded central employment area in Anacostia.

Sections 101(b) and (c) correct spelling, typographical and grammatical errors.

Section 101(d)(1) restores language inadvertently deleted during the enrollment process. Sections 101(d)(2) and d(3) correct typographical spelling errors. Section 101(d)(4) adds the qualifying phrase "consideration of" to a land use policy in order to conform with the language used in an identical and historic preservation policy. Section 101 (d)(5) inserts the qualifying phrase "if necessary to protect and enhance" in place of the phrase "which reflects" in a land use policy in order to conform with the language used in an identical historic preservation policy.

Section 101(e)(1) corrects a grammatical error and restores the phrase "process, George Washington University and" which was inadvertently deleted during the enrollment process.

Section 101(e)(2) corrects a typographical error.

Section 101(f) corrects a subsection designation.

Section 101(g) restores the word "the" which was inadvertently deleted during the enrollment process.

Section 101(h)(1) corrects a spelling error and an inadvertently excluded percentage.

Section 101(h)(2) corrects the calculation of a particular percentage.

Section 101(h)(3) corrects a typographical error.

Title II modifies Act 12-609, the Comprehensive Plan Amendment Act of 1998 in response to findings by the National Capital Planning Commission of negative impacts of certain amendments in Act 12-609 on the functions or interests of the Federal establishment. The modifications included in Title III are precisely those that were recommended by NCPC in the resolution adopted on March 4, 1999, a copy of which is attached to this Report. These amendments are also summarized in the section of this report entitled "Impact of NCPC-Recommended Amendments to Comprehensive Plan on Existing Law."

Title III provides approval of the alley closing in Square 1189.

Section 301 states the finding of the Council that the public alley to be closed by Bill 13-108 is unnecessary for alley purposes. The section orders the alley to be closed, with title to revert as shown on the Surveyor's plat filed under S.O. 98-150.

Section 302 requires the applicant to certify to the District, prior to the issuance of a building permit for the development facilitated by the alley closing, that the applicant has: (1) satisfied the easement and other conditions required by Washington Gas; and (2) provided relocation assistance to eligible retail tenants displaced by the development facilitated by the alley closing, if required by section 209 of the Street and Alley Closing Act (D.C. Code § 7-429).

Title IV approves of the fiscal impact statement contained in the committee report on Bill 13-108 as the statement required by the Home Rule Act.

Title V requires transmittal of copies of the act to various officials.

Title VI provides the effective date.

Fiscal Impact

The enactment of the Square 1189 alley closing contained in Title III of Bill 13-108 would have a positive fiscal impact on the District of Columbia. This alley closing facilitates the construction of a mixed-use residential and retail development on the Georgetown incinerator site, which will provide a total of approximately $7.7 million in annual tax revenues to the District of Columbia, as follows: (a) $2,659,000 in real and personal property taxes, (b) $1,848,000, in hotel taxes, (c) $1,755,000 in sales taxes, (d) $901,000 in residents and employees' income taxes, (e) $194,000 in parking taxes, and (f) $369,000 in utility and corporation franchise taxes.

In addition to the annual revenues, the Georgetown project will yield a total of approximately $5,299,000 in one-time revenues during construction of the project: $1,683,000 in transfer and recordation taxes; $1,359,000 in personal income taxes; $399,000 in sales taxes; and $1,858,000 in real property taxes. Also, the District will receive $4,000,000 in sales proceeds as a result of the conveyance of the public property to private ownership.

The construction of this project is expected to create an estimated 626 full-time equivalent jobs and 150 spin-off jobs. Operation of the various uses in the project (e.g. hotel, health club, movie theater, parking garage and condominium) is expected to create 270 permanent part-time and full-time jobs.

The enactment of Titles I and II of Bill 13-108, which contain technical and NCPC-

recommended amendments to the Comprehensive Plan Amendment Act of 1998 (Act 12-609), would not have any adverse impact upon the operating budgets or financial plan for the District of Columbia. The Committee reiterates the following statement contained in the Fiscal Impact section of the Committee Report on Bill 12-99, the Comprehensive Plan Amendment Act of 1998: The Committee shares the view by the Office of Planning that the Comprehensive Plan and amendments, "by themselves even after enactment, are not self-implementing nor a commitment of District financial resources to their implementation. They are officially and formally adopted expressions of District government policies for the future development of the District of Columbia. They provide guidance to District policy- and decision-makers for actions to be taken over the next 20 years. Detailed fiscal impact information must be prepared at the time an amendment is implemented."

Advisory Neighborhood Commission Review of Square 1189 Alley Closing

Advisory Neighborhood Commission (ANC) 2E was notified of the proposed alley closing by both the Surveyor and the Committee, but no written comments have been received by the Committee to date. Nonetheless, the Committee is aware that ANC 2E endorsed the development that is facilitated by the alley closing when the project was being considered by the following entities during the past year: the Historic Preservation Review Board; the Old Georgetown Board; and the Commission on Fine Arts.

National Capital Planning Commission Review of Square 1189 Alley Closing

Referral to the National Capital Planning Commission ("NCPC") of this alley closing application was not required pursuant to section 7-423 of the D.C. Code.

Position of the Executive Branch on Square 1189 Alley Closing

Bill 13-108 was introduced at the request of the Mayor. Ronald Dreist, Surveyor of the District of Columbia, testified at the Committee's public roundtable on Bill 13-108 that executive branch agencies and affected public utilities have reviewed this alley closing and have no outstanding objections to the proposal.

Committee Action

The Committee held a public roundtable on Bill 13-108 as introduced (the Square 1189 alley closing) on March 9, 1999, at which the following witnesses presented testimony in support of the bill: Ronald F. Dreist, Jr, D.C. Surveyor's office; and the applicant's representatives, Anthony Lanier, president, EastBanc/Millenium Partners, Inc., project developer; Shalom

Baranes, project architect; Anita Morrison, economic consultant to project; and Emily Eig, architectural historian to project.

A complete record of the testimony and other supporting documents presented at the roundtable is on file with the Legislative Services Division of the Office of the Secretary to the Council of the District of Columbia.

At its regular meeting on March January 19, 1999, the Committee of the Whole met to consider Bill 13-108 and this Committee Report. Chairman Cropp moved for approval of an amendment in the nature of a substitute to Bill 13-108 to incorporate, within this pending land use-related legislation, technical corrections to the Comprehensive Plan Amendment Act of 1998 (Act 12-609) as well as NCPC-recommended modifications to Act 12-609. The amendment in the nature of a substitute to Bill 13-108 and this Committee Report were approved by voice votes (Chairman Cropp and Councilmembers Allen, Ambrose, Brazil, Catania, Chavous, Graham, Jarvis, Mendelson, Orange, Patterson and Schwartz present; Councilmember Evans absent).

Attachments

EXHIBIT F

CHAPTER 2 CHANCERY APPLICATIONS

200 GENERAL PROVISIONS

200.1 This chapter provides regulations regarding an application to locate, replace, or expand a chancery use not otherwise permitted as a matter-of-right, to implement the Foreign Missions Act, approved August 24, 1982 (96 Stat. 282, as amended; D.C. Official Code §§ 6-1301 to 6-1315 (2012 Repl.).

200.2 For the purposes of this chapter, the term "low- to medium-density residence zones" shall mean any of the R and RF zones, and any of the RA-1, RA-2, and RA-3 zones.

200.3 For the purpose of this chapter, the term "special purpose zones" shall mean the MU-1, MU-2, and D-2 zones.

200.4 For the purposes of this chapter, the term "medium-high density residential zones" shall mean any of the RA-4 residential apartment zones, and "high-density residential zones" shall mean any of the RA-5 residential apartment zones.

201 CHANCERY USE CRITERIA

201.1 The Board of Zoning Adjustment shall determine whether to "not disapprove" or "disapprove" a chancery application according to the standards of this section.

201.2 A chancery shall be permitted in the medium-high density residential zones, high-density residential zones, and special purpose zones, subject to disapproval by the Board of Zoning Adjustment in accordance with the review standards of Subtitle X § 201.8.

201.3 For applications requesting to locate, replace, or expand a chancery in a low- to medium-density residence zone, before applying the criteria of Subtitle X § 201.8, the Board of Zoning Adjustment after a hearing on the application shall determine whether the proposed location is in a mixed-use area determined on the basis of existing uses, which includes office and institutional uses.

201.4 For the purposes of Subtitle X § 201.3 determination, the "area" shall be the area that the Board of Zoning Adjustment determines most accurately depicts the existing mix of uses adjacent to the proposed location of the chancery.

201.5 An area shall be considered to be a mixed-use area if as of the date of the application more than fifty percent (50%) of the zoned land within the area is devoted to uses other than residential uses as defined in Subtitle B, Chapter 2. Notwithstanding the foregoing, the Board of Zoning Adjustment may find that an area with less than or equal to fifty percent (50%) of non-residential uses is a mixed-use area upon a showing of non-residential uses as may be submitted by the applicant, Secretary of State, or the Mayor of the District of Columbia.

201.6 If the Board of Zoning Adjustment finds that the area is a mixed-use area, the Board of Zoning Adjustment shall then determine the merits of the application based on the criteria of Subtitle X §

201.8.

201.7 If the Board of Zoning Adjustment finds that the area is not a mixed-use area, the Board of Zoning Adjustment shall disapprove the application.

201.8 The Board of Zoning Adjustment's determination of the merits of all chancery applications shall be based solely on the following criteria:

(a) The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital;

(b) Historic preservation, as determined by the Board of Zoning Adjustment. In carrying out this section, and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmark;

(c) The adequacy of off-street parking or other parking and the extent to which the area will be served by public transportation to reduce parking needs, subject to such special security requirements as may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services;

(d) The extent to which the area is capable of being adequately protected, as determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services;

(e) The municipal interest, as determined by the Mayor of the District of Columbia; and

(f) The federal interest, as determined by the Secretary of State.

202 EXPANSION OR REPLACEMENT OF EXISTING CHANCERIES

202.1 An existing chancery in a low- to medium-density residential zone may be expanded or replaced, subject to disapproval by the Board of Zoning Adjustment, in accordance with the review standards of Subtitle X § 201.8.

203 BOARD OF ZONING ADJUSTMENT REVIEW

203.1 In addition to the procedures for a special exception case set forth in Subtitle Y, the following procedures apply to the review of chancery applications.

203.2 The consideration of an application submitted under this section shall be considered a rulemaking proceeding.

203.3 Any determination by the Board of Zoning Adjustment shall be based solely on the criteria in Subtitle X § 201.8.

203.4 The Board of Zoning Adjustment shall refer each application to the Office of Planning for review and comment. The Board of Zoning Adjustment shall specifically request a determination by the Mayor as to the municipal interest.

203.5 The Board of Zoning Adjustment shall refer each application to the United States Secretary of State for review and comment, and shall specifically request a determination of the federal interest, as set forth in Subtitle X § 201.8(f), special security requirements, as set forth in Subtitle X § 201.8(c), and the extent to which the site is capable of being adequately protected, as set forth in Subtitle X § 201.8(d).

203.6 If the application would require the construction, demolition, or alteration of a building located in a historic district, the alteration or demolition of a historic landmark, or the construction of a building or structure on the site of a historic landmark, the application shall be referred to the Historic Preservation Review Board, and if the property is located in the Old Georgetown District described in D.C. Official Code § 6-1201, it shall also be referred to the Commission of Fine Arts for the Historic Preservation Review Board and the Commission of Fine Arts to report as to whether the substantive criteria of Subtitle X § 201.9 have been met.

203.7 The Board of Zoning Adjustment may grant relief to the requirements of this title for chanceries in all zones, and may grant permission to construct improvements in the public space to be undertaken as part of a chancery application being reviewed by the Board of Zoning Adjustment, consistent with what is permitted under District law and in accordance with the procedures and standard of this chapter.

203.8 A final determination on a chancery application shall be published in the *D.C. Register* not later than six (6) months after the date a complete application is filed.

203.9 The Board of Zoning Adjustment's determination shall not be subject to administrative proceedings of any other District agency.

204 IMPLEMENTATION

204.1 Following the publication of a notice of final rulemaking giving notice of the Board of Zoning Adjustment's decision to not disapprove an application, the applicant may file an application for a building permit with the proper authorities of the District of Columbia.

204.2 The Zoning Administrator shall not approve a permit application unless the submitted construction plans conform to the plans approved by the Board of Zoning Adjustment in its final decision, as those plans may have been modified by any guidelines, conditions, or standards that the Board of Zoning Adjustment may have applied.

205 APPLICATION REQUIREMENTS

205.1 An application for a chancery shall meet the requirements of Subtitle Y § 301.

301 CHANCERY APPLICATION REQUIREMENTS

301.1 The owner of property upon which a chancery is proposed to be located, replaced, or expanded, or an authorized representative, shall file an application with the Board.

301.2 The application of an authorized representative shall include a letter signed by the owner authorizing the representative to act on the owner's behalf with respect to the application.

301.3 The Board may at any time require additional evidence demonstrating the authority of the representative to act for the owner.

301.4 An application shall contain a letter or other transmittal from the United States Department of State indicating that the Department of State has reviewed the application as required by § 205 of the Foreign Missions Act, D.C. Official Code § 6-1305, and has approved the application for the purposes of filing and processing by the Board.

301.5 Each application shall be made on the appropriate form provided by the Director. In addition to the information required by this section relating to appearance and representation, the applicant shall furnish all information required by the application form at the time of filing the application, including, as applicable:

(a) A plat, drawn to scale and certified by a survey engineer licensed in the District of Columbia or by the D.C. Office of the Surveyor, and showing the lot numbers and lot area of all properties within the square;

(b) A site plan showing the boundaries and dimensions of the existing and proposed structures and accessory buildings and structures, and, if applicable, any area of relief requested;

(c) Architectural plans and elevations in sufficient detail to clearly illustrate any proposed structure to be erected or altered, landscaping and screening, and, where applicable, parking and loading plans;

(d) A detailed statement addressing the review standards for chancery uses specified in Subtitle X § 201.8; and

(e) The names and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and names and addresses of each lessee having a lease with the owner for all or part of any building located on the property involved in the application; however, in the case of a residential condominium or cooperative with twenty-five (25) or more dwelling units, notice may be provided to the board of directors of the association of the condominium or cooperative that represents all of the owners of the dwelling unit.

301.6 If the application is for a location in a low- to medium-density residence zone, a written statement by the applicant attesting to:

(a) A calculation of the land area within the square, or other area determined pursuant to Subtitle X § 201.4, of all low- to medium-density residence zoned lots, identified by lot numbers;

(b) For each lot within the square devoted to a use other than a residential use within a low- to medium-density residence zone, the number and date of the certificate of occupancy authorizing the use and the use designation authorized; and

(c) A copy of each certificate of occupancy referenced in Subtitle Y § 301.6(b).

301.7 If the application is for a location in a low- to medium-density residence zone and an area other than a square has been used to calculate the percentage of existing uses pursuant to Subtitle X § 201.4, a statement shall be included explaining the basis for using the area, which shall not be based solely on previous Board action for another location.

301.8 When calculating the land area devoted to residential use, the area shall include the entire lot area of any property devoted to residential use in the computation of the land area.

301.9 If the chancery is to be located in a project with more than residential uses, the applicant shall calculate the land area within the square devoted to residential use by using a ratio equal to the proportion of residential use to other uses in the project.

301.10 Except as provided in Subtitle Y § 301.13, all statements, information, briefs, reports (including reports and statements of experts and other witnesses), plans, photographs, or other exhibits that the applicant may wish to offer in evidence at the public hearing shall be filed at the time of filing the application.

301.11 If a map, plan, or other document is readily available to the general public, in lieu of filing a copy of the document, the applicant need only provide a complete citation to the source of the document and indicate where the public may view the document.

301.12 No application shall be accepted unless accompanied by a certificate of service demonstrating that a copy of the application and all accompanying documents have been served upon:

(a) The Office of Planning; and

(b) The affected ANC.

301.13 No later than thirty (30) days before the date of the public hearing on the application, the applicant shall file with the Board any traffic or transportation reports to be submitted in support of the application. At or before the time of filing the traffic or transportation report with the Board, the applicant shall serve a copy of the report on the ANC for the area within which the property is located, the Office of Planning, and the District Department of Transportation.

301.14 No later than twenty-one (21) days before the date of the hearing for the application, the applicant shall file with the Board any supplemental statements, information, briefs, reports (including reports or statements of expert and other witnesses), plans, or other supplemental material that the applicant may wish to offer into evidence at the hearing.

EXHIBIT G

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 83-25
January 3, 1983

SUBJECT: Establishment of an Office of Planning

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973 as amended, D. C. Code section 1-242 (1981 Ed.), it is hereby ORDERED that:

1. Establishment: There is established in the Office of Economic Development of the Executive Office of the Mayor an Office of Planning, to be headed by a Director of Planning.

2. Purpose: The Purpose of the Office of Planning is to assist the Deputy Mayor for Economic Development and the Mayor in the performance of the planning functions of the District of Columbia, and in the preparation of plans for the physical and economic development of the city.

3. Functions: The Director of Planning shall:

   a. Prepare, refine and implement the District elements of the Comprehensive Plan for the National Capital.

   b. Prepare, refine and implement area and specific plans such as the Downtown Plan and neighborhood plans.

   c. Establish and implement procedures for citizen participation in the planning process.

   d. Manage the collection of demographic and statistical information, including the computerized MAGIS system, in order to maintain accurate population and land use evaluation and projections.

e. Provide planning liaison for the District of Columbia government with other federal and regional agencies, task forces and committees as appropriate.

4. Transfers: All positions, personnel, property, records and unexpended balances of appropriations, allocations or other funds of the Office of the Assistant City Administrator for Planning and Development are hereby transferred to the Office of Planning.

5. Recissions: Mayor's Order 79-9 is hereby rescinded.

6. Effective Date: This Order shall be effective immediately.

Marion Barry, Jr.
Mayor

Attest:

Dwight S. Cropp
Secretary of the District of Columbia

EXHIBIT H

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 83-106
April 28, 1983

SUBJECT: Delegation of Authority under Public Law 97-241, the Foreign Missions Act

ORIGINATING AGENCY: Office of Planning

By virtue of the authority vested in me as Mayor of the District of Columbia by Section 422 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973 as amended, D. C. Code Section 1-242 (1981 Edition), it is hereby ordered that:

(1) The authority of the Mayor of the District of Columbia to determine the municipal interest as set forth in the Foreign Missions Act (Title 2, Public Law 97-241, 96 Stat. 283, August 24, 1982) is delegated to the Director of Planning.

(2) Effective Date: This order shall become effective immediately.

Marion Barry, Jr.
Mayor

Attest:

Dwight S. Cropp
Secretary of the District of Columbia

J-3147—75

#4: That the initial suspension without pay be sustained.

#5: That the fine of $1,620.20 be reduced to $100.00.

Dwight S. Cropp
Secretary of the District of Columbia