

Monday, September 15, 1980

Daily Digest

HIGHLIGHTS

Senate passed the Foreign Service Act.

Senate

Chamber Action

Routine Proceedings, pages S12497-S12594

Bills Introduced: Six bills and three resolutions were introduced, as follows: S. 3110-3115; S. Res. 518-519, S. Con. Res. 124. Pages S12554, S12561, S12566

Bills Reported: Reports were made as follows:

Filed during the recess on September 12, 1980:

S. 2375, authorizing funds to provide support for the training of professionals in health service needs, with amendments (S. Rept. No. 96-936).

H.R. 2743, providing for a national policy for materials research and development capability and performance of the United States, with an amendment (S. Rept. No. 96-937).

H.R. 3210, terminating the authority of the Secretary of the Interior to make land grants to the Las Vegas Valley Water District, Nevada.

H.R. 6137, conveying certain interests in public lands to the city of Angels, California.

H.R. 7434, establishing the African-American National Historic Site in Boston, Massachusetts.

S. 3017, allowing the Water and Power Resources Service to conduct feasibility studies for several salinity control projects along the Colorado River Basin to insure its continued development and protection (S. Rept. No. 96-938).

S. Res. 518, waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 333, strengthening Federal programs and policies combatting international and domestic terrorism. Referred to the Committee on the Budget.

Filed today:

S. Con. Res. 109, disapproving the proposed export of low-enriched uranium to India (together with minority views) (S. Rept. No. 96-939).

H.R. 5829, providing for duty free entry of six bronze bells for the use of the Foundry United Methodist Church, of Washington, D.C., with amendments (S. Rept. No. 96-940).

S. 2884, providing for an accelerated program of light water nuclear reactor safety research and development to be carried out by the Department of Energy, with an amendment (in the nature of a substitute) (S. Rept. No. 96-941).

S. 2926, providing for the accelerated development of commercial fusion power, with amendments (S. Rept. No. 96-942). Pages S12560-S12561

Measures Passed:

Foreign Service Act: Senate passed H.R. 6790, promoting the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, after striking all after the enacting clause and inserting in lieu thereof the text of S. 3058, prior to which Senate had taken actions on amendments proposed thereto as follows:

Adopted:

(1) Pell amendment No. 2312, restricting the use of the authority for career extensions. Page S12510

(2) Pell amendment No. 2314, preventing windfall pay increases through the Civil Service to Foreign Service conversion process. Page S12510

(3) Pell amendment No. 2313, making technical changes in the bill. Page S12510

(4) Helms amendment No. 2308, making the effective date April 1, 1981. Page S12511

(5) Helms amendment No. 2304, requiring the Secretary to notify Congress of the number of Foreign Service personnel assigned to positions higher or lower than their personal rank. Page S12521

Rejected:

(1) By 18 yeas to 66 nays, modified Helms unprinted amendment No. 1573, in the nature of a substitute for amendment No. 2290. Page S12506

(2) By 41 yeas to 43 nays, Helms amendment No. 2309, increasing the rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other in-

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ternational agreement to which the United States and such country are signatories. Page S12511

(3) By 19 yeas to 62 nays, Helms amendment No. 2310, providing for examinations for certain salary classes of the Foreign Service and the Senior Foreign Service. Page S12512

(4) By 36 yeas to 45 nays, Helms unprinted amendment No. 1574, deleting the section of the bill dealing with grievance procedure. Page S12516

S. 3058 was then indefinitely postponed. Page S12554
Pages S12498-S12554

Permanent Subcommittee on Investigations subpoena power: Senate agreed to S. Res. 502, directing the Senate Legal Counsel to bring civil action to enforce subpoenas of the Permanent Subcommittee on Investigations. Page S12554

Records transfer: Senate agreed to S. Res. 519, authorizing the withdrawal and release of certain records and documents created or obtained by and in the possession of the Special Committee on Aging to the Office of Disciplinary Counsel, Supreme Court, State of Hawaii. Page S12554

HUD Appropriations: Senate began consideration of H.R. 7631, appropriating funds for fiscal year 1981 for the Department of Housing and Urban Development and certain independent agencies. Pages S12554, S12587-S12594

Presidential Message: Senate received a message from the President during the recess, on September 12, transmitting the Third Annual Report on the Status of Health Information and Health Promotion. Referred to the Committee on Labor and Human Resources (PM-242). Page S12558

Nominations: Senate received the following nominations:

Received during the recess on September 12:

Harry W. Shlaudeman, of California, to be Ambassador to Argentina.

Thomas D. Boyatt, of Ohio, to be Ambassador to Colombia.

Edwin G. Corr, of Oklahoma, to be Ambassador to Peru.

Nickolas P. Geeker, to be U.S. Attorney for the Northern District of Florida.

James L. Blackburn, to be U.S. Attorney for the Eastern District of North Carolina.

Dennis D. Clark, of Maryland, to be a Member of the Federal Mine Safety and Health Review Commission.

Routine lists of nominations in the Foreign Service and the Navy.

Received today:

Robin Duke, of New York, Barbara W. Newell, of Massachusetts, Elie Abel, of California, John E. Fobes,

of North Carolina, and John H. Franklin, of Illinois, each to be a Representative to the Twenty-first Session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization.

Sandra L. Bird, of New York, Joseph D. Duffey, of the District of Columbia, Kathleen Nolan, of California, Beatrice Ranis, of Hawaii, and Roger Revelle, of California, each to be Alternative Representatives to the Twenty-first Session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization.

Routine lists of Navy and Air Force nominations.

Pages S12594-S12604

Message From the President: Page S12558

Messages From the House: Pages S12558-S12559

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Statements on Introduced Bills: Pages S12561-S12565

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Nominations: Pages S12594-S12604

Measure Held at the Desk: Pages S12554-S12555, S12559

House Bill Placed on the Calendar: Page S12559

Record Votes: Four record votes were taken today (Total—403). Pages S12509, S12512, S12516, S12521

Recess: Senate met at 1 p.m., and recessed at 5:35 p.m., until 10:30 a.m., on Tuesday, September 16, 1980. (For Senate's program see remarks of Senator Robert C. Byrd in today's Record on page S12594.)

Committee Meetings

(Committees not listed did not meet)

APPROPRIATIONS—STATE, JUSTICE, COMMERCE, JUDICIARY

Committee on Appropriations: Committee ordered favorably reported with amendments H.R. 7584, appropriating funds for fiscal year 1981 for the Departments of State, Justice, Commerce, and the Judiciary. (As approved by the committee the bill appropriates \$9,053,168,000, an increase of \$333,970,000 over the House-passed figure of \$8,719,198,000.)

HAZARDOUS WASTE

Committee on Commerce, Science, and Transportation: On Friday, September 12, committee concluded hearings on the substance of S. 1480, authorizing funds for fiscal years 1981 through 1986, to provide for the safe and adequate treatment of hazardous substances released into the environment (pending on Senate calendar), after receiving testimony from Swep T. Davis, Associate Assistant Administrator for Water and Waste

to show that I again seriously question the concept of being in session after an election in a Presidential election year. My memory of the times I have been here in 1972 and 1976 have convinced me that they are not productive sessions.

I say again to the majority leader that if there is anything we can do or that I can do personally to assist in working out the calendar so that we might avoid a postelection session, it is my hope that he will try to see if it is possible. I note that the majority leader has stated categorically—and I know that when my good friend says something categorically, he believes it and means it—that a postelection session is assured.

It seems to me that with the potential for the change of leadership in the executive branch, and even without it, in a Presidential election year, there is too much for the country to risk to have Congress in session after an election. I cannot believe that there is not some way we can avoid that.

It is my hope that we might discuss this matter with the leadership of the majority party in both Houses, to see if it would be possible to work out an arrangement whereby we would have a continuing resolution which, in fact, would continue the "must" legislation through in the next year, on an authorizing continuing resolution basis, and see if it would be possible to arrive at that type of solution to the problem that confronts us.

Mr. ROBERT C. BYRD. Mr. President, I appreciate the opportunity to respond to the distinguished Senator. I also am grateful for his offer to assist in expediting the work of the Senate.

I doubt that a postelection session can be avoided unless the second concurrent budget resolution and appropriation bills and the continuing resolution can be acted upon in such a way as to avoid the necessity of such a postelection meeting.

The House will send over a continuing resolution soon. It is my understanding that it will provide a date of something like December 15. This, in itself, would necessitate our return following the election.

We still have several appropriation bills. The second concurrent budget resolution has not been marked up in the other body as yet.

My only suggestion would be that we get as much business done as possible, so that when we do return after the election, our workload will be narrowed to that extent.

Further, if we could get agreements on appropriations bills which would preclude legislative amendments which are not in order under the rules anyhow and which would preclude the calling up of nongermane amendments which are not in order under the rules anyhow, this would help us to expedite action on appropriations bills. If we could get other time agreements and agreements on the nominations that remain to be confirmed, these things would greatly expedite the work of the Senate.

I know that the distinguished minority whip will be interested in expediting

these matters and he will be effective in aiding in the expedition of them. I know, also, that he will try to do whatever he can do from his side of the aisle to meet the suggestions I have made, particularly with respect to the amendments on appropriations bills.

Calling up an appropriations bill here, of course, sets the stage for a lot of amendments that are not germane and a lot of amendments that are legislative in nature. If we could reach agreements on these, that would avoid having to take time to deal with such amendments that are not in order under the rules anyhow. This would greatly aid us in the utilization of the remaining time.

I thank the distinguished Senator.

Mr. STEVENS. Mr. President, I do thank the majority leader for his comments.

I think it would be possible to work out an understanding between the majority and minority that is based upon firm assurance that if the understandings were agreed to there would be no postelection session.

Whether it is with regard to nominations or the must legislation, or the appropriations bills, with the knowledge that there is going to be a postelection session, I think it is very difficult to get agreement on almost anything right now, although, as my good friend knows, I will continue to work to try and help him with those agreements in order to accelerate the work of the Senate.

It just seems to me that we should have, by virtue of our experience in the past, learned that postelection sessions in Presidential election years are really detrimental, I think, to the legislative process and to the best interests of the country.

So again I renew my offer on the record to assist in any way I can.

We have no request for time on this side, I might say to my good friend.

On that basis I shall be happy to yield back my time or let it run, whichever the majority leader wishes to do.

Mr. ROBERT C. BYRD. Mr. President, I yield back my time.

Mr. STEVENS. Mr. President, I yield back my time.

The ACTING PRESIDENT pro tempore. The time has all been yielded back.

FOREIGN SERVICE ACT OF 1980

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the pending business, S. 3058, which the clerk will state.

The legislative clerk read as follows:

A bill (S. 3058) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The Senate resumed consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, will the Chair state the agreement?

AMENDMENT NO. 2290

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the pending amendment in the nature of a substitute,

amendment No. 2290, by the Senator from North Carolina (Mr. HELMS) on which there shall be 1 hour.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged against either side on the amendment awaiting the managers of the amendment and the opponents of the amendment to reach the Chamber.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, the Foreign Service Act of 1980 (S. 3058) represents a 5-year nonpartisan effort to strengthen and improve the Foreign Service of the United States.

In 1978, the Congress took a major step to upgrade the management and efficiency of the Federal service by enacting the Civil Service Reform Act. This bill, S. 3058, is a companion measure designed to increase the effectiveness of the foreign policy arm of Government. It also responds to a congressional directive—section 117 of Public Law 94-350—to prepare a comprehensive plan for the improvement and simplification of the personnel systems of our various foreign affairs departments and agencies.

The last comprehensive attempt to revise the Foreign Service was the Foreign Service Act of 1946. There is a clear need, after more than three decades, for substantial legislative changes to strengthen and improve the Foreign Service to enable it to fulfill its essential role and mission now and in the years ahead.

This new Foreign Service Act is needed:

To provide a clear distinction between Foreign Service and civil service employment, and to convert to civil service status without loss those Foreign Service personnel who are obligated and needed only for domestic service;

To improve efficiency and economy by simplifying and rationalizing the various categories of Foreign Service personnel and by establishing a single Foreign Service salary schedule;

To establish a Senior Foreign Service SFS with rigorous entry, promotion, and retention standards based on performance, with performance pay for outstanding service;

To make more uniform the statutory terms and conditions of Foreign Service employment based on merit principles;

To provide a statutory basis for labor-management relations in the Foreign Service;

To consolidate and codify the various laws relating to Foreign Service personnel which have been enacted both within and outside the framework of the existing Foreign Service Act;

To improve interagency coordination by promoting compatibility among the personnel systems of the agencies employing Foreign Service personnel and



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No. 142

Senate

(Legislative day of Thursday, June 12, 1980)

The Senate met at 1 p.m., on the expiration of the recess, and was called to order by HON. WENDELL H. FORD, a Senator from the State of Kentucky.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

"God of our life, through all the circling years,
We trust in Thee,
In all the past, through all our hopes and fears
Thy hand we see."

—H. T. KERR.

Breathe upon us now a sense of Thy continued presence. Fill us with life anew, that we may love what Thou dost love, and do what Thou wouldst do.

Help us, Lord, in our daily work to stay close to Thee that we may serve the Nation as we would serve Thy kingdom. May the call to public service and the duties already imposed upon us here keep us steadfast, alert, and strong amid all change.

Under the shelter of Thy wing,
Still may we dwell secure.
Sufficient is Thine arm alone,
And our defense is sure.
Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 15, 1980.
To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WENDELL H. FORD, a Senator from the State of Kentucky, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. FORD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CREDIT GUARANTEES FOR POLAND

Mr. ROBERT C. BYRD. Mr. President, on Friday afternoon, President Carter announced his decision to extend \$670 million in agricultural credit guarantees to Poland for fiscal year 1981. This action will allow Poland to buy an estimated 4 million tons of grain and other agricultural commodities from American farmers.

I applaud this effort to support the Polish economy in the wake of the historic agreements settling the recent strikes in Poland. The Polish Government has stated that the agreements will be implemented fully. Mr. Stanislaw Kania, the new Communist Party chief, has pledged to see that the reforms are carried out. Initial steps taken in accordance with the agreements seem to validate Mr. Kania's pledge. New independent unions are springing up all over Poland, and workers are lining up to join.

The strikes were debilitating to the already weak Polish economy. But I hope that the agreements made between the workers and their Government, without outside interference, will allow work to recommence and will provide a foundation for future prosperity. It is appropriate for the people of the United States to affirm their friendship with the Polish people by extending to them the largest amount of U.S. credit guarantees ever offered to a single country. The President stated that this aid was in re-

sponse to an urgent request from Poland.

No one believes that this financial assistance will relieve Poland of all future hardships. But it is important that the Polish people know that they have the support of the people of the world's greatest democracy, the United States of America. It is important that the Polish people share in the bounty of the world's most efficient agricultural producer, the American farmer.

These credit guarantees are an indication that the American people care about Poland and follow its development and its news with special interest. We are witnesses to the events and promises of the last month, and we will watch carefully as the promises of September come to life in the months and years ahead.

RECOGNITION OF THE ASSISTANT MINORITY LEADER

Mr. ROBERT C. BYRD. Mr. President, if the distinguished minority whip would like any of my time, I will be glad to yield it.

The ACTING PRESIDENT pro tempore. The Senator from Alaska is recognized.

Mr. STEVENS. I thank the distinguished majority leader.

THE POSTELECTION SESSION

Mr. STEVENS. Mr. President, I was just reading the CONGRESSIONAL RECORD for Thursday, September 11, and I noticed that my good friend the majority leader had indicated once again that it is the intention to return to session on November 12.

It had been my hope that perhaps the leadership might work toward a continuing authorizing resolution which would negate the necessity to return.

I realize that there is "must" legislation to be completed, but it was my hope that we might avoid the potential discord that is involved in a postelection session in a Presidential election year.

I do not have any speech to make about this. I should just like the Record

○ This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

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with those of other departments and agencies.

There is no doubt that it is in the national interest to maintain and strengthen a professional Foreign Service, representative of the American people, to assist the President and the Secretary of State in managing the country's foreign relations.

This bill strengthens the professional character of the Foreign Service of the United States by:

First, limiting Foreign Service status to those who accept its discipline including the obligation to serve anywhere in the world often under dangerous or unhealthy circumstances;

Second, requiring that all persons seeking career status pass successfully through a strict but fair tenuring process; and

Third, establishing closer links between performance and promotion, compensation and incentive payments, and retention in service.

This bill will also improve the management of the Foreign Service and promote economy and efficiency by reducing the number of personnel categories under a single pay schedule, establishing a Senior Foreign Service comparable to the Senior Executive Service of the civil service, and by encouraging interchange and maximum compatibility of personnel systems among the foreign affairs agencies.

The bill has been the subject of extensive consultations. Its provisions reflect comments and suggestions which have been received from the members of the Foreign Service and the employee organizations which represent them, and from interested agencies within the executive branch.

Its support is broad based, extensive, and nonpartisan. It is appropriate that in this year, while U.S. diplomats are still being held hostage in Iran, we move to pass this legislation in support of our representatives abroad.

I urge my colleagues to support S. 3058.

Mr. President, I think special credit is due to the distinguished Senator from Rhode Island (Mr. PELL) for the interest he has shown in the legislation through the years, and for the leadership he has given in helping to draft the legislation and bring it to the floor.

I am certain that he himself will look upon the passage of this bill as one of the single accomplishments of his career in the Senate, and I extend to him my congratulations.

Mr. PELL. I thank the Senator.

Mr. CHURCH. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. On whose time?

Mr. CHURCH. On the time of either side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask unanimous consent that the time be charged as previously provided under the order entered pursuant to the majority leader's request.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

UP AMENDMENT NO. 1573 IN THE NATURE OF A SUBSTITUTE FOR AMENDMENT NO. 2290

(Purpose: To amend the Foreign Service Act of 1946 to strengthen and improve the Foreign Service, and for other purposes)

Mr. HELMS. Mr. President, I ask unanimous consent that it be in order for me to send to the desk a substitute for my amendment No. 2290 which makes a number of corrections of a technical nature. I have cleared this with the distinguished manager of the bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1573 in the nature of a substitute for amendment numbered 2290.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Service Act Amendments of 1980".

OBJECTIVES

SEC. 2. Section 111 of the Foreign Service Act of 1946 is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon; and

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

"(10) to ensure that personnel in the Foreign Service are accorded all the rights accorded to personnel in the civil service; and

"(11) to provide further protections, procedures, and emoluments to such personnel, in addition to the protections, procedures, and emoluments provided to personnel in the civil service, in order to compensate such Foreign Service personnel for the hazards, inconveniences, and disruptions which encumber such personnel and which require sacrifice and discipline not expected of civil service personnel."

FOREIGN SERVICE SCHEDULE

SEC. 3. (a) Sections 412 through 415 of the Foreign Service Act of 1946 are amended to read as follows:

"FOREIGN SERVICE SCHEDULE

"Sec. 412. (a) There is established the Foreign Service Schedule, which shall apply to the members of the Service who are citizens of the United States and for whom salary

rates are not otherwise provided for by this title.

"(b) The Foreign Service Schedule shall have 13 salary classes, designated FS-1 through FS-13, which shall correspond to grades of the General Schedule under section 5332 of title 5, United States Code, as follows:

"Salary class:	Shall correspond to grade:
FS-1	GS-18
FS-2	GS-17
FS-3	GS-16
FS-4	GS-15
FS-5	GS-14
FS-6	GS-13
FS-7	GS-12
FS-8	GS-11
FC-9	GS-9
FS-10	GS-7
FS-11	GS-6
FS-12	GS-5
FS-13	GS-4

"(c) Each class in the Foreign Service Schedule shall have 10 salary steps, equal to the steps for the corresponding grade in the General Schedule, except that the salary classes designated FS-1, FS-2, and FS-3 shall have one, five, and nine steps, respectively.

"ADDITIONAL COMPENSATION

"SEC. 413. (a) The Congress finds that the availability of members of the Foreign Service to serve world-wide at any post assigned without regard to hazards, inconveniences, or disruption of family relations and educational and other personal plans entitles such members to the additional compensation provided under subsection (b).

"(b) In addition to the basic salary prescribed under section 412 and any other allowance authorized by law and only to such extent or in such amounts as are provided in advance by appropriation Acts, there shall be paid in a lump sum to each member of the Foreign Service an amount equal to 15 percent of the basic salary for such member at the grade and step prescribed under section 412, except that in no event shall a member of the Foreign Service be paid under this section less than \$2,500 or more than \$7,500.

"CLASSIFICATION OF POSITIONS

"SEC. 414. The Secretary of State shall designate and classify positions in the Department of State, the Agency for International Development, and the International Communication Agency and positions at Foreign Service posts, subject to the applicable provisions of chapter 51 of title 5, United States Code, in relation to the salaries established under section 412. Positions so classified shall be considered to be part of the civil service for purposes of title 5, United States Code. Career members of the Foreign Service shall be eligible to compete for positions classified under chapter 51 of title 5, United States Code, which are not classified by the Secretary pursuant to this section.

"ASSIGNMENT TO POSITIONS

"SEC. 415. The Secretary shall, to the maximum extent practicable without prejudicing the foreign policy or national security interests of the United States, assign individuals holding a personal rank in the diplomatic service of the United States only to such classified positions as may be appropriate to the rank and salary of such individuals. The Secretary shall from time to time prepare and transmit a report to the Congress listing the names of each individual assigned to a classified position for which the salary was more than one grade higher or lower than the grade corresponding to the personal rank of such individual."

(b) Section 416 of such Act is repealed.

ADMISSION TO FOREIGN SERVICE SALARY CLASSES

SEC. 4. Sections 516 through 518 of the Foreign Service Act of 1946 are amended to read as follows:

"ADMISSION TO FOREIGN SERVICE SALARY CLASSES 7 THROUGH 13

"Sec. 516. No person may be eligible for initial appointment as a member of the Foreign Service of classes 7 through 13 unless such person has taken an appropriate written and oral examination, as the Board of Examiners for the Foreign Service may prescribe, to determine fitness and aptitude for the work of the Service and demonstrated loyalty to the Government of the United States and attachment to the principles of the Constitution. Part of the written examination shall test the applicant's knowledge of the geography, history, and political structure of the United States and of the major international events of the twentieth century. The Board of Examiners for the Foreign Service shall interpret the results of such examinations in the light of the ordinary clerical, technical, or professional duties which the applicants would perform in the Foreign Service.

"ADMISSION TO FOREIGN SERVICE SALARY CLASSES 1 THROUGH 6

"Sec. 517. No person may be eligible for initial appointment as a member of the Foreign Service of classes 1 through 6 unless such person has taken an appropriate oral examination, as prescribed by the Board of Examiners for the Foreign Service, to determine the fitness and aptitude of the applicant. Notwithstanding the preceding sentence, the Secretary of State may appoint an individual as a member of the Foreign Service Reserve of class 1, 2, or 3, without examination by the Board of Examiners for the Foreign Service if—

"(1) not later than 30 days after such appointment, the President notifies the Senate of such appointment; and

"(2) the appointment of such individual would not cause the number of individuals appointed as members of the Foreign Service Reserve of classes 1, 2, and 3 without examination by the Board of Examiners to exceed 5 percent of the number of individuals appointed as members of the Foreign Service of classes 1, 2, and 3.

"OFFICE OF PERSONNEL MANAGEMENT

"Sec. 518. (a) The Director of the Office of Personnel Management shall cause the names of all individuals appointed to the Foreign Service to be placed on the registers or lists of eligibles, maintained by the Office of Personnel Management under subchapter I of chapter 33 of title 5, United States Code, together with the grade in the civil service corresponding to the salary class in the Foreign Service for each such individual. The Director of the Office of Personnel Management shall keep current the information provided under the preceding sentence.

"(b) If the employment of an individual in the Foreign Service is terminated, the Director of the Office of Personnel Management shall assist such individual in finding a position of corresponding grade in the civil service."

LABOR-MANAGEMENT RELATIONS

Sec. 5. (a) Section 7103(a)(2) of title 5, United States Code, is amended—

(1) by inserting "or" at the end of clause (iii); and

(2) by striking out clause (iv).

(b) Title VI of the Foreign Service Act of 1946 is amended by inserting after part E the following:

"Part F—LABOR-MANAGEMENT RELATIONS

"Sec. 651. (a) The provisions of subchapter 71 of title 5, United States Code, shall apply with respect to labor-management relations in the Foreign Service except to the extent such provisions are inconsistent with this section.

"(b) The Federal Labor Relations Authority shall resolve any dispute as to whether this Act or chapter 71 of title 5,

United States Code, applies with respect to labor-management relations in the Foreign Service.

"(c) Each member of the Foreign Service who is a citizen of the United States, whether serving, other than a management official, has the right to form, join, or assist any labor organization or to refrain from such activity, freely and without fear of penalty or reprisal. Each such member shall be protected in the exercise of such right.

"(d) (1) For purposes of this section, except as provided in paragraph (2), the term 'management official' means an official who—

"(A) is a chief of mission or principal officer;

"(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

"(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in clause (A) or (B);

"(D) is serving as a deputy to any individual described by clause (A), (B), or (C);

"(E) is assigned to carry out functions of the Inspector General of the Foreign Service; or

"(F) is engaged in the administration or formulation of the personnel policies and programs of the Department.

"(2) For purposes of labor-management relations with respect to a particular Foreign Service post, of the individuals assigned to such post from the Department, the International Communication Agency, and the United States International Development Cooperation Agency, not more than six senior officials shall be considered to be management officials for purposes of this section, including—

"(A) not more than one senior official each from the International Communication Agency and the United States International Development Cooperation Agency; and

"(B) not more than the following four senior officials from the Department: the chief of mission or principal officer, the deputy chief of mission, the principal administrative officer, and the principal personnel officer."

"(e) (1) For purposes of involvement in any labor organization, the employees, including supervisors and all persons other than management officials, of the Department, the United States International Development Cooperation Agency, and the International Communication Agency shall constitute, with respect to each such Department or Agency, as the case may be, a single and separate worldwide bargaining unit.

"(2) For purposes of involvement in any labor organization, the employees, including supervisors and all persons other than management officials, of the Department of Agriculture and the Department of Commerce may constitute, with respect to each such department, as the case may be, a single and separate worldwide bargaining unit or, if recognized as a bargaining unit on the date of enactment of this Act, may merge with any bargaining unit under paragraph (1) which accepts such merger.

"(f) Upon the approval of the Federal Labor Relations Authority and under such terms and conditions as the Authority may require, any bargaining unit representing civil service employees of a department or agency of the United States for which members of the Foreign Service are employed may merge with a worldwide bargaining unit representing only Foreign Service employees if such unit accepts such merger.

"(g) For purposes of this section, the term 'conditions of employment' means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5, United States Code;

(B) relating to the designation or classification of any position under section 414.

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multi-agency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system.

"(h) The provisions of sections 7114(c), 7117(a), 7117(b), 7121, and 7122, of title 5, United States Code, shall not apply to labor-management relations in the Foreign Service."

COMPUTATION AND PAYMENT OF ANNUITIES

Sec. 6. Section 821 of the Foreign Service Act of 1946 is amended—

(1) by striking out "2 per centum" in the first sentence and inserting in lieu thereof "2.5 per centum"; and

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

"(j) (1) The rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories shall be increased by a rate equal to—

"(A) one-tenth per centum of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained, if such annuitant was held hostage or detained less than 30 days; or

"(B) two-tenths per centum of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained in excess of 30 days.

"(2) For purposes of computing under subsection (a) the amount of the annuity for which each participant is entitled, the number of years of creditable service calculated under section 851 and 853 shall be increased by one year for each month or fraction thereof a participant is so held hostage or detained less than six months and shall be increased by two years for each month or fraction thereof a participant is so held hostage or detained in excess of six months.

"(3) A participant so held hostage or detained shall not have his annuity reduced by reason of his age."

RETIREMENT CREDIT FOR "RADIO" SERVICE

Sec. 7. (a) Subsection 8332(b) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting after paragraph (9) the following:

"(10) Subject to sections 8334(c) and 8339(1) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946 for the (A) National Committee for a Free Europe; (B) Free Europe Committee, Inc.; (C) Free Europe Inc.; (D) Radio Liberation Committee; (E) Radio Liberty Committee; (F) subdivisions of the entities referred to in clauses (A) through (E); (G) Radio Free Europe/Radio Liberty Inc.; (H) Radio Free Asia; (I) the Asia Foundation; or (J) the American Forces Network, Europe (AFN-E)."

(b) Section 8332(b) of such title is amended by adding at the end thereof the following:

"The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type per-

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formed by an employee referred to in paragraph (10)."

RETIREMENT FOR BINATIONAL CENTER EMPLOYEES

SEC. 8. Section 803(a) of the Foreign Service Act of 1946 is amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

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

(5) Any person who was appointed as a Binational Center Grantee and who has completed at least five years of satisfactory service as such a grantee or under any other appointment under this Act and who makes an appropriate contribution to the Fund in accordance with the provisions of this Act."

EFFECTIVE DATE

SEC. 9. The amendments made by this Act shall take effect on October 1, 1980.

Mr. HELMS. Mr. President, at the outset, let me pay my genuine respects to the distinguished manager of the bill (Mr. PELL) and to others who have worked so diligently on it. Basically, there is no disagreement as to the need for some legislation. There is some disagreement on how far we should go in determining some aspects of it.

As to the substitute which is now pending, let me reassure my colleagues that there are no major changes from what was previously proposed. I will enumerate the corrections at this time.

First. On page 4 of amendment 2290, lines 1 and 2, strike everything after "\$7,500". This deletes the tax exemption of the additional compensation. While the Senator from North Carolina would prefer that this special recognition be tax exempt, it has been suggested that there would be complications with the Tax Code which the Finance Committee might need to examine. So, rather than place another obstacle on the legislation at this late date, I am simply deleting that provision.

Second. Page 6, lines 10 to 17 have been redrafted to make it clear that appointments under this section would be restricted to 5 percent of Foreign Service classes I, II, and III, and not to 5 percent of the entire personnel of the State Department.

Mr. President, this restriction was originally put in at the suggestion of the State Department, and it was always the intent to restrict such appointments to 5 percent of classes I, II, and III, as my statement of last Thursday shows.

However, the gremlins got into it in the drafting stage. It should be pointed out that the reference is to salary classes, not to commissioned ranks, said it is obvious that the Secretary, under law, can appoint only reserve officers and not career officers.

To clarify that point, the word "reserve" is inserted at the appropriate places.

Third. In labor-management relations page 10, after line 11, insert a new subsection (g). Mr. President, this is identical to section 1002(5) of S. 3058. Although this subsection protects the Secretary from being forced to bargain over certain regulations, this insures that the scope of bargaining is not extended beyond what is in S. 3058. At the same time, it does not decrease the scope of

bargaining. It merely preserves the status quo.

Fourth. A new subsection (h) is further added to exclude those provisions of the CSRA labor-management program that are inconsistent with the provisions of this section. With one world-wide unit per agency, there is no need to have a two-step process of agency head approval for agreements. In the civil service, agreements are often at local activity level, so a period for review and approval by the Department head in Washington makes sense. With one world-wide unit, however, such a requirement would merely encourage delay in bargaining. The agency head should make sure he is represented competently at the table in negotiating for his world-wide unit.

Sections 7117 (a) and (b), are omitted from the committee bill because their discussion of how bargaining relates to regulations is subsumed in the definition of "conditions of employment" contained in subsection (b). The committee bill omits sections 7117 (a) and (b) because its provisions are inconsistent with current practice under the Executive order and with its definition of "conditions of employment." With continuation of the legislated grievance procedure, sections 7121 and 7122 are unnecessary.

As I said at the outset, Mr. President, these are all technical and conforming amendments to improve the bill.

Mr. President, as a preface to my comments on my bill, S. 2986, and the committee bill, S. 3058, I want, for a few moments, to discuss the constitutional context to which both relate. These bills, Mr. President, touch directly on the rights and privileges and duties of the Senate itself. Consequently, unlike many other reorganization and reform bills, they are of unusual importance to the Senate. Unlike the House of Representatives, which has rights and duties relating largely only to legislative matters under the separation of powers, the Senate shares in some of the powers and functions of the President of the United States. This is particularly true in the Senate's constitutional right to participate in the making of treaties and in the appointment of ambassadors and Foreign Service officers.

Mr. President, I want to read, with the indulgence of Senators, the pertinent text of paragraph II of section II or article II of the Constitution. It reads:

He—

Meaning the President—

shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors,

And so on.

Thus, unlike the House of Representatives, the Senate has a collegial role in the powers of the Presidency, particularly in foreign affairs.

These bills, S. 2986 and S. 3508, deal with the conditions under which personnel for the Foreign Service will be selected, personnel who will participate in the drafting of treaties, their implementation and their nonimplementation.

Consequently, the character of these personnel and their qualifications, their esprit de corps, their protection against arbitrary action by foreign powers and by their own superiors, all are matters of great concern to the Senate. We have all heard repeatedly in the last several years that the Foreign Service and the diplomatic establishment which it is intended to serve have been in a state of crisis and decline. That decline has accompanied and contributed to the decline of the United States as a world power.

So, now, we get to the meat of the coconut, Mr. President. My bill, which is in the parliamentary sequence of a substitute to my substitute, is intended to provide the administrative and the fiscal means to reverse this decline and to eliminate the endemic crises which afflict the Foreign Service today.

As the distinguished occupant of the Chair may know, the American Federation of Government Employees, AFL-CIO, has endorsed my bill. As the distinguished Senators may also know, there are many differences between the Senator from North Carolina and the AFL-CIO on various matters of domestic legislation. However, on foreign policy matters, I believe I can say without challenge that George Meany and I were in complete agreement on many issues more than almost any other Senator. I could relate many conversations that I had with George Meany over the years. He and I did agree on domestic matters, frequently, but we agreed on foreign policy, national defense, and that sort of thing. His interest and mine in bringing Alexander Solzhenitsyn to this country were parallel, and we worked together on that issue.

I mention all of this, Mr. President, to state my appreciation to the AFL-CIO's American Federal of Government Employees for studying my proposal and having endorsed it. I believe that general agreement on foreign policy probably exists with the present President of the AFL-CIO, Lane Kirkland. However, I must confess that I have not talked with him about this measure.

The reasons for our agreement on foreign policy are clear: Our agreement about the extreme dangers which we confront abroad and the need to provide maximum resources to meet those challenges.

Mr. President, even the American Foreign Service Association, which is not supporting the pending substitute, has had to concede that the problems which I have just described do, in fact, exist. For example, just last Monday, the senior officers of that association confirmed to my staff that over 120 to 150 Foreign Service officers classes 1 and 2 are performing work lower than their grades. They alleged that at least that number of FSO-1 and FSO-2 officers are doing the work of FSO-3 officers, though assigned to nominal positions of FSO-1 and FSO-2. They asserted, and the Department of State has confirmed, that since 1974, not a single FSO-1 and FSO-2 officer has been selected out. For this reason, FSO-3 and FSO-4 officers are actually doing the work of FSO-1 and FSO-2 officers, according to the state-

ments of the current leaders of the American Foreign Service Association.

The pending substitute would put a speedy end to that unhappy and undesirable situation.

By requiring all positions to be classified according to the universal standards of levels of difficulty of work, developed over 50 years by Federal classification experts, and by requiring periodic desk audits of these positions by the Office of Personnel Management, these abuses would end. Further, by requiring the Secretary of State to report to the Congress periodically the numbers of officers assigned more than one position higher or lower than their own grades, the Congress could exercise its proper oversight over the personnel selected primarily to implement our foreign policies.

A great deal has been made about the additional costs of my bill. In fact, my bill would provide savings by raising the quality and reducing the quantity of Foreign Service personnel. Under the conditions set by my bill, at least 15 percent and perhaps 20-percent Foreign Service would prove to be redundant within years.

I should like to remind the Senators of the judgment of that eminent career Foreign Service officer and seven times Ambassador, the Honorable Ellis Briggs. In his book, "Farewell to Foggy Bottom", Ambassador Briggs assails the overloading of posts with nonessential personnel.

As one of many examples of superfluous personnel who in fact are obstacles to efficient performance, Ambassador Ellis Briggs narrated his experiences at the American Embassy in Prague, Czechoslovakia.

When he arrived there, he found a staff of 80. The Department asked his advice as to how much he should cut the staff, in light of the Communist seizure of power in Prague. He recommended the staff be cut by 50 percent, for a total of 40 persons.

Let me use Ambassador Briggs' words:

I recommended to Washington that my inherited complement of eighty Americans (although microscopic by today's embassy standards) be reduced as a start, by one half. That is to say, that the roster be cut from eighty to forty . . .

After six months, and an expenditure of effort on my part sufficient to have built, singlehanded, a bridge across the Vitava River, I had managed to reduce my overblown staff by two persons—from eighty to seventy-eight.

At which point, the Communists, ignorant of my hassle with Washington over personnel, and believing that they were doing the American government in general and the American ambassador in particular the greatest possible disservice, suddenly declared five-sixths of the embassy personnel persona non grata.

What do you think was the result, after the departure of 86 of the 80 embassy personnel at Prague?

Ambassador Briggs wrote as follows:

It was an efficient embassy. It was probably the most efficient embassy I ever headed. Our operation was compact. Our personnel was alert. We kept Washington accurately informed of what was going on. Our work was accomplished with a minimum of friction and delay.

Mr. President, that is the testimony of Ambassador Briggs. He recommended a cut of 1 in 2. He suffered a cut of 5 out of 6. Yet, he welcomed the latter cut as better for U.S. policy.

The point is that my bill would result in a reduction of 15 percent to 20 percent in quantity, but would result in higher pay for better qualified, better educated, more dedicated personnel, working at jobs for which they are qualified.

Its results would be eminently beneficial to the foreign policy position and the international standing of the United States.

Ambassador Briggs later went into more detail on this topic in his book "Anatomy of Diplomacy." There the Ambassador says:

The Foreign Service entered the decade of the 1960s with far too many people. The notion that it takes scores of officials to man a single Embassy, and thousands and thousands to operate a successful Washington foreign affairs establishment, has proved in post after post and country after country to be nonsense—as the practitioners of diplomacy (in contrast to the planners and administrators) have repeatedly testified. Nor is this view of the efficacy of small staffs an American heresy. A British diplomatist recently declared that "forty years' foreign service has taught me that in diplomacy there is an inverse relationship between numbers and performance. . . . The envoy's a one-man task; double the team and the results are halved."

What the optimum number of Foreign Service Officers would be, given United States responsibilities in a fast-changing world, is, of course, not easy to say with precision. At the moment, the figure probably falls around twenty-five hundred, as against three thousand seven hundred officers now on the roster.

Certainly with one thousand fewer officers there still should be plenty of administrative elbowroom to take care of vacations and home leave, and to assign occasional officers with special aptitudes or interests to the study of esoteric languages, or to a university for an advanced degree in a science relevant to "emerging nations." The State Department should still be able to fill its quota at the postgraduate Government institutions, which are more numerous than the public is aware.

With one thousand fewer officers, the requirements for substantive work could still be met (two or three officers each, in the political and economic sections will usually suffice), and there would be ample talent remaining for Deputy Chief of Mission, for assistants to the Ambassador, for juniors being rotated through Embassy sections for experience, and for officers on loan to the propagandists, the intelligence community, the military establishment, the aid operations, and even the Peace Corps.

With one thousand fewer officers there would still be an ample quota of Foreign Service Officers to fill the "opposite number" positions in the State Department (minus those three hundred jobs "de-designated" as not suitable for the Foreign Service).

With one thousand fewer officers, a brisker and more alert corps could be maintained, without the sloppiness that inevitably penetrates an organization that has to invent make-work projects—like the Comprehensive Country Programming System of 1964—in order to convince the Congress, or the public, or itself, how quickly the ship of state would founder without extra hands to polish the brasswork.

In a world where international develop-

ments seem to multiply themselves at an ever-increasing pace, it is fashionable to declare that the personnel who suffice today may be inadequate for tomorrow. That is debatable, or at the least a matter for continuing study, which should start from the premise that the roster of the Foreign Service should be kept at the lowest possible figure consistent with getting the job done. That should be coupled with a recruitment policy that will provide a more even flow than heretofore of candidates entering the Foreign Service and a tough but humane "selection out" program that will permit the promotion system to operate.

Mr. President, I reserve the remainder of my time and I yield the floor.

Mr. PELL addressed the CHAIR.

The PRESIDING OFFICER (Mr. HEFLIN). The Senator from Rhode Island.

Mr. PELL. Mr. President, I have listened with interest to the proposals and suggestions of my colleagues from North Carolina. I know his interest in the bill, and I have had an opportunity over the weekend to go over his substitute.

But, after a careful examination of both his substitute amendment and our own proposal, I continue to urge my colleagues to support the proposed Foreign Service Act of 1980, S. 3058.

This bill is an absolutely nonpartisan measure. Remember, we started working on it with Assistant Secretary Eagleburger under the Ford administration. It has gained overwhelming support of Senators and Representatives who conducted extensive hearings and markup sessions during 1979 and 1980.

Mr. President, I urge my colleagues to support the proposed Foreign Service Act of 1980, S. 3058. This bill is a completely nonpartisan measure which has gained the overwhelming support of the Senators and Representatives who conducted extensive hearings and markup sessions during 1979 and 1980. S. 3058 is, with some minor differences, identical to the legislation which recently passed the House of Representatives by a vote of 239 to 78. It should be noted that a substantial majority of each party voted in favor of that legislation.

S. 3058 is the direct result of 5 years of efforts initiated under the Ford administration. It is a response to a 1975 congressional mandate calling for a comprehensive plan for the improvement and simplification of the Foreign Service.

I believe this Senator played a role in the development of that comprehensive plan and that congressional mandate. My colleagues should take note of the fact that three Secretaries of State—Henry Kissinger, Cyrus Vance, and Edmund Muskie—have all written in support of this legislation.

In contrast, the Helms substitute has never been vetted at any of the previous stages of consideration including the Senate Foreign Relations Committee hearings—a committee upon which the senior Senator from North Carolina so ably serves.

This substitute confuses the essential differences between the Foreign Service and the Civil Service to the detriment of both systems. For example, the sub-

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stitute, also, inappropriately applies a civil service approach to the Foreign Service promotion, assignment and classification systems.

The proposed application of civil service classification standards to the Foreign Service in the substitute would drastically limit the flexibility needed by the Secretary of State to meet worldwide staffing needs.

Mr. President, the Helms substitute, also, lacks a number of provisions contained in S. 3058 which are necessary to keep our Foreign Service strong and vital. It fails to deal with important issues concerning family members. It contains no affirmative action or equal employment opportunity provisions. It has none of the advanced provisions of S. 3058 which deal with employee protections, labor management relations and allowances—all of which have been so laboriously developed, and were not in the 1946 act.

Finally, Mr. President, the substitute's 15-percent tax-exempt salary supplement and the increase in the retirement multiplier from 2 percent to 2.5 percent for each year of service would be enormously costly. The other way to keep these costs down would be to dramatically reduce the size of the Foreign Service. On that point, it should be noted that the size of the Foreign Service has remained constant since the early 1960's despite an incredible increase in its responsibilities. To reduce the Service would seriously damage U.S. interests abroad.

In conclusion, Mr. President, I would like to indicate that S. 3058 has the strong support of the American Foreign Service Association, which is the exclusive elected employee representative for all 11,000 members of the Foreign Service in the Department of State and the Agency for International Development. If we are to continue to have the kind of Foreign Service this Nation must have to protect its interests abroad, the operating charter, personnel system, employee protections and rewards which S. 3058 provides are essential. The Helms substitute contains a number of harmful features, fails to emphasize the special nature of the Foreign Service, and has not had the benefit of either the full consideration or the broad consensus which S. 3058 enjoys.

Therefore, I urge my colleagues to reject the proposed substitute.

Mr. President, I should like to read into the Record a letter from Katherine Keough, acting for the Family Liaison Action Group (FLAG):

DEAR SENATOR PELL: With the regard to the hostage benefit amendment that Senator Helms is proposing to attach to the Foreign Service Act:

"While FLAG is deeply grateful to Senator Helms for addressing himself to a specific benefit for the American hostages in Iran, we feel that his proposal might better be included as part of a separate compensatory bill.

"We anticipate that such legislation would address annuities, retirement and other financial considerations. We, FLAG, would be more than happy at an appropriate time in the future to assist Senator Helms in the drafting of such a bill which will be meaningful to these hostages and their families.

"For the present FLAG would strongly prefer to have Senator Helms' support for a swift enactment of the Hostage Relief Act (S. 2852 and S. 2861) now rather than an attachment to the Foreign Service Act. In the future we will seek his creative personal support and ideas as we begin to turn our attention towards comprehensive, compensatory legislation."

We thank you for making our remarks known to Senator Helms and others on the Committee.

Mr. President, I yield the floor at this point.

Mr. HELMS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Ten minutes and fifty-eight seconds.

Mr. HELMS. I thank the Chair.

First of all, Mr. President, I want to share with Senators a telegram I have received from Mr. John Hemenway, former president of the American Foreign Service Association, who says:

As past president of American Foreign Service Association I urge support of Helms' substitute (S-3058) and Bayh amendment correcting injustices of grievance system legislated in 1975.

Present AFSA leadership has acted ultra vires—violating AFSA by laws—pretending consultation with membership when in fact it merely has rubber-stamped provisions promoted by cliques trying to manipulate foreign policy through personnel practices.

It is signed "John Hemenway, 4816 Rodman Street, N.W., Washington, D.C. 20016."

Mr. PELL. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. PELL. Is the Senator aware of the fact that Mr. Hemenway was fired as president, by the process of recall, and does not stand in well with that organization? Because of that, I do not believe he speaks for the Foreign Service now.

Mr. HELMS. I understand what the Senator is saying, but I point out that there were an extraordinary number of irregularities in that recall and that matter is now in the courts. The ultimate judgment will be made there.

In any case, Mr. President, I accept fully the concept that the Foreign Service has many similarities to the military service.

It is precisely for that reason that I oppose the creation of a Senior Foreign Service not based at all on the military services but on the purely civilian model introduced into the Civil Service Reform Act of 1978. Thus, the claim that these new Senior Foreign Service positions are modeled on the flag positions of the military is literally untrue. The present system, which I should like to retain, was in fact modeled on the pattern of the Navy, as the legislative history of the 1946 act clearly and repeatedly shows. The proposed Senior Foreign Service is a direct assault on the military flag officer model.

As to the confirmation system, the Secretary of State has repeatedly asserted that positions abroad in fact are now classified according to the objective standards of the Office of Personnel Management. If that is the case, why should this not be mandated by statute? Certainly, those standards already provide for higher classifications for such

factors as service abroad. The main difference between my bill and present alleged policy is that congressional oversight would be improved because the Office of Personnel Management would have a role in confirming the accuracy of the classification, and the Secretary of State would have a further assurance that congressional intent is being honored.

But classification is an abstract function unless related to the actual assignment of qualified personnel in the proper grade and proper pay category. Foreign Service personnel, as well as the taxpayer, need to know that proper service is given for salaries paid. My proposal, incorporated in the pending substitute, assures that, by providing the congressional oversight which is now lacking.

Correct classification is important for Foreign Service officers, who hold rank-in-person commissions and compete for promotion against each other. They need to be assured that their performances are rated objectively against the same standard. For example, a class 3 officer serving in a position normally classified as class 2 but actually requiring services at a class 4 level would have unfair advantage over all other colleagues of class 3. My proposal would eliminate the possibility of this danger by having the outside classification experts of the Office of Personnel Management review the classifications of all positions. Thus, the promotion selection panels would be able to judge personnel records with greater uniformity.

The charge that my proposal, by including these provisions, does not provide for a clear separation of the Foreign Service and Civil Service is groundless. These provisions are the universal provisions of due process and equity. My proposal does not in any way diminish any of the real distinctions between Foreign Service and Civil Service by providing those elements which every fair career system must have—in fact, it clarifies and reinforces these real distinctions by many other specific provisions which are not in the other bill.

Frankly, I am astounded that the State Department now claims that my proposal erodes the difference between the Foreign and Civil Services by linking Foreign Service grades to Civil Service grades. But these linkages already exist by agreement of the Secretary of State and OPM. In fact, the pay increases of Foreign Service personnel, as well as military personnel, are even now directly linked by the Federal Pay Comparability Act of 1970 and the specific points of linkage agreed to by the Secretary of State and OPM. The difference is that, taking account of the pay study ordered by the State Department and the complaints by the American Foreign Service Association and the American Federation of Government Employees, I have incorporated into my bill a linkage system which better correlates the actual pay of Foreign Service personnel to Civil Service grades.

In fact, my proposal does the same in principle for Foreign Service personnel which Congress has just enacted for military personnel, who this year will

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receive a higher pay adjustment than Civil Service personnel. The only difference is that I am doing this systematically by permanent legislation rather than ad hoc.

Here, too, I believe my proposal further shows an acute awareness of the similarities between the Foreign Service and the military service, important similarities to which the administration and the committee bills are in fact inattentive.

As to costs, my rebuttals to the State Department computations already exist in the Report No. 96-913, pages 247-269. These pages show that my bill would not cost more than the committee or administration bills. In fact, it would cost less. The State Department has sought further to confuse and obfuscate the purposes of my proposal by pretending that conflicts could arise because I have sought to assure that Foreign Service personnel have all the procedural protections and employee rights which Civil Service personnel have.

I ask, Mr. President, how can this lead to confusion? These Foreign Service personnel are Federal employees. Certainly they should not have lesser rights, especially since they have assumed more onerous and dangerous duties and obligations, duties even analogous to military personnel.

As to the alleged protections afforded Foreign Service employees in the committee bill, which is supported by the administration, I feel obliged to emphasize that these protections in fact are less than currently provided in the Foreign Service Act of 1946 as amended. The repeated detailed analysis of the harmful report on members of the Foreign Service Staff Officer Corps is but one example of a major deprivation of existing protection and rights, in this case of clerical, administrative and technical personnel.

The claim that my proposal gives the Secretary of State the right to classify positions in AID and ICA is a total misreading. The present Foreign Service Act of 1946 as amended, makes it clear that the term Secretary of State means Administrator of AID and Director of ICA whenever any actions are to be carried out in those agencies. Since my proposal amends the Foreign Service Act of 1946 as amended, that distinction applies. Only the Administrator of AID would classify positions in AID; only the Director of ICA would classify positions in ICA.

In fact, as the testimony before the Foreign Relations Committee shows, the great concern is that the committee bill erodes the integrity and independence of AID and ICA and vests too much power over them in the Secretary of State. My proposal does not do that, but maintains the existing status quo.

THE PRESIDING OFFICER. The time of the Senator from North Carolina has expired.

Mr. HELMS. I thank the Chair.

THE PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, I oppose the substitute offered by our dis-

tinguished colleague from North Carolina. I do so for a number of reasons.

But, first, I point out that the Senate once again is indebted to our distinguished colleague, and the members of his staff, who I think is one of the most dedicated, hardworking, and devoted Members of the Senate and who many times provokes us into forcing us to think about what we are doing even though we end up concluding that we oppose it. They have rendered a very valuable service because otherwise we would not have had this debate; otherwise, we would not have been forced to go back and take a good hard look at this act that has been hammered out and either reaffirmed our support for it or cause us to open our minds and see whether or not there are fallacies in it that should be corrected.

But to offer now at this stage a full substitute as a bill I think, after the 15 months that we have spent exhaustively studying this legislation, would be wrong.

I think that the distinguished Senator from North Carolina, who believes deeply in the presence of the Senate and the process of the Senate and knows it about as well as any of whom I know, would fully take into account the fact that his own colleagues who could not have spent and have not spent as much time as he has on this particular measure could now be expected to really fully comprehend the nature of this sweeping substitute and then override and overlook the work that has been done by committees in the House of Representatives and in the Senate over a period of many months.

If I had known that he intended to make such an offer of a substitute, it would have been my wish that it would have been offered at the time that the Committee on Foreign Relations, of which he serves as a distinguished member, was marking up the bill so we could have given it the kind of considered judgment that we in the Senate have come to expect committees to do, not that we turn to the committees and have them do all our work for us, but on the other hand it does give us the benefit of having some Members concentrate on this particular activity.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. PERCY. I am happy to yield for a comment.

Mr. HELMS. I thank my friend.

Mr. President, what he says is true. I did not offer it formally, as the Senator from Illinois has said, but I did make it available to every member of the committee and staff at that time. It so happened I was in a markup of a bill in the Agriculture Committee, of which I am ranking minority member, so I could not be there to do it formally, but I did in good faith make it available to every member of the committee and all staff members. I thank the Senator.

Mr. PERCY. I appreciate the explanation.

Mr. President, I wish to speak in support of the Foreign Service legislation

as reported by the Foreign Relations Committee and against the substitute proposed by my colleague from North Carolina.

On the one hand, the Senator says that the Foreign Service "is essentially an elite service that differs fundamentally from the civil service," while actually his substitute would adopt many significant features of the civil service system. He prefers aspects of the civil service relating to promotions and assignments, which are generally believed to be unsuited to the Foreign Service, while rejecting features of the civil service—such as a senior service and performance pay—which make good sense for the Foreign Service as well.

The substitute addresses some longstanding problems of the Foreign Service, such as pay comparability, but says nothing about a range of other issues which ought to be addressed, and which are addressed in the bill reported by the committee. The effect of his legislation would seem to be to consolidate the Foreign Service as a branch of the civil service without regard to the unique requirements, as well as the special identity and spirit, of the Foreign Service. As one who has respect for the civil service and who spent many, many hours on the civil service reform bill which is now law, I simply do not see the rationale for such an approach to the Foreign Service.

Furthermore, Mr. President, it seems to me that a bill which would affect the Foreign Service in such a profound way should be the subject of extensive review. Members of the administration, the Congress and the Foreign Service itself should have a chance to debate such a course of action thoroughly and to assess the impact of its provisions on the basis of careful study. It is not clear, therefore, why the substitute is proposed at this late hour. The bill reported by the Foreign Relations Committee has been before us for over a year and was the subject of a number of hearings and markup sessions in committee. It was discussed extensively within the administration and within the Foreign Service itself and has the strong support of both. A similar bill was carefully formulated by two committees of the House and passed that body a week ago by a vote of 239 to 78.

Mr. President, all of the issues raised by Senator HELMS were before the committee, of which he is an able and active member, yet he did not propose his substitute during the markup. The effect of accepting it now would be to end all prospect of Foreign Service legislation this year, since it would certainly have to be referred to other committees. We would therefore have to begin all over again in the next Congress and delay still further many changes in the Foreign Service system which are already long overdue.

Mr. President, some of my colleagues of the minority may feel that they would like to defer the resolution of some issues to the next administration and the next Congress, but Foreign Service reform is not a partisan issue. We all—regardless

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of party—want to see an effective, superior-quality Foreign Service capable of executing a coherent, consistent foreign policy, and the differences between the substitute and the committee bill are not political.

I see nothing to be gained from postponing action on a carefully developed bill such as the one reported out by the Foreign Relations Committee. Almost all of its provisions have been exhaustively reviewed—and in some cases painfully negotiated—over a period of years, with results which are likely to be very similar under any administration. It will always be open to us to make further adjustments in the Foreign Service system as time goes on. But the overwhelming consensus seems to favor building upon the separate, specially designed Foreign Service which has been developed over so many years.

Whatever problems of recruitment, administration and morale the Service may now have, they are not likely to be improved by a proposal to make the Foreign Service so similar to the civil service. And in failing to address a number of other features of the committee bill, this substitute is simply not adequate to its own professed objective of streamlining and reforming the Foreign Service.

I urge my colleagues to vote against the substitute and to retain S. 3058 as reported by the Foreign Relations Committee.

The American Foreign Service Association which is the elected exclusive representative of all 11,000 AID and State foreign service persons that has endorsed the Foreign Service Act of 1980 indicated that about 15 months scrutiny by concerned congressional committees has been given to the pending bill, including many people who have cared to testify worked to fine tune the legislation, to preclude political abuse, to protect the rights of individual employees, and to strengthen the professional service.

They furthermore pointed out that 60 hours of hearings by the House Foreign Affairs and Post Office and Civil Service Committee which considered every one of 400 suggested changes cannot be disregarded.

The House of Representatives approved the bill by an overwhelming vote of 239 to 78, including the majorities of both parties.

To at this stage then feel that it would be profitable to make a sweeping substitute and have any chance of this legislation being enacted in this Congress I think would be to ignore the fact that the clock is running, time is running out, and really in a sense the adoption of this substitute would kill the bipartisan support that has been working mightily toward civil service and Foreign Service reform and improvement which would provide, and the present bill before us does provide, a comprehensive review of the Foreign Service and assures excellence in our first lines of defense.

In addition to this, members of the administration, State Department, Members of Congress, and the Foreign Service itself, have given a tremendous amount of thought and time to the pending leg-

islation and have contributed immeasurably to the bill before us.

It is, therefore, I think, extraordinarily difficult to give the full kind and careful consideration that should be given to the proposal by the distinguished Senator from North Carolina, and I for one could not support in any way a substitute for the present bill.

Al of the issues raised by Senator HELMS were actually issues that were before the committees of both the House of Representatives and the Senate.

Though he did have a conflict in scheduling at that time and there was important legislation affecting all of us before the Agriculture Committee, this is a matter that I think would have required a good deal of careful thought before we could certainly adopt the substitute.

Mr. President, I wish to take just one aspect of the substitute bill before us which would, I think, vitally affect the performance and service and indicate that I could, as the distinguished Senator from Rhode Island knows, certainly not support the substitution of a pay increase automatically across the board for performance bonuses.

I do feel that the performance bonus system that has been worked out in civil service and in civil service reform is an extraordinarily good feature of this legislation.

At this time, however, I wish to refer to a letter that I have received from Mr. Alan K. Campbell, Director of the Office of Personnel Management with whom we worked over a period of many months, in fact over a year, on civil service reform itself. The letter reads as follows:

As the Senate nears floor action on S. 3058, "The Foreign Service Act of 1978," I would like to note my continued strong support for this legislation which I believe will be highly beneficial to the Foreign Service.

Since early in 1979 when OPM became heavily involved with the Department of State in advising it during the formulation of the Administration's proposal, we have been enthusiastic about many of the features of this legislation which opens new opportunities for flexibilities in the management of the Foreign Service personnel system. Key to this forward looking legislation is the Senior Foreign Service with its opportunities for rewarding outstanding performance. We are also very happy with the bill's clear delineation of those positions which are appropriately under the Foreign Service personnel system.

The Senate report on S. 3058 carries the additional views of Senator Helms along with the substitute measure which he is sponsoring. Although Senator Helms has the good of the Foreign Service in mind, I must take issue with his proposal because of several features which I believe to be unsound from the standpoint of Federal personnel policy.

Section 3 of Senator Helms' bill, S. 2986, provides, in a revised section 413 of the Foreign Service Act of 1946, an additional lump sum payment to each member of the Foreign Service equal to 15 percent of the basic salary for such member within the limits of \$2,500 and \$7,500. The bill would further exempt this lump sum payment from taxation.

I strongly disagree with this concept. First, Senator Helms would offset the expense of this provision by deleting the Senior Foreign Service performance pay provisions. It is obvious to those of us who have studied and worked with compensation systems that rewards should go with performance. Senator

Helms, in deleting the performance award system proposes a step backward in the progress toward pay-for-performance which is to be found under the Civil Service Reform Act, passed overwhelmingly by the Senate, and section 405 of S. 3058.

Further, there is no reason to believe that the added bonus would accomplish anything constructive in struggling with the problem of members of the Service who are reluctant to go overseas. Senator Helms explains in the committee report that "by providing the 15 percent tax-exempt incentive, it would reduce the resistance of married personnel to accept foreign assignments . . .". There can be no such direct effect from a bonus which goes to all members, without regard to their willingness to move to "undesirable" posts. The proposal would simply raise the level of compensation without a return benefit to the Government. Members of the Foreign Service receive post differentials provided under title 5, U.S.C., which are meant to compensate for the difficulties in recruiting at hardship posts. These differentials would be increased under S. 3058 and the House passed bill.

Section 6 of Senator Helms' bill would revise the retirement formula to increase the annuity of members of the Service from the current 2 percent for each year of service to 2½ percent. The bill would apparently provide this increased computation benefit to all service so that those retiring immediately after the Act's passage would receive a windfall from the bill despite the knowledge that Senator Helms apparently does not intend that the increased benefit apply to service prior to the enactment date.

I do not find Senator Helms' analogy between the Foreign Service and the FBI and Air Traffic Controllers valid. The present computation of retirement for members of the Foreign Service already exceeds the normal Civil Service computation. The special computation provided for Air Traffic Controllers and other special occupations in which early retirement has been mandated, is meant to adjust the annuity to a normal level in the face of a career which is curtailed at a point of service which would otherwise provide an inadequate annuity. The increased computation in Senator Helms' bill for members of the Foreign Service is unnecessary. They do not normally have early retirement. Also, the House passed version of the Foreign Service bill raises the mandatory retirement age to 65, which indicates a trend toward longer service, rather than early retirement.

I have not touched on all of my concerns with Senator Helms' bill, but have indicated some of my primary concerns. I urge the Senate to move ahead on its consideration of S. 3058. Thank you for the consideration of my comments.

I have provided a similar letter to Senator Pell.

Sincerely yours,

ALAN K. CAMPBELL,
Director.

That ends the quotation I would like to read at this time. I certainly concur with Mr. Campbell.

At this time I would like to mention to my distinguished colleague from North Carolina that the Governmental Affairs Committee worked for well over a year on civil service reform. We held hearings in Washington for many, many days.

The Senator from Illinois, knowing the deep effect this had upon millions of the Federal employees, recognized that one of the most important things we could do in the Senate to restore the faith of the American people in their Government was to find a way to organize the personnel system so that there

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was a responsiveness somewhat closer to the private sector, because the performance and productivity in Government have been dismal in many, many respects.

The Senator from Illinois held three separate hearings in different parts of Illinois. Director Campbell came to Illinois, other members of the Civil Service Commission came and testified.

We had as witnesses many past regional directors of many different services who testified as to their utter frustration, their disappointment, their disillusionment, their inability to get anything done. They could not fire people; many times they could not hire people. They could not reward.

There was a uniformity of pay regardless of performance that just, in a sense, as one of them said, "drove me right up the wall. I finally just had to get out. I could not perform the function that was expected of me under the personnel practices of the Federal Government."

So the months and months we put into the Civil Service Reform Act were the culmination of those frustrations.

There was bitter opposition many times, and there were several services that wished exemption from them. The Foreign Service said, "We are different. We should not really come, of course, under the same type of regulations and modifications and changes."

The Intelligence services said they wanted to be exempt. The Export-Import Bank was exempt.

Yet now it is a strange thing but all of them are coming back petitioning Congress to include many of those reforms in the personnel practices that govern them.

For instance, the subject of bonuses is one we all well understand. We would all like to believe that every person will always give as much to his job as he is capable of giving, that he has always had the support of his family for an outstanding job, and that money was not what motivated them. That is what we used to talk about respecting teachers years ago, until I finally went to President Eisenhower in exasperation and said, "There is no way, in my judgment, to get enough teachers in this country unless we compensate them as much as we do bricklayers—maybe not as much, but get up there somewhere."

We began a program in the fifties of elevating teachers' salaries and giving them a sense of dignity and giving them a job that people would really seek, that parents would recommend their children take.

The same thing is true in Government service, and this is where the bonus system, which has worked so well in the private sector, comes into play. It works well in Ford Motor Co., it has worked well over the past in duPont; it has worked well in General Electric; and it has worked well in the company I knew something about, Bell & Howell Co., for years, 18 years, when I had the duty to administer our executive compensation program.

I had an opportunity to see the effect on families and individuals of being able

to say at the end of the year, "We will now evaluate all of our key personnel and executives based on performance to see whether or not their salary fully compensated them or whether they went beyond the call of duty and should be fully rewarded."

It was that selection process. It was sitting down with that individual, it was having that individual have to go home and say, "I didn't make it this year, I am outside the bonus system," and then explain it to his family because last year he might have been given \$3,000, \$4,000, \$5,000, \$6,000, at the end of the year or a person going home and saying, "I know, dear, I have been gone many nights, I have traveled weekends, I worked hard, but here is the \$6,000," or \$8,000 or whatever it may be, "to help our children get an education, and that extra work has been worthwhile."

The difference in approach that a family takes when they see that the company cares about them is what I am speaking about. The same thing is now true in the Federal Government. For the first time in the history of our Federal service we are able to evaluate and have given the power to supervisors to render judgment as to whether compensation has been adequate for the performance of an individual.

When two individuals sit side by side and one exerts 150 percent of his energy and one exerts 35 percent of his energy, at the end of the year they both may be getting the same compensation, at the end of the year to be able to take that 150-percent performer and really reward him, that makes a difference.

That is why this last month not only has the Foreign Service said they would like to come under this reward system, but also the intelligence services have petitioned, and the Export-Import Bank has come in and said, "We cannot hold our people. They are now going to the senior service that rewards them adequately."

The word is getting around that an outstanding performer really even in the Federal Government can now be rewarded and compensated, and it is not just the money. It is the fact that it has become a symbol in our society of outstanding performance.

So again I say in that one area, and this is why I think Dr. Campbell feels so strongly, we ought to be able to offer to the Foreign Service now that extra incentive for outstanding work because we all know people do not perform uniformly. They are all a composite of inner drives, and one of those drives that is ours is the fact that we may be rewarded, we may be recognized for what we have done, in addition to our good will in wanting to do the best job possible.

For that and a number of other reasons, I will regretfully oppose the substitute and ask our colleagues to support the committee bill.

Again I wish to also commend our distinguished colleague for the thoughtful way he has approached this problem. It is one of the big problems we have faced, he has provoked us into thinking there may be better ways of doing it. Certainly if there are better ways, the Sen-

ator from Illinois will always, just as we have this year now begun the reform of the civil service reforms passed a year ago, be looking at it not as set in concrete but as a moving, going thing, an entity that is so important that we must constantly find ways to improve it.

I do not overlook the fact that there is a body of support now among some personnel who would support the substitute, but I think overwhelmingly, as has been pointed out in the American Foreign Service Association release to us, is the fact that they do represent exclusively 11,000 AID and State Department Foreign Service personnel, and they have endorsed the Foreign Service Act of 1980.

They do point out that a worldwide survey of 283 posts in 114 countries shows that the people of the Foreign Service in that survey overwhelmingly supported the bill, and if we have any chance of passage of this reform, we would have to enact the committee bill and not the substitute.

The PRESIDING OFFICER. The Senator from Rhode Island has 2 minutes remaining.

Mr. PELL. I know the Senator from North Carolina would like an opportunity to rebut, so I will yield my 2 minutes to him.

Mr. HELMS. I thank the distinguished Senator for his courtesy, and I will not require the entire 2 minutes.

Mr. President, the distinguished Senator from Rhode Island mentioned as a disadvantage to my substitute the fact that it does not address the grievance procedure.

I am perfectly willing to modify my amendment along the lines of the Bayh bill (S. 2712) on grievance procedures which has already passed the Senate twice.

I ask, with the Senator's indulgence, that the Bayh bill be added at the conclusion of my pending substitute, and I have been informed by Senator BAYH's staff that the Senator from Indiana is agreeable to this procedure.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

Will he please send the modification to the desk?

Mr. HELMS. I so do.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

At the end of the HELMS amendment, UP 1573, add the following modification:

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the modification be dispensed with, and I thank the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modification is as follows:

At the end of the pending amendment, add the following:

Sec. 10. Delete sections 691 through 695 of the Foreign Service Act of 1946 and insert in lieu thereof the following:

Chapter 11.—GRIEVANCES

Sec. 691. DEFINITIONS; APPLICABILITY.—(a) (1) Except as provided in paragraph (2), for purposes of this chapter, the term

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"grievance" means any act, omission, document, or condition which is a source of concern or dissatisfaction to a member of the Service who is a citizen of the United States or to an exclusive representative and which is subject to the control of the Secretary or the Secretary of State (or both) and relates to terms and conditions of employment, including, but not limited to—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member;

(B) other alleged violation, misinterpretation, or misapplication of any applicable law, regulation, or published policy adversely affecting the career, reputation, financial condition, or terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action taken or likely to be taken against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member which is or could be prejudicial to the member;

(F) any action which is alleged to be in the nature of reprisal, or interference with freedom of action in connection with participation by the member in procedures under this chapter or in connection with the making of any disclosure or submission described in section 105(b)(2), (b)(3), or (c);

(G) any alleged denial of basic due process;

(H) any claim involving the effect, interpretation, or breach, of any collective bargaining agreements; and

(I) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2)(A) Subject to subparagraph (B) of this paragraph, the term "grievance" does not include, for purposes of this chapter, the judgment of a selection board established pursuant to section 602, a tenure board established pursuant to section 306(D), or any other equivalent body established pursuant to law or regulation which similarly evaluates the performance of members of the Service on a comparative basis.

(B) Notwithstanding subparagraph (A), the term "grievance" shall include a claim that a judgment described in subparagraph (A)—

(i) was based on any prohibited personnel practice described in section 2302(b) of title 5, United States Code;

(ii) was based on or constitutes falsely prejudicial information; or

(iii) was not made in accordance with law, rule, or regulation.

(b) For purposes of this chapter, the term "exclusive representative" means a labor organization which is accorded exclusive recognition under chapter 10.

(c) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce. When used in this chapter, the term "Secretary" shall refer to the head of a department or agency listed in this subsection.

SEC. 692. GRIEVANCES CONCERNING FORMER MEMBER.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse, former spouse, or another member of the family of a deceased member or former member of the Service may file a grievance under this chapter.

SEC. 693. FREEDOM OF ACTION.—(a) Any person filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(B)(1) Any grievant has the right at every stage of the proceedings to a reasonable number of representatives of his or her own choosing. An exclusive representative shall have the right to appear and present its views during any grievance proceeding.

(2) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this chapter.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d)(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards which are necessary to ensure confidentiality, in accordance with section 1108(d).

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department shall expedite security clearance procedures whenever necessary to assure a fair and prompt investigation and resolution of a grievance.

SEC. 694. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance, except that in the case of any grievance arising before the date of the enactment of this Act, the grievance shall be so barred, and not so considered and resolved, unless it is filed within 2 years after such date of enactment. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any (within sixty days after it is filed with the Department, a grievant shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 695. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 12 members, who shall be appointed under subsection (b).

(b)(1) The Members of the Board shall be appointed by the Secretary of State from individuals nominated under paragraph (2) and approved in writing by the exclusive representative for each agency to which this chapter applies and each such agency which has such an exclusive representative. Each member of the Board shall be appointed

for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section.

(2) Each appointment made by the Secretary of State under paragraph (1) shall be made from a written list of candidates submitted to the Secretary of State by any organization which is composed primarily of individuals who are experienced in the adjudication or arbitration of personnel matters.

(3) An individual shall be eligible for appointment as a member of the Board only if such individual—

(A) is not a current or former employee of the Department or a current or former member of the Service, or is not performing and has not previously performed services for the Department or Service (other than as a member of the Board);

(B) has the demonstrated ability, background, training, and experience necessary to be especially qualified to serve as a member of the Board; and

(C) demonstrates a capacity and willingness to devote sufficient time to service as a member of the Board in order to enable the Board to dispose of cases under this chapter in a timely manner.

(c)(1) A member of the Board may be removed from the Board—

(A) by majority vote of the members of the Board (other than the member who is the subject of the proposed action of removal); and

(B) only for inefficiency, neglect of duty, or malfeasance in office.

(2) Any member of the Board who is the subject of any proposed action of removal under this subsection shall be given notice and opportunity for a hearing before the Board prior to any vote of the members of the Board under paragraph (1)(A). Each agency and each exclusive representative shall be given the right to appear at the hearing and present its views. The Board may dispense with the opportunity for a hearing only upon the submission of a written waiver of the hearing to the Chair by the member subject to the proposed action.

(d) Each member of the Board who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate payable for GS-18 under the General Schedule under section 5332 of title 5, United States Code, including traveltime, for each day such member is engaged in the actual performance of duties as a member of the Board. A member of the Board who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Board shall be entitled to travel expenses and per diem allowances in accordance with section 5703 of title 5, United States Code.

(e) The members of the Board shall select from among the members of the Board a Chair who shall be the chief executive and administrative officer of the Board.

(f) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible

solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards necessary to ensure confidentiality, in accordance with section 1108(d).

SEC. 696. BOARD PROCEDURES.—(a) Procedures for the resolution of grievances in accordance with the purposes of this chapter shall be established by an agreement between the exclusive representative for each agency to which this chapter applies and each such agency which has an exclusive representative.

(b) Subject to any terms of an agreement under subsection (a), the Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. Unless the grievant requests otherwise, such hearings shall be open to public observation, except that the Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be closed to public observation because the public interest so requires. Testimony at a hearing shall be given under oath or affirmation, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing any witness under its control, supervision, or responsibility, except that if the Board determines that the absence of such witness from the hearing would not impair the presentation of the grievance or lessen the Board's assessment of credibility, the witness may be made available by deposition. If the witness is not made available in person or by deposition within a reasonable time as determined by the Board, the facts at issue shall be construed in favor of the grievant. Necessary costs and travel expenses shall be paid by the agency.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board may exclude any irrelevant, immaterial, or unduly repetitious evidence.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) The Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designated by the Chair, except that hearings within the continental United States shall be held by pan-

els of at least three members unless the parties agree otherwise.

The Board shall act through panels of at least 3 members in any grievance regarding any agency which has an exclusive representative. Members of any such panel shall be designated by the Chair for a fixed period of time and shall be approved in writing by the agency and the exclusive representative. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate.

(8) If the Board determines that the Department is considering any action which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions if such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence or if the Board otherwise considers it warranted.

(c) The provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is, in the interest of national defense or the conduct of foreign affairs, specifically prohibited from disclosure by any other provision of law or specifically required by Executive order to be kept secret.

SEC. 697. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board may order the Department—

(1) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5598(b)(1) of title 5, United States Code;

(2) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(3) to take any other remedial action that the Board deems appropriate.

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d) (1) If the Board finds that—

(A) the grievance is meritorious and orders that remedial action be taken that relates directly to promotion or assignment of the grievant, or

(B) the evidence before it warrants disciplinary action against any employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary of State.

(2) The Secretary of State shall make a written decision on the recommendation of the Board within thirty days after receiving the recommendation. The Secretary of State shall implement the recommendation of the Board except to the extent that, in a decision made within the 30-day period, the Secretary of State rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would adversely affect the foreign policy or national security of the United States. If the Secretary of State re-

jects the recommendation in whole or in part, the rejection shall fully state the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative.

(3) Pending the decision of the Secretary of State under paragraph (2), there shall be no ex parte communication concerning the grievance between the Secretary of State and any person involved in the proceedings of the Board. The Secretary of State shall, however, have access to the entire record of the proceedings of the Board.

SEC. 698. ACCESS TO RECORDS.—(a) If a grievant is denied access to any written information in the custody or available to the agency (hereinafter in this section referred to as "agency record") prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1) (A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the Secretary of State personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States. Any such certification shall be fully documented with the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

Any material furnished to the Board shall be furnished to the grievant or the grievant's representative at the same time. Whenever the furnishing of a personnel record or any other material may conflict with a regulatory or statutory provision protecting privacy or confidentiality the record shall be furnished promptly to the grievant or the grievant's representative only upon a certification, signed personally upon oath or affirmation, that the information contained therein will not be disclosed outside of the grievance proceedings. No employee of the Department participating in a proceeding on behalf of the Department shall disclose any information concerning a grievance to anyone not involved in the grievance proceedings. Violations of this section may be brought to the attention of the Board for appropriate action.

(e) If the Department fails to furnish to the Board any agency record promptly upon request, the Board shall construe the facts at issue in favor of the grievant if the Board determines the agency record may be relevant or material to the grievance. Consistent with the objective of expediting the resolution of grievances, the Board may make such a construction even if the agency record is submitted, if it was not submitted promptly after it was originally requested.

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(f) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board. The Board shall furnish the grievant or the grievant's representative with a copy of the record of the proceedings and the decision in any case considered by it.

SEC. 699. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. Except as provided in subsection (c), such an election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

(c) An election to raise a matter under grievance procedures in no way prejudices the right of an aggrieved party to request the Merit Systems Protection Board to review the final decision of the Grievance Board or to request the Equal Employment Opportunity Commission to review a final decision in any matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(d) Nothing in this act shall extinguish or lessen any right or remedy, including the right to trial de novo, of an employee or applicant for employment under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

SEC. 700. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of a final action on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of the title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

CONFORMING AMENDMENTS

Page 5, in the item relating to section 1101, strike out "Definition of grievance" and insert in lieu thereof "Definitions; applicability".

Page 17, line 3, strike out "section" and insert "Act".

Page 17, line 6, strike out "in the civil service".

Page 167, beginning on line 9, strike out "in any separation" and all that follows down through line 10 and insert in lieu thereof "in any grievance proceeding under chapter 11; or".

Page 69, line 22, insert a period after the word "grievances" and strike all that follows down through line 24.

Mr. HELMS. Mr. President, in addition, I am pleased to tell this body that my substitute amendment for S. 3058, would not affect the contractual agreement of the U.S. Government to the 900 or so workers at USICA and the Voice of America. Last week, my esteemed colleague from Maryland (Mr. MATHIAS), offered an amendment to the Foreign Relations Committee bill, which I, along with my other colleagues, adopted.

Certainly in the context of S. 3058, Mr. MATHIAS' amendment was necessary and appropriate.

My substitute, would not violate the agreement between AFGE Local 1812 and the U.S. International Communication Agency. Foreign Service domestics would continue to be in the same bargaining unit to which they now belong under Executive order 11636, a Republican Executive order. Their relations with their agency would be covered under section 5, the labor-management relations of my substitute. These "domestic" employees would have continued access to the grievance provisions for the Foreign Service.

My substitute amendment would maintain the status quo of the collective bargaining agreement. Those USICA employees who have or do decide to remain within the Foreign Service system could do so. Others could, under the terms of their representative's contract with USICA, voluntarily convert to civil service status.

Mr. President, I thank the distinguished Senator from Rhode Island for yielding.

The PRESIDING OFFICER. The Senator from Rhode Island now has 15 seconds remaining.

Mr. PELL. I yield back the 15 seconds and suggest we come to a vote.

Mr. HELMS. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute as modified by the Senator from North Carolina for his substitute for the bill.

The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from Louisiana (Mr. LONG), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "nay".

Mr. STEVENS. I announce that the

Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS) and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. BOREN). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 18, nays 66, as follows:

[Rollcall Vote No. 400 Leg.]

YEAS—18

Armstrong	Garn	Schweiker
Bayh	Hatch	Simpson
Bellmon	Helms	Stevens
Boschwitz	Humphrey	Thurmond
Byrd	Jepsen	Wallop
Harry F., Jr.	Laxalt	
Domenici	McClure	

NAYS—66

Baucus	Hayakawa	Nelson
Bentsen	Heflin	Nunn
Biden	Helms	Packwood
Boren	Hollings	Pell
Bradley	Huddleston	Percy
Bumpers	Inouye	Proxmire
Burdick	Jackson	Froyor
Byrd, Robert C.	Johnston	Ribicoff
Cannon	Kassebaum	Riegle
Chafee	Kennedy	Roth
Chiles	Leahy	Sarbanes
Church	Levin	Sasser
Cochran	Lugar	Schmitt
Cohen	Magnuson	Stennis
Danforth	Mathias	Stevenson
DeConcini	Matsunaga	Tower
Dole	McGovern	Tsongas
Durenberger	Melcher	Warner
Exon	Metzenbaum	Weicker
Ford	Mitchell	Williams
Gravel	Morgan	Young
Hatfield	Moynihan	Zorinsky

NOT VOTING—18

Baker	Goldwater	Stafford
Cranston	Hart	Stewart
Culver	Javits	Stone
Durkin	Long	Talmadge
Eagleton	Pressler	
Glenn	Randolph	

So Mr. HELMS' amendment (UP No. 1573), as modified, was rejected.

Mr. PELL. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PERCY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, obviously, a great many Senators did not understand the excellence of the substitute offered by the Senator from North Carolina. In view of the vote, I ask unanimous consent that the now-pending substitute be withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 2290) was withdrawn.

The PRESIDING OFFICER. Is there further amendment? If there be no further amendment, the question is on the engrossment and third reading of the bill.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

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The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask for order, because this is extremely important legislation.

The PRESIDING OFFICER. The Senate will be in order.

AMENDMENT NO. 2312

(Purpose: To restrict the use of the authority for career extensions)

Mr. PELL. Mr. President, I call up amendment No. 2312, now at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL) proposes an amendment numbered 2312.

Mr. PELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 67, line 2, immediately before the period insert ", subject to any career extension under subsection (d) of this section", and immediately after line 2, insert the following new subsection:

"(d) Notwithstanding any other provision of this section—

"(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) expires, or whose limited career extension under subsection (b) expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

"(2) if the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances."

On page 66, line 14 and 15, strike "in light of the recommendations of selection boards established under section 602 and the needs of the service," and insert in lieu thereof "in accordance with the recommendations of selection boards established under section 602."

Mr. PELL. Mr. President, what this amendment does is prevent the removal of senior officers for political reasons—a change in administration or something of that sort. It came up as a result of the testimony of a number of the witnesses who came before the Foreign Relations Committee. It is generally acceptable and I hope it can be accepted by my colleagues.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2312) was agreed to.

AMENDMENT NO. 2314

(Purpose: To prevent windfall pay increases through the Civil Service to Foreign Service conversion process)

Mr. PELL. Mr. President, I call up now amendment No. 2314.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL) proposes an amendment numbered 2314.

Mr. PELL. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 200, strike out lines 20 through line 3 on page 201 and insert in lieu thereof the following:

SEC. 2101. PAY AND BENEFITS PENDING CONVERSION.—(a) Until converted under the provisions of this chapter, individuals who were Foreign Service officers immediately before the effective date of this Act shall be treated for purposes of salary as follows:

(1) Individuals who were serving under appointments at class 2 or a higher class of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2103 of this Act on the first day of such pay period to the Senior Foreign Service in the appropriate class (as determined by the Secretary) established under section 402 of this Act.

(2) Individuals who were serving under appointments at or below class 3 of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2102 of this Act on the date specified in subsection (e) to the appropriate class and step (as determined under section 2106(a) of this Act) in the Foreign Service Schedule established under section 403 of this Act.

(b) (1) Except as provided in section 2104 (b), until converted under the provisions of this chapter, individuals who were Foreign Service Reserve officers or Foreign Service staff officers or employees immediately before the effective date of this Act shall be treated for purposes of salary in accordance with paragraphs (3) and (4) of this subsection.

(2) Not later than 30 days after the effective date of this Act, the Secretary—

(A) shall make an initial determination of the availability for worldwide assignment of each individual who was a Foreign Service Reserve officer or a Foreign Service staff officer or employee immediately before the effective date of this Act, and

(B) shall notify any such individual who is not initially determined to be available for worldwide assignment of that initial determination.

(3) Individuals who are initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as follows:

(A) Individuals who could be converted under section 2103 shall be paid as if they had been converted under section 2103, on the date specified in subsection (e) which begins on or after the effective date of this Act, to the Senior Foreign Service in the appropriate class (as determined by the Secretary) established under section 402.

(B) Individuals who could be converted under section 2102 shall be paid as if they had been converted under section 2102, on such date, to the appropriate class and step (as determined under section 2106(a)) of the Foreign Service Schedule established under section 403.

(4) (A) Individuals who are not initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as if they had been converted under section 2104(a), on the date specified in subsection (e), to the grade and step in the General Schedule which most closely corresponds to the class and step at which the individual

was serving immediately before the effective date of this Act, subject to the prohibition on reductions in basic rate of salary which is contained in the second sentence of section 2106(a) (1).

(B) If an individual who is not initially determined under paragraph (2) of this subsection to be available for worldwide assignment is subsequently converted under section 2102(a), 2103(b), or 2103(c) on the basis of a decision that the initial determination with respect to the availability of that individual for worldwide assignment was erroneous, the salary of that individual shall be adjusted, retroactively to the date specified in subsection (e), to the rate at which that individual would have been paid under paragraph (3) of this subsection if he or she had been initially determined to be available for worldwide assignment under paragraph (2) of this subsection.

(c) For the period beginning on the effective date of this Act and ending on the day before the date specified in subsection (e) (if such date occurs after the effective date of this Act), the individuals to whom this section applies shall continue to receive a salary at the rate at which they were being paid immediately before the effective date of this Act.

(d) Except as provided in section 2104(b), until converted under the provisions of this chapter, individuals who, immediately before the effective date of this Act, were Foreign Service officers, Foreign Service Reserve officers, or Foreign Service staff officers or employees, shall be treated for purposes of allowances and all other matters (except salary) as if they had been converted on the effective date of this Act under section 2102 or section 2103 (as appropriate for the class in which they were serving immediately before the effective date of this Act).

(e) Except as otherwise provided, any adjustment of salary under this section shall take effect on the first day of the first pay period which begins on or after—

(1) such date (on or after the date of enactment of this Act and before the effective date of this Act) as the President may specify by Executive order for purposes of this paragraph, or

(2) if the President does not specify a date under paragraph (1), the effective date of this Act.

Mr. PELL. Mr. President, in simplest terms, this amendment prevents a windfall salary increase for those individuals who convert from the Foreign Service to the civil service. Without this amendment, there would be a number of windfall increases, which would be both expensive and inadvisable. I hope my colleagues can accept this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment (No. 2314) was agreed to.

AMENDMENT NO. 2313

(Purpose: To make technical changes)

Mr. PELL. Mr. President, I call up amendment No. 2313.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL) proposes an amendment numbered 2313:

On page 42, line 4, immediately before "The" insert "(a)"; and between lines 12 and 13, insert the following new subsection:

"(b) (1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5, United States Code, and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate

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is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary for his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

"(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5, United States Code, immediately prior to such appointment."

On page 47, line 18, immediately after "compensation" insert "(including position classification)".

On page 52, line 4, immediately after "member" insert "and notwithstanding sections 5535 and 5536 of title 5, United States Code".

On page 78, line 10, strike out "abroad"; and in line 12, strike out "abroad".

On page 141, line 25, immediately after "United States" insert "(or any territory or possession of the United States or the Commonwealth of Puerto Rico)".

On page 158, beginning in line 25, strike out the comma and all that follows through and including line 2 on page 159 and insert in lieu thereof a period.

On page 173, beginning in line 16, strike out "the operations of" and all that follows through and including line 19 and insert in lieu thereof "the Department in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Department's operations shall not be an unfair labor practice)";

On page 192, line 1, strike out "of State"; and on page 194 lines 1 and 2, strike out "of State".

On page 219, line 21, strike out "the".

On page 225, line 14, strike out "and" and insert in lieu thereof a period; and in line 18, immediately after "prescribe" insert the following: "and (iii) under such regulations as the President may prescribe, individuals who are to perform duties of a more routine nature than are generally performed by members of the Foreign Service assigned to the lowest class of the Foreign Service Schedule may be appointed to an unenumerated class ranking below the lowest class of the Foreign Service Schedule and be paid basic compensation at rates lower than those of the lowest class, except that such rates may be no less than the then applicable minimum wage rate specified in section 6 (a) (1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a) (1))."

On page 228, line 7, immediately after the first period insert the following: "Such person is to be considered an employee of the United States Government for the purposes of any benefit under any law administered by the Office of Personnel Management."

On page 242, immediately after line 25, insert the following new section:

"SEC. 2305. SEVERANCE PAY.—Section 5595 (a) (2) (vi) of title 5, United States Code, is amended by inserting after 'to receive' the following: 'benefits under section 609(b) (1) of the Foreign Service Act of 1980 or any'". Redesignate former sections 2305 through 2314 as sections 2306 through 2315 respectively; and on page 245, line 16, strike out "2309(a)" and insert in lieu thereof "2310 (a)"; and on page 246, line 2, strike out "2309(b)" and insert in lieu thereof "2310 (b)".

On page 244, strike out lines 3 and 4 and insert in lieu thereof the following: "striking out (1) and all that follows through and including 'each type of education' and inserting in lieu thereof 'one annual trip each way for each dependent'".

On page 245, line 24, immediately before the first period insert a comma and the following: "except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed 25 percent of the basic pay of the employee".

On page 246, lines 11 and 12, strike out "in the Department of State".

On page 247, between lines 3 and 4, insert the following new subsection:

"(c) Section 6305(a) of title 5, United States Code, is amended by inserting immediately after 'States' in the first sentence '(or after a shorter period of such service if the employee's assignment is terminated for the convenience of the Government)'".

Beginning on page 243, strike out line 22 and all that follows through and including line 6 on page 254 and insert in lieu thereof the following:

"SEC. 2403. EFFECTIVE DATE.—(a) Except as otherwise provided, this Act shall take effect at the end of the 90-day period beginning on the date of enactment of this Act.

"(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.

"(c) Appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and application of the limitation in section 305(b) until October 1, 1985. Prior to that date, the number of members serving in the Senior Foreign Service under limited appointments by the Secretary of Commerce may not exceed 10 at any one time (excluding individuals with reemployment rights under section 310 as career appointees in the Senior Executive Service)".

On page 254, line 7, strike out "(2) The provisions of such chapter" and insert in lieu thereof "(d) (1) The provisions of chapter 8 of title I"; and beginning in line 9, strike out "such effective date" and insert in lieu thereof "the effective date of this Act"; and in line 12 strike out "(3)" and insert in lieu thereof "(2)".

Mr. PELL. Mr. President, this amendment consists of a number of technical changes in S. 3058. None of these changes has any significant or substantive impact. They have been gone over on all sides and I hope they can be approved.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment (No. 2313) was agreed to.

AMENDMENT NO. 2308

(Purpose: To make the effective date April 1, 1981)

Mr. HELMS. Mr. President, I call up amendment No. 2308 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2308:

On page 253, line 23, delete "October 1, 1980" and insert in lieu thereof, "April 1, 1981".

Mr. HELMS. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. HELMS. Mr. President, I was thinking just now of our former distin-

guished colleague from Wyoming, the delightful, inimitable Cliff Hansen. I came in this Chamber one time and, voting on one of his amendments, I said, "Is this your amendment, Cliff?" He said, "It is. It is an excellent amendment. It is good. It is beneficial to the country. It is fair and equitable and, naturally, it is being defeated."

That is how I felt when I saw the substitute go down because, in fact, Senators have not had time to study this issue, and I can understand that.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, this bill is 250 pages long. It makes sweeping changes in the personnel practices affecting thousands of Government employees. It requires perhaps hundreds of pages of new regulations to be written by the Secretary of State, all of them regulations which very well could have a dramatic effect on the way this bill is administered.

As Senators will note, the effective date of this bill was October 1, which is less than 3 weeks away. I simply do not think it is sound practice to write regulations and get the sweeping personnel changes underway with only 20 days.

It has been 34 years since the fundamental law was changed. Therefore, I think it is important the effective date of the bill be pushed forward by 6 months to give employees a better understanding of their new situations.

This amendment, therefore, would make the effective date of this bill April 1, 1981, and I move its adoption.

Mr. PELL. Mr. President, I think the motion of the Senator from North Carolina has merit. I have discussed it with the minority side. I advise my colleagues to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina.

The amendment (No. 2308) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HAYAKAWA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2309

(Purpose: To increase the rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories)

Mr. HELMS. Mr. President, I call up amendment No. 2309 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:
The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2309.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 97, after line 2, insert a new subsection as follows:

(m) (1) The rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories shall be increased by a rate equal to—

(A) one-tenth of 1 percent of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained, if such annuitant was held hostage or detained less than 30 days; or

(B) two-tenths of 1 percent of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained in excess of 30 days.

(2) For purposes of computing under subsection (a) the amount of the annuity for which each participant is entitled, the number of years of creditable service calculated under sections 816 and 817 shall be increased by 1 year for each month or fraction thereof a participant is so held hostage or detained less than 6 months and shall be increased by 2 years for each month or fraction thereof a participant is so held hostage or detained in excess of 6 months.

(3) A participant so held hostage or detained shall not have his annuity reduced by reason of his age.

Mr. HELMS. Mr. President, it is an unfortunate fact of life that respect for international law is standing more and more in the abeyance. We have seen more than one U.S. diplomat kidnapped, murdered, or held hostage. This problem is particularly egregious where a foreign state itself is the culprit in violating the concepts of diplomatic immunity.

I do not have to mention the hostages in Iran, nor the fact that they have been held captive for nearly 1 year. What counts is that the danger is always there, in these perilous days, and that any diplomat who serves abroad is subject to official terrorism even by foreign governments themselves.

I think that we should recognize this danger by providing increased retirement benefits, benefits which might be chosen immediately if need be. There are not only physical hazards, but mental and psychological hazards to which a hostage is uniquely subject. Sometimes, these effects create a permanent disability, as we saw in the recent case of Richard I. Queen.

My amendment would provide that the rate of annuity of any participant in the Foreign Service would be increased by one-tenth of 1 percent of the average basic salary, for each day detained for the first 30 days, and two-tenths of 1 percent for every day detained in excess of 30 days. This annuity would be available to him immediately as soon as he leaves Government service.

Mr. President, I urge the adoption of the amendment.

Mr. PELL. Mr. President, I realize the emotion, the compelling need, and the

situation that gives rise to this amendment. But my own view, and I think the view, more importantly, of the families of the hostages, is that they would prefer this be done in separate legislation.

I have earlier referred to a letter from Katherine Keough for the Family Lessor Action Group (FLAG) which says—it has already been printed in the Record—that while they are deeply grateful that Senator HELMS has addressed himself to this issue, that for the present, FLAG strongly prefers his support for swift enactment of the Hostage Relief Act rather than this amendment to the Foreign Service Act.

In this regard, the chairman of our committee (Mr. CHURCH) and I, and others, have cosponsored comprehensive legislation that we believe addresses the problem in a more thorough manner.

I hope in the light of this more comprehensive legislation which is pending before the Finance Committee, and in view of the wishes of the Family Liaison Action Group, that the Senator from North Carolina might be inclined not to press this issue to a vote.

Mr. HELMS. Mr. President, ordinarily, I would want to accommodate my friend in any way possible because he is a gentleman and he is, in fact, a dear friend of mine, and I respect what he has said.

However, I think it is time for the Senate to speak in terms of encouragement to those hostages and to others in the Foreign Service.

Whether this amendment is retained in conference would be up to the conferees. But I think the Senate ought to speak to this question.

Therefore, I ask for the yeas and nays on the amendment, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Wisconsin (Mr. NELSON), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE), are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators present who desire to vote?

The result was announced—yeas 41, nays 43, as follows:

[Rollcall Vote No. 401 Leg.]

YEAS—41

Armstrong	Durenberger	McClure
Bayh	Garn	Packwood
Bellmon	Hatch	Roth
Biden	Hatfield	Sasser
Boren	Hayakawa	Schmitt
Boschwitz	Heinz	Schwelker
Bradley	Helms	Simpson
Byrd,	Humphrey	Stevens
Harry F., Jr.	Jeppsen	Thurmond
Cochran	Kassebaum	Tower
Cohen	Laxalt	Wallop
Danforth	Long	Warner
Dole	Lugar	Welcker
Domenici	Mathias	Young

NAYS—43

Baucus	Huddleston	Pell
Bentsen	Inouye	Percy
Bumpers	Jackson	Proxmire
Burdick	Johnston	Pryor
Byrd, Robert C.	Leahy	Randolph
Cannon	Levin	Ribicoff
Chafee	Magnuson	Riegle
Chiles	Matsunaga	Sarbanes
Church	McGovern	Stennis
DeConcini	Melcher	Stevenson
Exon	Metzenbaum	Tsongas
Ford	Mitchell	Williams
Gravel	Morgan	Zorinsky
Heflin	Moyihan	
Hollings	Nunn	

NOT VOTING—16

Baker	Goldwater	Stafford
Cranston	Hart	Stewart
Culver	Javits	Stone
Durkin	Kennedy	Talmadge
Eagleton	Nelson	
Glenn	Pressler	

So Mr. HELMS' amendment (No. 2309) was rejected.

Mr. PELL. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 2310

(Purpose: To provide for appropriate examinations for certain salary classes of the Foreign Service and the Senior Foreign Service)

Mr. HELMS. I call up amendment 2310 and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:
The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2310.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair. The amendment is as follows:

On page 31, line 23, change the period to a dash, and insert between lines 23 and 24 the following paragraphs:

"(1) Notwithstanding any other provision of law, no person shall be eligible for initial appointment as a member of the Foreign Service of classes 5 through 9 unless such person has taken an appropriate written and oral examination, as the Board of Examiners for the Foreign Service may prescribe, to determine fitness and aptitude for the work of the Service and demonstrated loyalty to the Government of the United States and attachment to the principles of the Constitution. Part of the written examination shall test the applicant's knowledge of the geography, history, and political structure of the United States and of the major in-

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ternational events of the twentieth century. The Board of Examiners for the Foreign Service shall interpret the results of such examinations in the light of the ordinary clerical, technical, or professional duties which the applicants would perform in the Foreign Service.

"(2) Notwithstanding any other provision of law, no person shall be eligible for initial appointment as a member of the Foreign Service of classes 1 through 4 unless such person has taken an appropriate oral examination, as prescribed by the Board of Examiners for the Foreign Service, to determine the fitness and aptitude of the applicant."

Mr. HELMS. Mr. President, one of the most important elements in the morale of the Foreign Service is that of insuring that candidates for a service represent the highest quality personnel. Senators know the work of the Foreign Service is demanding, that it requires extensive knowledge of world affairs, geography, language, and sensitivity to other cultures, and it is important that not only the senior personnel have the assurance that the same high standards to which they were subjected for entry are maintained, but that new personnel have the self-confidence that they are ready to handle any assignment on worldwide availability.

Mr. President, the only way to do this, the only way to achieve this, is by written examination in the great tradition of the Foreign Service.

Unfortunately, this tradition has been watered down. There have been results of test scores set aside or reinterpreted. Worst still is the problem of lateral entry at higher levels by people who have never, never been examined, not even on languages.

I submit, Mr. President, that this is an abuse of the Service and it is an abuse that should be stopped.

Therefore, this amendment proposes that all candidates for appointment in classes 5 through 9 be given written examinations, but that the upper four classes should be examined also as to their professional competence, I doubt that a written examination is necessary in the latter case, but there should be at least the formality of an oral examination.

No examinations are proposed for the senior Foreign Service. Those in the senior Foreign Service will no doubt be under rigorous standards of selection promotion.

I think the amendment speaks for itself and, at a very minimum, Senators ought to agree to this. Therefore, I urge its adoption. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PELL. Mr. President, I have examined this amendment of the Senator from North Carolina. Referring to paragraph (2) where he speaks about oral examinations for senior officers 1 through 4, that is the present practice, so I do not think it is really necessary. There is no change between what is presently in the law and that of the amendment of the Senator from North Carolina. I believe the Senator will agree with me that paragraph (2) is a repetition of present procedure, present law.

Mr. HELMS. That is correct as to practice, but there is no requirement for a formal oral examination in law.

Mr. PELL. When it comes to paragraph (1) there is a change here where it requires that the examinations, written examinations, for junior officers cannot be waived by the Secretary of State as he is permitted to do in order to effectuate the affirmative action program.

This is a somewhat contentious provision, but it is one that is necessary at this time in order to provide for proper diversification and representation of all Americans in the Foreign Service, and I would recommend that this amendment not be agreed to.

Mr. PERCY. Mr. President, I would just ask the distinguished Senator from North Carolina if we required this kind of procedure with respect to hiring Senate employees, and we have to have a lot of Senate employees who have some knowledge of the world we live in, geography and history and so forth, that if we required every single one of them to submit to oral and written examinations, would this not unnecessarily burden the U.S. Senate?

Would it not place a tremendous amount of restrictions on the way we select people and in our discretion? Do we not feel that we as supervisors and our own department heads have enough discretion to select and pick people without overburdening formalities of written and oral examinations, to require them to go through tests on geography, history, U.S. political structure, major international events, and so forth?

It seems to the Senator from Illinois that we are trying to get away from as much regulation, as much rigidity in our system as possible and provide a little bit more flexibility. If we impose those same requirements on ourselves here in the Senate that we are now talking about in this amendment, imposing upon the entire Foreign Service these restrictions for lower ranks, is not this unnecessarily costly, and will it not remove the kind of flexibility we need to select people who can do these jobs, and really give discretion to a person who is a skilled interviewer?

I have known many people who can sit down and cram for an examination and get by with that and do reasonably well, but you would not think of hiring him. On paper he would look awfully good.

I wonder if the distinguished Senator could respond to that inquiry of the Senator from Illinois?

Mr. HELMS. I am delighted to respond to my friend from Illinois, and I will respond to his question with a question. Would the Senator advocate elimination of examinations for candidates for West Point and the other service academies?

What we are talking about is competence. I do not know about the Senator from Illinois, the Senator from Idaho, or the Senator from Rhode Island, but I have talked to Ambassadors and other representatives in the Foreign Service, and they are appalled by some of the personnel they are required to take.

Is it not reasonable to expect a candidate for such a sensitive, perilously responsible, position that is tied so closely to our foreign policy and the implementation thereof to pass a written examina-

tion? If we say here that, "Oh, no, we are not going to allow them to take a test; we are going to waive that. We will just bring them in so that we can fill this and fill that," and the rest of it as is now being done—according to Ambassadors I have been talking with, then what are we saying? I say, yes, we ought to have some way of knowing that there is competence and some way of measuring that competence. I think the American people, the taxpayers, are entitled to that. Certainly our foreign policy needs it. That is my response to the Senator.

Mr. PERCY. As I see the substitute requiring an examination for admission of lower staff officers in the specialist categories of the Foreign Service in all cases, I look upon the intent as that of maintaining high quality in the Service, and I think that is a laudable intent. But I do think we have to take into account that there would be two rather unfortunate results of the program. It will eliminate the minority and women's recruitment program for the Foreign Service, which has helped materially to enhance representativeness without reducing quality.

I submit for the RECORD several summaries of the progress which has been made in the Department of State, which will be endangered by the amendment. It would require specialists entering in the grades named, secretary, security officers, communicators, nurses, to take the general background examination now required of Foreign Service officer candidates.

Since recruitment is already difficult for some categories of specialists, this would place the service at a real disadvantage. Just as with the civil service, recruitment of Foreign Service specialists seems best handled by examination of professional credentials through a competitive process, as would be done under S. 3058. The Senator from Illinois feels that the provisions of S. 3058 are satisfactory. They have been looked at very carefully, indeed.

For that reason, I would oppose the pending amendment.

The summaries previously referred to follow:

DEPARTMENT OF STATE,
Washington, D.C., April 4, 1980.

MEMORANDUM

To The Secretary,
Through M. Ben H. Read.
From M/DGP.—Harry G. Barnes, Jr.
Subject Trends in FSO minority representation.

You asked me to send you the figures I had used in our Affirmative Action meeting April 2, with regards to trends in minority representation in the Foreign Service Officer Corps.

I mentioned that at the beginning of 1977 5.9% of our FSOs and FSO candidates were minorities. At the beginning of 1980 that figure stands at 8.3%. By way of illustrating the results of the emphasis we have put on affirmative action, I also gave the following figures for the Junior Officer ranks (as of the end of 1979):

	Percent
*0-6	13.6
*0-7	20.7
*0-8	36.0

With regard to the proportion of women, the corresponding figures are:

	Percent
0-6	20.0
0-7	23.0
0-8	30.0

*FSO and FSR Career Candidates.

DEPARTMENT OF STATE—MINORITY FOREIGN SERVICE OFFICERS AND CAREER CANDIDATES, DEC. 31, 1976, TO DEC. 31, 1979

	Dec. 31, 1976			Dec. 31, 1979		
	Total population	Total minorities	Percent	Total population	Total minorities	Percent
CA.....	1					
CM.....	40	1	2.5	31	1	3.2
FSO-1.....	311	6	1.9	320	12	3.8
FSO-2.....	305	10	3.3	302	7	2.3
Subtotal, senior level....	657	17	2.6	653	20	3.1
FSO-3.....	615	17	2.8	704	21	3.0
FSO-4.....	854	27	3.2	774	49	6.3
FSO-5.....	627	68	10.8	579	60	10.4
Subtotal, middle level....	2,096	112	5.3	2,057	130	6.3
FSO-6.....	340	20	5.9	474	14	3.0
FSO-7.....	283	1	.4	11		
FSO-8.....	85					
Subtotal, junior level....	708	21	3.0	485	14	2.9
Total, FSO.....	3,461	150	4.3	3,195	164	5.1
FSO/FSR-6, FSSO-4.....				575	78	13.6
FSO/FSR-7.....				246	51	20.7
FSO/FSR-8.....				50	18	36.0
Total, Junior officers (including career candidates) ¹				871	147	16.9
Total, FSO and career candidates.....				3,581	287	8.3

¹ Starting January 1978, junior officers are appointed as career candidates—FSR.

Note: With an intake of 59 minority officers during fiscal year 1980 we expect that minority FSO's and career candidates will comprise approximately 10 percent of the FSO Corps.

DEPARTMENT OF STATE—WOMEN FOREIGN SERVICE OFFICERS AND CAREER CANDIDATES, DEC. 31, 1976 TO DEC. 31, 1979

	Dec. 31, 1976			Dec. 31, 1979		
	Total population	Total women	Percent	Total population	Total women	Percent
CA.....	1					
CM.....	40	1	2.5	31	1	3.2
FSO-1.....	311	10	3.2	320	7	2.2
FSO-2.....	305	8	2.6	302	10	3.3
Subtotal, senior level....	657	19	2.9	653	17	2.6
FSO-3.....	615	34	5.5	704	36	5.1
FSO-4.....	854	56	6.6	774	66	8.5
FSO-5.....	627	85	13.6	579	107	18.5
Subtotal, middle level....	2,096	175	8.3	2,057	209	10.2
FSO-6.....	340	56	16.5	474	86	18.1
FSO-7.....	283	54	19.1	11	3	27.3
FSO-8.....	85	18	21.2			
Subtotal, junior level....	708	128	18.1	485	89	18.4
Total, FSO.....	3,461	322	9.3	3,195	315	9.9
Junior officers, including career candidates:						
FSO/FSR-6, FSSO-4.....				575	115	20.0
FSO/FSR-7.....				246	57	23.2
FSO/FSR-8.....				50	15	30.0
Total, Junior officers (including career candidates) ¹				871	187	21.5
Total, FSO and career candidates.....				3,581	413	11.5

¹ Starting January 1978, junior officers are appointed as career candidates—FSR.

² An additional 73 women mid- and junior-level FSO career candidates have been taken in since Jan. 1, 1980, for a total FSO and career candidate population of 486 women (less attrition) by Oct. 1, 1980. This represents 2.7 percent of a total 3,830.

DEPARTMENT OF STATE—WORK FORCE CHANGE, BY SEX, 1969-79

	Total		Men		Women	
	Number	Percent	Number	Percent	Number	Percent
Total work force (CS and FS):						
Dec. 31, 1969.....	12,899		8,279	64.2	4,620	35.8
Dec. 31, 1979.....	12,830		8,046	62.7	4,784	37.3
Change.....	-69	-0.5	-233	-2.8	+164	+3.5
All civil service (GS and GG):						
Dec. 31, 1969.....	3,329		1,238	37.2	2,091	62.8
Dec. 31, 1979.....	3,710		1,178	31.8	2,532	68.2
Change.....	+381	+11.4	-60	-4.8	+441	+21.1
All Foreign Service:						
Dec. 31, 1969.....	9,570		7,041	73.6	2,529	26.4
Dec. 31, 1979.....	9,120		6,868	75.3	2,252	24.7
Change.....	-450	-4.7	-173	-2.5	-277	-11.0
Foreign Service officer and career candidate:						
Dec. 31, 1969.....	3,304		3,130	94.7	174	5.3

	Total		Men		Women	
	Number	Percent	Number	Percent	Number	Percent
Foreign Service officer and career candidate—Continued						
Dec. 31, 1979.....	3,581		3,168	88.5	413	11.5
Change.....	+277	+8.4	+38	+1.2	+239	+137.4
Foreign Service Reserve and Foreign Service Reserve Unlimited:						
Dec. 31, 1969.....	1,404		1,289	91.8	115	8.2
Dec. 31, 1979.....	3,020		2,588	85.7	432	14.3
Change.....	+1,616	+115.1	+1,299	+100.8	+317	+275.7
Foreign Service staff and Foreign Service staff officers:						
Dec. 31, 1969.....	4,862		2,622	53.9	2,240	46.1
Dec. 31, 1979.....	2,519		1,112	44.1	1,407	55.9
Change.....	-2,343	-48.2	-1,510	-57.6	-833	-37.2

Source: PER/MGT/OS quarterly summary of employment (excluding noncareer chiefs of mission, FS/GS unclassified, consular agents, resident staff, wage board, WAE, and contract).

Mr. HELMS addressed the Chair. The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I must confess, with all due respect to my friend from Illinois, that I do not quite understand what he is saying. He mentioned that this would eliminate recruitment programs for minorities and women, if I understood him.

Is he saying that minorities and women are not qualified to pass the test? I do not understand the argument that he is making.

My argument is that everybody, regardless of race, creed, or sex, who is going to be employed by the Foreign Service, ought to be qualified and ought to be demonstrably so. I think that is a reasonable request. It seems to me to be demeaning to suggest that minorities and women are not qualified to pass a written exam.

I realize that certain people in the State Department, in their zeal to get a bill passed, have been calling around to all the Senators, saying: "Don't take any of HELMS' amendments. You will mess up the whole deal. We have got this deal cut over in the House, so don't take any Helms amendment."

I received a call Thursday from my good friend, the former Secretary of State, Cy Vance. He said, "Jesse, I hope that after your substitute is defeated"—and he certainly made a brilliant forecast on that—"that you won't offer any amendments."

I said, "Well, Mr. Secretary, let me go down the list on these amendments and see which one of them you find disfavor with." I went down the list, Mr. President, one by one. He said, "Well, I agree with that." "I agree with that." "I don't know about that one, but it sounds all right to me." At the conclusion of

the conversation, he said that they are good amendments, but he still did not want any vote on them. This is my friend Cy Vance. And, of course, Ed Muskie has been making the same calls to Senators. They do not want any amendment, no matter how much it improves this bill.

I say to you, Mr. President, that that is a very poor way to legislate. I have not advanced an amendment to any bill since I have been in the Senate that, as a Senator, I did not consider would be helpful to the intent of that amendment.

There is nothing frivolous about this. This is simply saying that you are going to take an examination and demonstrate that you are competent. And, under the American system that I love, what is wrong with that?

The State Department complains about the range of grades requiring written examinations. Well, let me point out,

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Mr. President, that these candidates are being appointed to positions which are ranking a person as high as a GS-12. What is a GS-12? By military standards, I say to my friend from Illinois, that is a position as high as captain in the Army.

Does my friend, or do any of my friends, suggest that there should be no examination, no demonstration of competence? It would be absurd for them to say that with respect to the Army. I say it is absurd to make that suggestion as to this bill.

I simply cannot comprehend why the State Department would not be eager to require a written examination for persons of the relatively senior position of captains and so forth.

I note with special interest the complaints about the difficulty in obtaining clerical personnel, notably secretaries, yet I am informed that the Office of Personnel Management regularly, itself, tests typists and secretaries for employment as civil service employees in Washington, D.C., for the State Department. So why the double standard? That office could easily provide the same testing service for Foreign Service personnel. So the question is: Why not?

Earlier this afternoon, Mr. President, I noted that recruiting better qualified personnel was one of the justifications for the 15-percent tax-exempt additional compensation. I am pleased to note that the Department concedes that it now has severe difficulty in recruiting secretaries. Certainly the 15-percent differential might be an inducement; it might save recruitment and personnel turnover costs.

The Senate can vote its will on this amendment, but I just do not understand how any Senator can step up here and say "nay" to an amendment that is simply calling for demonstrably ascertained competence.

I yield the floor.

Mr. PERCY. Mr. President, I will ask my distinguished colleague, because he made comments about this bill going without any amendment, can he ever recall, in his experience, when the Senator from Illinois was helping to floor manage a bill when the Senator from Illinois was not willing to consider amendments? I have no pledge of any kind to carry a bill clean into conference.

Mr. HELMS. Mr. President, if the Senator will yield, I did not imply, nor should he infer, that I was talking about him. He knows that he is my friend. I am simply saying that the lobbying from the Department was not to take an amendment from HELMS or anybody else. "Let's let this thing, greased as it is, go through." I am not talking about the Senator from Illinois.

Mr. PERCY. I can assure my colleague that the Senator from Illinois has not talked to a single person in the State Department.

I just happened to be in my office with Ambassador Helman having a meeting. He is here from Geneva. I had an appointment with him here at 3 o'clock. I asked him about the last amendment,

how he would view it as a Foreign Service officer and I got his judgment.

But I have not talked to the State Department officially about any aspects of this bill. I am simply going on my own experience as an employer. And I asked the question: Would we want to submit, for many of these ranks, a requirement that everyone hired by the U.S. Senate be submitted to that kind of oral and written examination, which would add a tremendous amount of cost and duplicity and effort for the kind of jobs that I feel we have adequate experience among ourselves to determine whether or not a person is qualified?

When we are trying to deregulate this Government and when we just stood out on the steps out here and heard the pledges that we made as Republicans for getting the heavy hand of Government out of a lot of things and directing and telling us what commonsense ought to tell us and forcing us to do things which we, in our judgment, do not feel at all cost effective, why would we turn around and come right back on a floor and then force the State Department to force persons in the lower categories to submit to oral and written examinations that we just do not feel require that kind of questioning?

That is why I raised the question and why I do not feel, in good judgment, that this is essential and certainly is not in accord with the desire to have our operations as flexible and as cost effective as possible.

If the Senator from North Carolina could convince me that this was absolutely essential, that we were hiring totally unqualified people and that would be corrected by this, but I have not really heard that argument or seen that measure of proof. For that reason, I cannot really see the need for it.

It is not the intention of the Senator from Illinois to just take a bill without amendments. The Senator from Illinois always has accepted amendments as a floor manager when he feels that they have improved the bill.

In fact, we welcome such amendments.

In this particular case, I just happen to disagree with my colleague.

Mr. HELMS. I know my good friend disagrees. We have always agreed to disagree agreeably. I love him for all that. But I would say to him that in hiring personnel for his office, he is not under any affirmative action gun. He is not under any political pressure to hire this person or that person. And he does not hire all that many people.

But I go back to my original statement, what we are talking about in terms of taking this examination are people who have as high as the equivalent military rank of captain in the Army. I do not think the Senator would suggest that there be no testing of someone being considered for a captaincy in the Army.

I do not know how much duplication, redtape, and so forth, is involved in a simple test. To tell you the truth, Mr. President, before I got into my study of this bill, I just assumed that that sort of thing was policy. Here I find that,

"No, we have written examinations, but we waive them whenever we want" which means that political appointments can be made of people who do not understand the languages or the cultures, or anything else. They even can make lateral entry at higher grades, without examination. Just plug them in because somebody wants to be in the Foreign Service.

I do not know, I cannot testify of my own knowledge, of course, as to how often that happens, but I think we ought to be in the position of having said on the floor of the U.S. Senate that it is not going to happen at all. All this amendment says is, "You will have a demonstrably competent candidate." That is all the amendment says; nothing more, nothing less.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I think the record should show that we have already accepted one amendment to this bill. This changed the effective date of the bill at the suggestion of the Senator from North Carolina, an excellent suggestion. So this bill is not without amendment already.

Another point to bear in mind is that if the pending amendment of the Senator from North Carolina is accepted, it would then mean that a new procedure would have to be brought into effect for secretaries and specialists whereby they would have to take examinations of the type that are given now only to Foreign Service officers. I think that we would find that would not be necessary. In any case, I am ready to vote on this matter.

Mr. HELMS. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to the amendment of the Senator from North Carolina. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. NUNN), the Senator from Mississippi (Mr. STENNIS), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. BAU-

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cus). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 19, nays 62, as follows:

[Rollcall Vote No. 402 Leg.]

YEAS—19

Armstrong	Humphrey	Thurmond
Boren	Jepsen	Tower
Boschwitz	Laxalt	Wallop
Exon	Lugar	Warner
Garn	McClure	Zorinsky
Hatch	Morgan	
Helms	Simpson	

NAYS—62

Baucus	Ford	Mitchell
Bayh	Gravel	Moynihan
Bellmon	Hatfield	Packwood
Bentsen	Hayakawa	Pell
Biden	Heflin	Percy
Bradley	Heinz	Proxmire
Bumpers	Hollings	Pryor
Burdick	Huddleston	Randolph
Byrd	Inouye	Ribicoff
Harry F., Jr.	Jackson	Riegle
Byrd, Robert C.	Johnston	Roth
Cannon	Kassebaum	Sarbanes
Chafee	Leahy	Sasser
Chiles	Levin	Schmitt
Church	Long	Schweiker
Cochran	Magnuson	Stevens
Cohen	Mathias	Stevenson
Danforth	Matsunaga	Tsongas
DeConcini	McGovern	Weicker
Dole	Melcher	Williams
Durenberger	Metzenbaum	Young

NOT VOTING—19

Baker	Goldwater	Stafford
Cranston	Hart	Stennis
Culver	Javits	Stewart
Domenici	Kennedy	Stone
Durkin	Nelson	Talmadge
Eagleton	Nunn	
Glenn	Pressler	

So Mr. HELMS' amendment (No. 2310) was rejected.

UP AMENDMENT NO. 1574

Mr. HELMS. Mr. President, I send an unprinted amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1574.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 185, strike out chapter 11 (beginning on line 4 and ending on line 18 of page 200) and insert in lieu thereof the following:

Chapter 11—GRIEVANCES

SEC. 1101. DEFINITIONS; APPLICABILITY.—

(a) (1) Except as provided in paragraph (2), for purposes of this chapter, the term "grievance" means any act, omission, document, or condition which is a source of concern or dissatisfaction to a member of the service who is a citizen of the United States or to an exclusive representative and which is subject to the control of the Secretary or the Secretary of State (or both) and relates to terms and conditions of employment, including, but not limited to—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member;

(B) other alleged violation, misinterpretation, or misapplication of any applicable

law, regulation, or published policy adversely affecting the career, reputation, financial condition, or terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action taken or likely to be taken against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member which is or could be prejudicial to the member;

(F) any action which is alleged to be in the nature of reprisal, or interference with freedom of action in connection with participation by the member in procedures under this chapter or in connection with the making of any disclosure or submission described in section 105(b)(2), (b)(3), or (c);

(G) any alleged denial of basic due process;

(H) any claim involving the effect, interpretation, or breach, of any collective bargaining agreement; and

(I) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2) (A) Subject to subparagraph (B) of this paragraph, the term "grievance" does not include, for purposes of this chapter, the judgment of a selection board established pursuant to section 602, a tenure board established pursuant to section 306(b), or any other equivalent body established pursuant to law or regulation which similarly evaluates the performance of members of the Service on a comparative basis.

(b) Notwithstanding subparagraph (A), the term "grievance" shall include a claim that a judgment described in subparagraph (A)—

(1) was based on any prohibited personnel practice described in section 2302(b) of title 5, United States Code;

(ii) was based on or constitutes falsely prejudicial information; or

(iii) was not made in accordance with law, rule, or regulation.

(b) For purposes of this chapter, the term "exclusive representative" means a labor organization which is accorded exclusive recognition under chapter 10.

(c) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce. When used in this chapter, the term "Secretary" shall refer to the head of a department or agency listed in this subsection.

SEC. 1102. GRIEVANCE CONCERNING FORMER MEMBERS.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse, former spouse, or another member of the family of a deceased member or former member of the Service may file a grievance under this chapter.

SEC. 1103. FREEDOM OF ACTION.—(a) Any person filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person, involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b) (1) Any grievant has the right at every stage of proceedings to a reasonable number of representatives of his or her own choosing. An exclusive representative shall have the right to appear and present its views during any grievance proceeding.

(2) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be

granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this chapter.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d) (1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards which are necessary to ensure confidentiality, in accordance with section 1108(d).

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department shall expedite security clearance procedures whenever necessary to assure a fair and prompt investigation and resolution of a grievance.

SEC. 1104. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance, except that in the case of any grievance arising before the date of the enactment of this Act, the grievance shall be so barred, and not so considered and resolved, unless it is filed within 2 years after such date of enactment. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within sixty days after it is filed with the Department, a grievant shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 1105. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 12 members, who shall be appointed under subsection (b).

(b) (1) The Members of the Board shall be appointed by the Secretary of State from individuals nominated under paragraph (2) and approved in writing by the exclusive representative for each agency to which this chapter applies and each such agency which has such an exclusive representative. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section.

(2) Each appointment made by the Secretary of State under paragraph (1) shall be made from a written list of candidates submitted to the Secretary of State by any organization which is composed primarily of individuals who are experienced in the adjudication or arbitration of personnel matters.

(3) An individual shall be eligible for appointment as a member of the Board only if such individual—

(A) is not a current or former employee of the Department or a current or former

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member of the Service, or is not performing and has not previously performed services for the Department or Service (other than as a member of the Board);

(B) has the demonstrated ability, background, training, and experience necessary to be especially qualified to serve as a member of the Board; and

(C) demonstrates a capacity and willingness to devote sufficient time to service as a member of the Board in order to enable the Board to dispose of cases under this chapter in a timely manner.

(c) (1) A member of the Board may be removed from the Board—

(A) by majority vote of the members of the Board (other than the member who is the subject of the proposed action of removal); and

(B) only for inefficiency, neglect of duty, or malfeasance in office.

(2) Any member of the Board who is the subject of any proposed action of removal under this subsection shall be given notice and opportunity for a hearing before the Board prior to any vote of the members of the Board under paragraph (1) (A). Each agency and each exclusive representative shall be given the right to appear at the hearing and present its views. The Board may dispense with the opportunity for a hearing only upon the submission of a written waiver of the hearing to the Chair by the member subject to the proposed action.

(d) Each member of the Board who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate payable for GS-18 under the General Schedule under section 5332 of title 5, United States Code, including traveltime, for each day such member is engaged in the actual performance of duties as a member of the Board. A member of the Board who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Board shall be entitled to travel expenses and per diem allowances in accordance with section 5703 of title 5, United States Code.

(e) The members of the Board shall select from among the members of the Board a Chair who shall be the chief executive and administrative officer of the Board.

(f) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards necessary to ensure confidentiality, in accordance with section 1108(d).

SEC. 1106. BOARD PROCEDURES.—(a) Procedures for the resolution of grievances in accordance with the purposes of this chapter shall be established by an agreement between the exclusive representative for each agency to which this chapter applies and each such agency which has an exclusive representative.

(b) Subject to any terms of an agreement under subsection (a), the Board may adopt regulations concerning its organization and

procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. Unless the grievant requests otherwise, such hearings shall be open to public observation, except that the Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be closed to public observation because the public interest so requires. Testimony at a hearing shall be given under oath or affirmation, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing any witness under its control, supervision, or responsibility, except that if the Board determines that the absence of such witness from the hearing would not impair the presentation of the grievance or lessen the Board's assessment of credibility, the witness may be made available by deposition. If the witness is not made available in person or by deposition within a reasonable time as determined by the Board, the facts at issue shall be construed in favor of the grievant. Necessary costs and travel expenses shall be paid by the agency.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board may exclude any irrelevant, immaterial, or unduly repetitious evidence.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) The Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designed by the Chair, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise.

The Board shall act through panels of at least 3 members in any grievance regarding any agency which has an exclusive representative. Members of any such panel shall be designated by the Chair for a fixed period of time and shall be approved in writing by the agency and the exclusive representative. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate.

(8) If the Board determines that the Department is considering any action which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such

action until the Board has ruled upon the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions if such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence or if the Board otherwise considers it warranted.

(c) The provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is, in the interest of national defense or the conduct of foreign affairs, specifically prohibited from disclosure by any other provision of law or specifically required by Executive order to be kept secret.

SEC. 1107. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board may order the Department—

(1) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(2) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(3) to take any other remedial action that the Board deems appropriate.

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d) (1) If the Board finds that—

(A) the grievance is meritorious and orders that remedial action be taken that relates directly to promotion or assignment of the grievant, or

(B) the evidence before it warrants disciplinary action against any employee of the Department or member of the Service,

it shall make an appropriate recommendation to the Secretary of State.

(2) The Secretary of State shall make a written decision on the recommendation of the Board within thirty days after receiving the recommendation. The Secretary of State shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary of State rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would adversely affect the foreign policy or national security of the United States. If the Secretary of State rejects the recommendation in whole or in part, the rejection shall fully state the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative.

(3) Pending the decision of the Secretary of State under paragraph (2), there shall be no ex parte communication concerning the grievance between the Secretary of State and any person involved in the proceedings of the Board. The Secretary of State shall, however, have access to the entire record of the proceedings of the Board.

SEC. 1108. ACCESS TO RECORDS.—(a) If a grievant is denied access to any written information in the custody of or available

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to the agency (hereinafter in this section referred to as "agency record") prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1) (A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the Secretary of State personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States. Any such certification shall be fully documented with the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) Any material furnished to the Board shall be furnished to the grievant or the grievant's representative at the same time. Whenever the furnishing of a personnel record or any other material may conflict with a regulatory or statutory provision protecting privacy or confidentiality the record shall be furnished promptly to the grievant or the grievant's representative only upon a certification, signed personally upon oath or affirmation, that the information contained therein will not be disclosed outside of the grievance proceedings. No employee of the Department participating in a proceeding on behalf of the Department shall disclose any information concerning a grievance to anyone not involved in the grievance proceedings. Violations of this section may be brought to the attention of the Board for appropriate action.

(e) If the Department fails to furnish to the Board any agency record promptly upon request, the Board shall construe the facts at issue in favor of the grievant if the Board determines the agency record may be relevant or material to the grievance. Consistent with the objective of expediting the resolution of grievances, the Board may take such a construction even if the agency record is submitted, if it was not submitted promptly after it was originally requested.

(f) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board. The Board shall furnish the grievant or the grievant's representative with a copy of the record of the proceedings and the decision in any case considered by it.

Sec. 1109. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been car-

ried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. Except as provided in subsection (c), such an election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

(c) An election to raise a matter under grievance procedures in no way prejudices the right of an aggrieved party to request the Merit Systems Protection Board to review the final decision of the Grievance Board or to request the Equal Employment Opportunity Commission to review a final decision in any matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(d) Nothing in this act shall extinguish or lessen any right or remedy, including the right to trial de novo, of an employee or applicant for employment under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

Sec. 1110. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of a final action on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

CONFORMING AMENDMENTS

Page 5, in the item relating to section 1101, strike out "Definition of grievance" and insert in lieu thereof "Definitions; applicability".

Page 17, line 3, strike out "section" and insert "Act".

Page 17, line 6, strike out "in the civil service".

Page 167, beginning on line 8, strike out "in any separation" and all that follows down through line 10 and insert in lieu thereof "in any grievance proceeding under chapter 11; or".

Page 69, line 22, insert a period after the word "grievances" and strike all that follows down through line 24.

Mr. ROBERT C. BYRD. Would the distinguished Senator yield?

Mr. HELMS. Certainly, I will yield to my good friend.

Mr. ROBERT C. BYRD. It is for an announcement.

Mr. President, it is the plan to finish this bill this evening. I am told by the distinguished Senator from North Carolina that he may have one more amendment, or he may not.

Mr. HELMS. Yes.

Mr. ROBERT C. BYRD. Then the Senate should be finished its work on this

bill by 5 o'clock, or 15 minutes after, something like that.

After that, there would be no more rollcall votes. After acting on this bill, there will be no more rollcall votes today. The Senate would go to the HUD appropriation bill for opening statements only, and then the Senate would go over until tomorrow.

ORDER FOR RECESS TO 10:30 A.M. TOMORROW

If the Senator will allow me to ask unanimous consent, I ask unanimous consent that when the Senate completes its business today it stand in recess until 10:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, under the order previously entered, the HUD bill would be laid down today, opening statements would be made, and that would be the business before the Senate tomorrow, after the recognition of Senators for whom any orders have been entered.

ORDER FOR RECOGNITION OF MR. M'GOVERN ON TOMORROW

Mr. ROBERT C. BYRD. I now ask unanimous consent to enter an order for Mr. M'GOVERN, for not to exceed 15 minutes, after the two leaders, under the standing order on tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Are there any other orders for the recognition of Senators tomorrow?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. Then, Mr. President, following the laying down of the HUD appropriation bill tomorrow, at no later than 12 noon, under the order previously entered, the Senate would lay aside temporarily the HUD appropriation bill and proceed to the military construction authorization bill; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. All right. I thank the distinguished Senator from North Carolina for his courtesy.

Mr. HELMS. Mr. President, this amendment would delete the grievance section of S. 3058 and replace it with what the Senator from North Carolina considers an improved version of the bill introduced by the distinguished Senator from Indiana (Mr. BAYH), which is S. 2712.

Now, the Chair will recall that this is the same amendment which I added by unanimous consent to my comprehensive substitute earlier this afternoon, which was defeated.

I might add that it has the strong support of the national office of the AFGE, AFL-CIO, and Local 1812.

For the benefit of Senators, perhaps I should summarize the effects of the pending amendment, which is a substitute for the grievance section of S. 3058.

Unlike the bill as originally drafted, this amendment guarantees an individual grievant the right to representation of his or her own choice.

The committee has adopted a similar amendment and, in view of the statutory

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base for the grievance procedure, the pending amendment simply continues this right.

Mr. President, the reported bill raises serious doubt about whether a grievant in a separation case is entitled to have this decision reviewed by the Equal Employment Opportunity Commission, and, where necessary, to obtain a trial de novo for the discrimination claim in the U.S. District Court.

I am confident it was not the intention of my distinguished colleagues on the Foreign Relations Committee to immunize the Department of State from enforcing the same obligation to provide equal opportunity currently applicable to both it and the other Federal agencies.

So, Mr. President, the pending amendment removes this ambiguity and, similar to an employee's status under the Civil Service Reform Act of 1978, preserves the rights of the Foreign Service officer's under the Nation's civil rights laws.

In what may have been a drafting oversight, the reported bill allows the agencies to appoint all the members of the Grievance Board. A marked departure from current practice where each agency and each employee representative have an absolute veto over each nomination to the board. Under the reported bill, whenever a disagreement arose, five agencies and two representatives would each nominate two candidates. Thus, there would be 10 agency nominees and 4 representative nominees. On the first round of the striking procedure, the five agencies would be able to eliminate the four candidates nominated by the employee representatives. The unfairness of this procedure is obvious and has been highlighted by a report from the officers of the Thomas Fund.

The Thomas Legal Defense Fund was established in 1971 to secure the constitutional protection for the rights of Foreign Service officers. The officers of the fund have distributed a report sharply critical of the changes made by the reported bill. In addition, the fund shares the alarm of the Thursday luncheon group, composed of minority members of the service, at the prospect that the grievance chapter will be crippled.

Mr. President, in earlier Congresses, the Senate has thoroughly considered the issue of an appropriate mechanism for resolving grievances in the Foreign Service. On several occasions, the Committee on Foreign Relations has recommended and the Senate has adopted the grievance legislation offered by my distinguished colleague from Indiana (Mr. BAYH). Unfortunately, we were never able to convince the House to go along wholeheartedly. In H.R. 6790 the House once again falls short of the Senate's consistent position on grievance legislation.

I believe that no thorough review of the legislation charter for the Foreign Service can be complete without an effort to achieve some of the gains found in the earlier legislation so favorably approved by the Senate. I must confess, however, that my substitute does not reach the full measure of protection afforded by S. 2712, the Bayh bill passed by this body in earlier years. I would like to ex-

plain some of the departures from the Bayh bill.

First, I have added a limiting phrase to the general definition of grievance so that the dispute must "relate to terms and conditions of employment." I do not intend by the addition of this phrase to preclude any matter currently grievable from being resolved through the procedure in my substitute. In fact, my substitute enlarges the definition of grievances beyond that found in current law. I wish to inform my colleagues, however, that by use of this limiting phrase, I specifically intend to make it clear that the policy content of foreign affairs decisions is not subject to the grievance procedure. I believe that the claim that the content of policy decisions would be grievable was an inaccurate criticism of the Bayh bill. This limiting phrase eliminates any basis for such a charge against my substitute.

In a second departure from the bill, approved earlier by the Senate, I specifically exclude the subjective judgments of selection boards from the definition of grievance. Where, however, a selection board has engaged in a prohibited personnel practice or otherwise violated law, rule, or regulation, its decision would be grievable.

Perhaps the most criticized facet of the Bayh legislation is its requirement that the members of the Grievance Board be selected on a tripartite basis, with one selected by agency management, one by the employee representative, and one by the other two members. My substitute eliminates this tripartite composition of the Grievance Board, while building on the Board's current practice of acting through panels.

My substitute allows the Secretary of State to refuse to provide information, and even to implement certain decisions of the Grievance Board, if he finds that it would adversely affect the foreign policy or national security of the United States. These provisions are a profound departure from the normal procedure for resolving disputes where the third-party decision is final and binding on all parties. Although I am hesitant about allowing one side to a dispute to have the power to ignore the decisions of the Grievance Board, I believe that my substitute contains adequate safeguards as that the Secretary's power will not be used arbitrarily or otherwise abused.

My amendment also contains guarantees for the protection of confidential information and allows the grievant the right to close a grievance hearing. Where, however, the grievant desires an open hearing, the Board would be required to honor the request unless it found good cause to do otherwise.

In conclusion, I urge my colleagues to vote for this substitute. It avoids the unfortunate provisions of the reported bill which have come under increasing criticism. The substitute also avoids those features of the grievance legislation approved by the Senate but which have raised the greatest objection. Most importantly, the substitute places the Senate on record—once again—in favor of expanding the guarantees of basic fairness in the Foreign Service.

Mr. PELL. Mr. President, I appreciate the motives and the reasons for the submission of this amendment. I ask one question of the Senator from North Carolina: Is this basically the Bayh bill that the Senator from North Carolina has submitted?

Mr. HELMS. It is, I say to my friend.

Mr. PELL. This is a bill we have considered before, and I wanted to identify it, to know exactly what we are talking about.

We thought there were many parts of the Bayh proposals that were excellent. In fact, the grievance provisions in the bill before the Senate, S. 3058, move in the direction of Senator BAYH's proposal in several key respects. For example, the grounds on which management can overturn Grievance Board decisions have been sharply narrowed, so that only true national security grounds provide justification for doing so.

Then, as the Senator from North Carolina has mentioned, our Foreign Relations Committee added a provision which confirms that "the grievant has a right to a representative of his or her own choosing at every step of the proceeding."

Richard I. Bloch, the Chairman of the Foreign Service Grievance Board and an arbitrator for a number of Federal agencies—IRS, Labor, Treasury, Justice, and others—says that the present Foreign Service grievance system "is the single best Federal sector system we know * * * well structured and for the most part adequately responsive to the needs of the parties."

The Grievance Board is working well and meets in a fair and constructive fashion the needs of management and the employees.

In this regard, the composition of the Board is exactly as the Senator from North Carolina has said. But we also should bear in mind that the list from which the members are drawn is a negotiated list, agreed upon by the organizations representing the employees.

When it comes to support, while the AFGE supports this measure, it is representative of only 2,000 employees; but the American Foreign Service Association, which supports the bill before the Senate, represents some 11,000 people, or almost six times as many in the Foreign Service.

Also, we have to keep in mind the rights of the individual, fairness to the individual, as well as flexibility of assignment and the national interests of the United States. Those really are paramount.

One of the problems with the Bayh approach is that a man or woman assigned to an unattractive post could bring a grievance.

The whole idea of the Foreign Service is that you go where you are assigned. It is a disciplined service. There may be an occasional unpleasantness in it, as there may be in the military service; but, in general, I believe the system works well and fairly. Here, I speak with some experience, because I served in it for a half-dozen years.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. On this question the yeas and nays have been ordered.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask unanimous consent to have printed in the RECORD a statement from the Thomas Legal Defense Fund.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

CRIPPLING THE FOREIGN SERVICE GRIEVANCE PROCEDURE: THE PROPOSED FOREIGN SERVICE ACT OF 1980 (H.R. 6790/S. 3058)

INTRODUCTION

The United States Senate and the House of Representatives are currently considering a bill which, in part, would amend the existing grievance legislation for the Foreign Service passed by the Congress in 1975. Written by the Department of State as a new "Foreign Service Act," H.R. 6790/S. 3058 has already received committee action in each House.

The "Foreign Service Grievance Act" (H.R. 7446/S. 2712), has also been introduced in both Houses and contains grievance provisions taken from the bill which was reported favorably by the Committee on Foreign Relations and passed by the Senate during the Ninety-Second and Ninety-Fourth Congresses. The Department has opposed changing its bill to incorporate the grievance provisions of H.R. 7546/S. 2712.

The Thomas Legal Defense Fund was established in 1970 when it became obvious that judicial protection would be necessary to secure the constitutional rights of officers employed in the foreign affairs community.

Through *Lindsay v. Kissinger*, 367 F. Supp. 949 (D.D.C. 1973), the Fund won the landmark affirmation that fair hearing and due process must be provided within the Foreign Service. This decision eventually led to the Department of State's acceptance of grievance legislation in 1975.

The Thomas Fund has consulted with attorneys familiar with current operations under the Foreign Service grievance system and has concluded that the provisions of the proposed Foreign Service Act would substantially reduce the protections already granted Foreign Service members under current law. The Department's communications to Congress and the foreign affairs community avoid discussing these "take-away" provisions. Since it has been the experience of the Fund that Department officials are inclined to take advantage of any opportunity presented by an ambiguous regulation or statute, the officers of the Fund determined that it is crucial to alert the foreign affairs community to the changes made in existing law by the proposed Foreign Service Act. Because the Bayh-Derrick bill has been adopted in earlier Congresses by the Senate and is being offered as an alternative to Chapter 10 of the proposed Foreign Service Act, it is also discussed.

The Thomas Legal Defense Fund has had this report prepared as part of its continu-

ing efforts to ensure that the Foreign Service is treated in accordance with principles of fairness and due process.

(Note: Other interpretations exist to this report's "worst case" analysis. If the grievance changes survive Congressional scrutiny and achieve passage, the Thomas Fund will continue to press for the most favorable construction of the new law.)

ANALYSIS

1. Confidence in the integrity of the grievance board.

The heart of any effective mechanism for resolving disputes is confidence in the integrity of the entity deciding those disputes. Under current law, all members of the Foreign Service Grievance Board are appointed with the approval of all of the foreign affairs agencies and employee bargaining representatives. Each employee representative now has an absolute veto over the appointment of each member to the Grievance Board.

H.R. 6790/S. 3058 would eliminate this veto by the employee representative. The bill provides instead a striking procedure whenever an agency fails to agree with a representative on Board members. The striking procedure would in effect, allow the agencies to appoint the members of the Board, thereby undermining confidence in the integrity of the Board and in the impartiality of its decisions.

Unlike most of the act, the grievance procedure would apply to the Departments of Agriculture and Commerce.

Under the proposed striking procedure, each agency (State, IDCA, USICA, Agriculture, Commerce) and each employee bargaining representative (AFSA, AFGE) would nominate two people. The five agencies and the two representatives would then alternate in striking names from the list of nominations. It thus appears that agencies would first be allowed to "stack the deck" by nominating ten of the fourteen candidates and then would get a second advantage by being able to strike more names from the stacked list than the representatives could. In fact, the five agencies would be able to eliminate all four candidates proposed by the representatives on the first round of the striking procedure. No justification for this departure from a neutral Grievance Board appears to have been presented by the bill's proponents.

The bill would also allow the Secretary to remove unilaterally any member of the Grievance Board for certain specified cause. Under current law, neither the agencies nor the representatives may remove a Board member unilaterally.

H.R. 7546/S. 2712 would establish a "tripartite panel" with one member of the Grievance Board appointed by agency management, one by the bargaining representative, and one by each of the other two members from a roster agreed upon by the Secretary and the bargaining representative. Tripartite panels are a common feature of dispute resolution mechanisms for professional public servants.

2. Definition of grievance.

The proposed Foreign Service Act (H.R. 6790/S. 3058) appears to exclude from the grievance procedure low-ranking decisions by the selection boards. With the limitation on time-in-class found in the Foreign Service personnel system, improper low-ranking can quickly result in an officer's being selected out improperly. Thus, the legality and validity of an initial low-ranking decision is crucial to an officer's career.

Under current law, a low-ranking decision must be accompanied by a statement of reasons documented by the performance file. Failure to comply with this and other requirements can now be successfully challenged before the Grievance Board. The process by which low-ranking decisions are made

is sufficiently imperfect that some officers have even persuaded management officials at the Department level to overturn low-ranking decisions. The bill's proponents do not appear to have offered any justification for narrowing the scope of grievances from current law and have neither identified nor explained their proposed immunity for improper and invalid low-ranking decisions.

The proposed act would also expressly allow the Department and a bargaining representative to further restrict by agreement an officer's statutory right to resolve a grievance.

As passed by the Senate in two earlier Congresses, the proposed grievance bill (H.R. 7546/S. 2712) would expand the definition of grievance to include promotion decisions. This bill also contains express coverage for all violations of due process. All actions grievable under current law would continue to be grievable under the expanded scope of grievances in this bill. Although the Senate Committee on Foreign Relations added general language to the prefatory section of S. 3058 urging that the Foreign Service be governed by due process principles, the Committee did not expand the bill's definition of grievance to include due process violations specifically.

3. Freedom of action.

Under current law, a grievant is entitled to have the grievance processed by a reasonable number of representatives chosen by the grievant. Some grievants have preferred to avoid using lawyers and instead rely on a couple of colleagues to be their representatives. This practice has facilitated the thorough and expeditious processing of grievances. The Fund knows of no general assertion by the Department that excessive representation has been sought under current law.

The House bill (H.R. 6790) would require that a grievant be represented by the exclusive bargaining agent for the bargaining unit to which the employee belongs (AFSA for State and IDCA, AFGE or USICA). No longer would the Foreign Service member be able to choose his or her own representatives and use the grievance procedure without the bargaining agent. The Department's explanation for this change included an erroneous conclusion that such practice is common elsewhere and omits the obvious reference to 5 U.S.C. 7114(a)(5) which grants to civil servants using a statutory procedure the right to select their own representative.

The Senate bill (S. 3058) would allow an employee to choose a representative other than the exclusive bargaining agent, but its language omits any reference to the "reasonable number of representatives" found in several sections of the current law. This omission could allow the Department to claim that the existing right to a reasonable number of representatives has been repealed.

4. Decisions of the board.

Under current law, certain decisions of the Board are not binding on the Department. These decisions include those on reinstatement, promotion, assignment, or disciplinary action, and those providing remedial action which is not stated specifically in the statute. The Department may ignore the Board decision on these subjects if it claims that the "needs of the Service" or that the "efficiency of the Service" justifies such action. Experience indicates that the Department is quite willing to exercise this discretionary right to reject third-party decisions.

The proposed act (H.R. 6790/S. 3058) would eliminate both efficiency and the needs of the service as grounds for rejecting a Board decision. The bill would still allow the Department to ignore a Board decision if, in the opinion of the Department, the decision was contrary to law or would adversely affect foreign policy or national security. As with access to written records (below), the bill appears to leave the determination that a decision is contrary to law solely with that side in the dispute which had already been

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found by the Grievance Board to have engaged in illegal or improper conduct.

The grievance bill (H.R. 7546/S. 2712) specifies that only the Secretary himself may reject a recommendation of the Grievance Board, and then only for national security or foreign policy reasons with full documentation required.

5. Access to written records.

Current law requires that the Department supply a grievant with records which the grievant requests and the Board believes are relevant and material. If the head of the Department or his deputy determines that disclosure would adversely affect foreign policy or national security, access to the record is barred. The agency determination is final, subject to judicial review.

The proposed act (H.R. 6790/S. 3058) seems to provide the Department with additional rationales, and thus opportunities, for refusing to disclose information even when that information is relevant to the grievance. In allowing the Department to refuse to decide whether disclosing particular information is prohibited by law, the bill could be interpreted to give the Department unilateral and final authority to determine whether a grievant is entitled to access to agency documents.

The grievance bill (H.R. 7546/S. 2712) would require the Department to furnish the grievant with any document he requests that the Board determines is relevant and material. Where bona fide security concerns exist, the bill directs the Department to expedite necessary security clearances.

Currently, the Department too often refuses to provide information in a timely fashion even when such information could forestall a grievance. No bill addresses this practice of delay and waste and expense it causes.

CONCLUSION

The proposed Foreign Service Act would radically alter the existing structure for resolving grievance in the Foreign Service. The legislation would deprive Service members of the right to challenge instances of agency misconduct that are currently grievable. It would allow the agencies to appoint the Grievance Board unilaterally. It would then allow this agency-appointed entity to further restrict the grievance procedure over the objections of employee representatives. All these changes depart from the well-established principles governing the resolution of disputes.

State Department Officials drafted many of these changes in oblique language. Since the changes almost uniformly favor the Department at the expense of the members of the Foreign Service, and the Department has not publicized their impact within the foreign affairs community, the proposed legislation must be seen as a covert attempt to disrupt and dismantle the Foreign Service grievance procedure.

Mr. HELMS. Mr. President, I am ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. Mc-

GOVERN), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. NUNN), the Senator from Mississippi (Mr. STENNIS), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from South Dakota (Mr. PRESSLER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators wishing to vote?

The result was announced—yeas 36, nays 45, as follows:

[Rollcall Vote No. 403 Leg.]

YEAS—36

Armstrong	Garn	Mathias
Baucus	Hatch	McClure
Bayh	Hatfield	Melcher
Bellmon	Helms	Roth
Boschwitz	Helms	Sarbanes
Chafee	Humphrey	Sasser
Cochran	Jepsen	Schweiker
Cohen	Johnston	Simpson
DeConcini	Kassebaum	Stevens
Dole	Laxalt	Thurmond
Domenici	Levin	Wallop
Ford	Lugar	Zorinsky

NAYS—45

Bentsen	Hart	Pell
Biden	Hayakawa	Percy
Boren	Heflin	Proxmire
Bradley	Hollings	Pryor
Bumpers	Huddleston	Randolph
Burdick	Inouye	Ribicoff
Byrd	Jackson	Riegle
Harry F., Jr.	Leahy	Schmitt
Byrd, Robert C.	Long	Stevenson
Cannon	Magnuson	Tsongas
Chiles	Matsunaga	Warner
Church	Metzenbaum	Welcker
Danforth	Mitchell	Williams
Durenberger	Morgan	Young
Exon	Moynihan	
Gravel	Packwood	

NOT VOTING—19

Baker	Javits	Stennis
Cranston	Kennedy	Stewart
Culver	McGovern	Stone
Durkin	Nelson	Talmadge
Eagleton	Nunn	Tower
Glenn	Pressler	
Goldwater	Stafford	

So. Mr. HELMS' amendment (UP No. 1574) was rejected.

AMENDMENT NO. 2304

(Purpose: To require the Secretary to notify Congress of the number of Foreign Service personnel assigned to positions higher or lower than their personal rank)

Mr. HELMS. Mr. President, I call up amendment No. 2304 and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2304.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 54, at the end of line 24, add the following sentence: "The Secretary shall notify Congress annually of the numbers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names and grades of such personnel shall be transmitted in a confidential manner to assure privacy and to safeguard national security."

Mr. HELMS. Mr. President, official State Department figures furnished to me by the Congressional Budget Office show that at the present time the Foreign Service has a total of 1,550 officers in classes 1 and 2, but according to State's own classification system, there is a need for only 1,236. That means that there is an overcomplement of 314.

This information is more than double the totals which I had been told before. That is a 25 percent overstaffing in the upper ranks—counting by the Department's own measurement. This clearly shows that the selection-out process is not working.

Moreover, this is based on a job-classification system of State's own devising. I would suggest that an objective job-classification system, such as has been used throughout the government for 50 years, might come up with a different measure.

Mr. President, this legislation (S. 3058) requires that all jobs in the Foreign Service be classified as to skill and other job factors required. My amendment would require the Secretary to inform Congress annually of the numbers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names of such personnel would be transmitted on a confidential basis to assure privacy and national security.

This is just an amendment which would enable Congress to keep better check on the efficiency of the administration of the Foreign Service. At the moment we do not know whether a large number or a small number of officers are assigned to positions which are above or below their grades and salary levels. I think this information should be available to Congress on a regular basis, and that is the purpose of this amendment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. TSONGAS). Without objection, it is so ordered.

Mr. PELL. Mr. President, as I understand this amendment, all it does, and I am reading the text, it requires:

The Secretary shall notify Congress annually of the numbers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names and grades of such personnel shall be transmitted in a confidential manner to assure privacy and to safeguard national security.

What this amendment does is require an annual report. I have discussed this with my colleagues and the administration and believe it is an acceptable amendment. I ask that it be supported.

Mr. PERCY addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. Mr. President, it is true that most Foreign Service personnel are assigned to positions identical to their own personal rank, but somewhat more members are serving above their personal grade than below. I think that the amendment, therefore, would be perfectly in order. There is no opposition at all to submitting such a report. From this side of the aisle, I know of no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina (Mr. HELMS).

The amendment (No. 2304) was agreed to.

○ Mr. BAUCUS. Mr. President, I rise in support of S. 3058, the Foreign Service Act of 1980, which is the bipartisan product of several years of study and experience, and which is well-designed to strengthen the Foreign Service of the United States and the conduct of foreign policy.

Events of recent years have vividly demonstrated the need for a strong, professional Foreign Service. The men and women of our Foreign Service are called upon to serve all over the world, often under difficult or hostile conditions. Their task is of vital importance to the security of the United States and to the cause of peace. The legislative basis for the present-day Foreign Service goes back to 1946; the world has changed enormously since then, and so have the demands on our Foreign Service people operating on the front lines in carrying out America's relations with other nations—both friends and adversaries, rich and poor.

I have examined the major provisions of the bill under consideration, and I am satisfied that it brings the mandate and structure of the Foreign Service abreast of the times we now live in; it is an excellent basis for the future development of our professional Foreign Service. This act delineates clearly the criteria characterizing the Foreign Service and setting it apart from the Civil Service, emphasizing the principle of availability for assignment worldwide.

It provides for the highest standards for initial hiring and for promotions and assignments throughout the career, establishing a framework for thorough training in foreign languages and the many other skills of particular importance in the conduct of international relations. At the same time, the present legislation establishes a structure parallel to that of the Civil Service in areas where the two personnel systems are compatible, such as in the establishment of a Senior Foreign Service essentially similar to the Senior Executive Service, and in the commitment to Equal Employment Opportunity.

The Foreign Service Act of 1980 will set our Foreign Service on a sound footing for many years to come, while re-

solving areas of confusion and inequities that have crept in over the years since passage of the 1946 act. It is appropriate that in this year when members of the Foreign Service have been subjected to extreme risks, even of life and liberty, that this body should manifest by passage of this act its concern and high regard for the men and women of the Foreign Service and for the key role they play in the conduct of foreign relations.

I congratulate the managers of the legislation, of both parties and in both houses of Congress, for the excellent work they have done in preparing this act for our favorable consideration, and I urge my colleagues to join me in voting for its passage.○

○ Mr. DOLE. Mr. President, the Senator from Kansas rises to speak today in favor of S. 3058, the Foreign Service Act of 1980. This is a piece of legislation long overdue, and many years in the making. Before addressing the merits of the bill, however, I would like to add to the comments of my colleagues in expressing appreciation to the Senator from North Carolina (Mr. HELMS) for his efforts on this subject. The provisions of this bill, which reform and consolidate the Foreign Service legislation enacted since the last comprehensive Foreign Service Act of 1946, have been worked out carefully over a period of years. Many compromises were required before the legislation could reach this point of final passage. The bill is complex, arcane in many areas, and the result of numerous hearings and studies, both by the Congress and the State Department.

In my opinion of the Senator from Kansas, Senator HELMS has done the Senate a signal service by subjecting the committee bill to a final scrutiny. It is necessary in a bill such as this to make sure that the bill as a whole carries out the spirit and intent of its many parts. By offering the substitute for the committee bill and several amendments, the Senator from North Carolina has caused many of his colleagues to review the pending legislation with a sharper focus than otherwise might be the case, and I thank the distinguished Senator from North Carolina.

EQUITY IN PAY

One of the major revisions in this bill is an attempt to make Foreign Service officer (FSO) salary levels relate more closely to other Government pay structures, while reflecting the extra hazards, dangers, and material inconveniences that being in the Foreign Service or our Nation entails. As I have expressed before, the Foreign Service Reform Act is the product of years of discussion and a great deal of lobbying and compromise this year. The House version passed 239 to 78. It has a very good and equitable pay structure which addresses the inadequacies of the present situation, which have occurred over the past several years. The Senate version is very similar; the major difference appears to be the administration attempt to lower the proposed adjustments in pay by using nonspecific language in the Senate bill, in the hope that a lower figure can be

reached as a compromise with the House level in a conference.

The Foreign Service, like the military, has been losing people particularly at the midlevels, and suffers from low morale. The FSO organization essentially claims that the administration's pay structure would equate Foreign Service salaries with comparable Civil Service positions, but not adequately take into account the hazards of FSO careers and the expenses and inconveniences of constant moving overseas. It is estimated, for instance, that for every year served in subequatorial Africa a Foreign Service officer can expect a statistical decrease of several years in life span due to chronic disease or debilitating illness. It is the opinion of the Senator from Kansas that a revision in pay scale, particularly at the midlevels, is long overdue.

SPOUSE RIGHTS

A major amendment, incorporated in the Senate bill, is a provision to allow former wives of FSO's who were unable to pursue careers while accompanying their spouses around the world, to collect part of the pensions after a divorce. The amount would be determined in court during the divorce proceeding. There are some who would delete this provision, preferring to leave to the courts any decision involving alimony and claiming that the courts already have the power to adjudicate the issue. This is not the case in some States and leaves in many cases the divorcee unprotected in the event the FSO dies.

The Senator from Kansas feels the wife of any American diplomat often plays a vital role in representing the United States in international relationships. Frequently in the past she has been expected to be knowledgeable of the affairs of state, culture, language, and social customs acceptable in the country in which her spouse serves. Countless hours have been devoted to the community, all without payment of any kind.

The time and talent diplomatic wives have contributed to our Nation should not be pushed aside, deminished, nor forgotten due to the termination of marriage. As our present laws now stand she has little security against financial disaster. Nor does she have protection under present social security laws since most often the Foreign Service wife is not permitted to pursue her own career while overseas. The passage of this bill will update and strengthen our laws as well as assure and provide the former wives with adequate financial protection upon dissolution of the marriage.

In summary, Mr. President, I believe this bill represents progress in modernizing the Foreign Service while building on the foundations of our postwar tradition of bipartisan foreign policy, administered by a nonpartisan Foreign Service officer corps. The widespread consensus among U.S. diplomats—and I might add that the last three Secretaries of State, at least, support this bill, covering both Republican and Democratic administrations—seems to favor the preservation of the Foreign Service as a separate, special designed corps. This legislation recognizes this long-term de-

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velopment and through its changes on pay and other matters, will hopefully add to its future stability and excellence. ©
The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Third reading.

Mr. PELL. Mr. President, I suggest third reading.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. PELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 6790.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the bill.

The Senate proceeded to consider the bill.

Mr. PELL. Mr. President, I move to strike out all after the enacting clause of H.R. 6790 and substitute therefor the text of S. 3058, as amended.

The PRESIDING OFFICER. Is there objection to the motion? If not, the motion is agreed to.

The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall it pass?

The bill (H.R. 6790) was passed, as follows:

H.R. 6790

Resolved, That the bill from the House of Representatives (H.R. 6790) entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.—This Act may be cited as the "Foreign Service Act of 1980".

SEC. 2. TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TABLE OF CONTENTS

- Sec. 1. Short title.
Sec. 2. Table of contents

TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES**CHAPTER 1—GENERAL PROVISIONS**

- Sec. 101. Findings and objectives.
Sec. 102. Definitions.
Sec. 103. Members of the Service.
Sec. 104. Functions of the Service.
Sec. 105. Merit principles; protections of members of the Service; and minority recruitment.

CHAPTER 2—MANAGEMENT OF THE SERVICE

- Sec. 201. The Secretary of State.
Sec. 202. Other agencies utilizing the Foreign Service personnel system.

Sec. 203. Compatibility among agencies utilizing the Foreign Service personnel system.

Sec. 204. Consolidated and uniform administration of the Service.

Sec. 205. Compatibility between the Foreign Service and other Government personnel systems.

Sec. 206. Regulations; delegation of functions.

Sec. 207. Chief of mission.

Sec. 208. Director General of the Foreign Service.

Sec. 209. Inspector General.

Sec. 210. Board of the Foreign Service.

Sec. 211. Board of Examiners for the Foreign Service.

CHAPTER 3—APPOINTMENTS

Sec. 301. General provisions relating to appointments.

Sec. 302. Appointments by the President.

Sec. 303. Appointments by the Secretary.

Sec. 304. Appointment of chiefs of mission.

Sec. 305. Appointment to the Senior Foreign Service.

Sec. 306. Career appointments.

Sec. 307. Entry levels for Foreign Service officer candidates.

Sec. 308. Recall and reemployment of career members.

Sec. 309. Limited appointments.

Sec. 310. Reemployment rights following limited appointment.

Sec. 311. Employment of family members of Government employees.

Sec. 312. Diplomatic and consular commissions.

CHAPTER 4—COMPENSATION

Sec. 401. Salaries of chiefs of mission.

Sec. 402. Salaries of the Senior Foreign Service.

Sec. 403. Foreign Service Schedule.

Sec. 404. Assignment to a salary class.

Sec. 405. Performance pay.

Sec. 406. Within-class salary increases.

Sec. 407. Salaries for Foreign Service personnel abroad who perform routine duties.

Sec. 408. Local compensation plans.

Sec. 409. Salaries of consular agents.

Sec. 410. Compensation for imprisoned foreign national employees.

Sec. 411. Temporary service as principal officer.

Sec. 412. Special differentials and premium pay.

Sec. 413. Death gratuity.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

Sec. 501. Classification of positions.

Sec. 502. Assignments to Foreign Service positions.

Sec. 503. Assignments to agencies, international organizations, and other bodies.

Sec. 504. Service in the United States and abroad.

Sec. 505. Temporary details.

CHAPTER 6—PROMOTION AND RETENTION

Sec. 601. Promotions.

Sec. 602. Selection boards.

Sec. 603. Basis for selection board review.

Sec. 604. Confidentiality of records.

Sec. 605. Implementation of selection board recommendations.

Sec. 606. Other bases for increasing pay.

Sec. 607. Retirement for expiration of time in class.

Sec. 608. Retirement based on relative performance.

Sec. 609. Retirement benefits.

Sec. 610. Separation for cause.

Sec. 611. Termination of limited appointments.

Sec. 612. Termination of appointments of consular agents and foreign national employees.

Sec. 613. Foreign Service Awards.

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

Sec. 701. Foreign Service Institute.

Sec. 702. Foreign language requirements.

Sec. 703. Training authorities.

Sec. 704. Training grants.

Sec. 705. Career counseling.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Sec. 801. Administration of the System.

Sec. 802. Maintenance of the Fund.

Sec. 803. Participants.

Sec. 804. Definitions.

Sec. 805. Contributions to the Fund.

Sec. 806. Computation of annuities.

Sec. 807. Payment of annuity.

Sec. 808. Retirement for disability or incapacity.

Sec. 809. Death in service.

Sec. 810. Discontinued service retirement.

Sec. 811. Voluntary retirement.

Sec. 812. Mandatory retirement.

Sec. 813. Retirement of former Presidential appointees.

Sec. 814. Former spouses.

Sec. 815. Lump-sum payments.

Sec. 816. Creditable service.

Sec. 817. Extra credit for service at unhealthful posts.

Sec. 818. Estimate of appropriations needed.

Sec. 819. Investment of the Fund.

Sec. 820. Assignment and attachment of moneys.

Sec. 821. Payments for future benefits.

Sec. 822. Unfunded liability obligations.

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TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

CHAPTER 1—GENERAL PROVISIONS

SEC. 101. FINDINGS AND OBJECTIVES.—(a) The Congress finds that—

(1) a career foreign service, characterized by excellence and professionalism, is essential in the national interest to assist the President and the Secretary of State in conducting the foreign affairs of the United States;

(2) the scope and complexity of the foreign affairs of the Nation have heightened the need for a professional foreign service that will serve the foreign affairs interests of the United States in an integrated fashion and that can provide a resource of qualified personnel for the President, the Secretary of State, and the agencies concerned with foreign affairs;

(3) the Foreign Service of the United States, established under the Act of May 24, 1924 (commonly known as the Rogers Act) and continued by the Foreign Service Act of 1946, must be preserved, strengthened, and improved in order to carry out its mission effectively in response to the complex challenges of modern diplomacy and international relations;

(4) the members of the Foreign Service should be representative of the American

people, aware of the principles and history of the United States and informed of current concerns and trends in American life, knowledgeable of the affairs, cultures, and languages of other countries, and available to serve in assignments throughout the world; and

(5) the Foreign Service should be operated on the basis of merit principles.

(b) The objective of this Act is to strengthen and improve the Foreign Service of the United States by—

(1) assuring, in accordance with merit principles, admission through impartial and rigorous examination, acquisition of career status only by those who have demonstrated their fitness through successful completion of probationary assignments, effective career development, advancement and retention of the ablest, and separation of those who do not meet the requisite standards of performance;

(2) fostering the development and vigorous implementation of policies and procedures, including affirmative action programs, which will facilitate and encourage (A) entry into and advancement in the Foreign Service by persons from all segments of American society, and (B) equal opportunity and fair and equitable treatment for all without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition;

(3) providing for more efficient, economical, and equitable personnel administration through a simplified structure of Foreign Service personnel categories and salaries;

(4) establishing a statutory basis for participation by the members of the Foreign Service, through their elected representatives, in the formulation of personnel policies and procedures which affect their conditions of employment, and maintaining a fair and effective system for the resolution of individual grievances that will insure the fullest measure of due process for the members of the Foreign Service;

(5) minimizing the impact of the hardships, disruptions, and other unusual conditions of service abroad upon the members of the Foreign Service, and mitigating the special impact of such conditions upon their families;

(6) providing salaries, allowances, and benefits that will permit the Foreign Service to attract and retain qualified personnel as well as a system of incentive payments and awards to encourage and reward outstanding performance;

(7) establishing a Senior Foreign Service which is characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language and area expertise;

(8) improving Foreign Service managerial flexibility and effectiveness;

(9) increasing efficiency and economy by promoting maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system, as well as compatibility between the Foreign Service personnel system and other personnel systems of the Government; and

(10) otherwise enabling the Foreign Service to serve effectively the interests of the United States and to provide the highest caliber of representation in the conduct of foreign affairs.

SEC. 102. DEFINITIONS.—(a) As used in this Act, the term—

(1) "abroad" means all areas not included within the United States;

(2) "agency" means an agency as defined in section 552(e) of title 5, United States Code;

(3) "chief of mission" means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including

any individual assigned under section 502 (c) to be temporarily in charge of such a mission or office;

(4) "Department" means the Department of State, except that with reference to the exercise of functions under this Act with respect to another agency authorized by law to utilize the Foreign Service personnel system, such term means that other agency;

(5) "employee" (except as provided in section 1002(8)) means, when used with respect to an agency or to the Government generally, an officer or employee (including a member of the Service) or a member of the Armed Forces of the United States, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;

(6) "function" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity;

(7) "Government" means the Government of the United States;

(8) "merit principles" means the principles set out in section 2301(b) of title 5, United States Code;

(9) "principal officer" means the officer in charge of a diplomatic mission, consular mission (other than a consular agency), or other Foreign Service post;

(10) "Secretary" means the Secretary of State, except that (subject to section 201(b)) with reference to the exercise of functions under this Act with respect to any agency authorized by law to utilize the Foreign Service personnel system, such term means the head of that agency;

(11) "Service" or "Foreign Service" means the Foreign Service of the United States; and

(12) "United States", when used in a geographic sense, means the several States and the District of Columbia.

(b) References in this Act or any other law to "Foreign Service officers" shall, with respect to the International Communication Agency, be deemed to refer to Foreign Service information officers.

SEC. 103. MEMBERS OF THE SERVICE.—The following are the members of the Service:

(1) Chiefs of mission, appointed under section 302(a)(1) or assigned under section 502(c).

(2) Ambassadors at large, appointed under section 302(a)(1).

(3) Members of the Senior Foreign Service, appointed under section 302(a)(1) or 303, who are the corps of leaders and experts for the management of the Service and the performance of its functions.

(4) Foreign Service officers, appointed under section 302(a)(1), who have general responsibility for carrying out the functions of the Service.

(5) Foreign Service personnel, United States citizens appointed under section 303, who provide skills and services required for effective performance by the Service.

(6) Foreign national employees, foreign nationals appointed under section 303, who provide clerical, administrative, technical, fiscal, and other support at Foreign Service posts abroad.

(7) Consular agents, appointed under section 303 by the Secretary of State, who provide consular and related services as authorized by the Secretary of State at specified locations abroad where no Foreign Service posts are situated.

SEC. 104. FUNCTIONS OF THE SERVICE.—Members of the Service shall, under the direction of the Secretary—

(1) represent the interests of the United States in relation to foreign countries and international organizations, and perform the functions relevant to their appointments and assignments, including (as appropriate) functions under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, other international agreements to which the United States

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is a party, the laws of the United States, and orders, regulations, and directives issued pursuant to law;

(2) provide guidance for the formulation and conduct of programs and activities of the Department and other agencies which relate to the foreign relations of the United States; and

(3) perform functions on behalf of any agency or other Government establishment (including any establishment in the legislative or judicial branch) requiring their services.

SEC. 105. MERIT PRINCIPLES; PROTECTIONS FOR MEMBERS OF THE SERVICE; AND MINORITY RECRUITMENT.—(a) (1) All personnel actions with respect to career members and career candidates in the Service (including applicants for career candidate appointments) shall be made in accordance with merit principles.

(2) For purposes of paragraph (1), the term "personnel action" means—

(A) any appointment, promotion, assignment (including assignment to any position or salary class), award of performance pay or special differential, within-class salary increase, separation, or performance evaluation; and

(B) any decision, recommendation, examination, or ranking provided for under this Act which relates to any action referred to in subparagraph (A).

(b) The Secretary shall administer the provisions of this Act and shall prescribe such regulations as may be necessary to ensure that members of the Service, as well as applicants for appointments in the Service—

(1) are free from discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited under section 2302(b)(1) of title 5, United States Code;

(2) are free from reprisal for—

(A) a disclosure of information by a member or applicant which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency (including the Inspector General of the Department of State and the Foreign Service) or another employee designated by the head of the agency to receive such disclosures, of information which the member or applicant reasonably believes evidences—

(1) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(3) are free to submit to officials of the Service and the Department any report, evaluation, or recommendation, including the right to submit such report, evaluation, or recommendation through a separate dissent channel, whether or not the views expressed therein are in accord with approved policy, unless the report, evaluation, or recommendation was submitted with the knowledge that it was false or with willful disregard for its truth or falsity; and

(4) are free from any personnel practice prohibited by section 2302 of title 5, United States Code.

(c) This section shall not be construed as authorizing the withholding of information

from the Congress or the taking of any action against a member of the Service who disclose information to the Congress.

(d) (1) The Secretary shall establish a minority recruitment program for the Service consistent with section 7201 of title 5, United States Code.

(2) Not later than January 31 of each year, the Secretary shall transmit to each House of the Congress a report, signed by the Secretary, on the activities of the Secretary under paragraph (1). Such report shall include any affirmative action plans submitted by the Secretary under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) and any data necessary to evaluate the effectiveness of the program under paragraph (1) for the preceding fiscal year, together with recommendations for administrative or legislative action the Secretary considers appropriate.

(e) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a), prohibiting discrimination on the basis of handicapping condition; or

(5) any provision of law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

CHAPTER 2—MANAGEMENT OF THE SERVICE

SEC. 201. THE SECRETARY OF STATE.—(a) Under the direction of the President, the Secretary of State shall administer and direct the Service and shall coordinate its activities with the needs of the Department of State and other agencies.

(b) The Secretary of State alone among the heads of agencies utilizing the Foreign Service personnel system shall perform the functions expressly vested in the Secretary of State by this Act.

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) (1) The Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this Act.

(2) The Secretary of Agriculture may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to personnel of the Foreign Agricultural Service, and

(B) with respect to personnel of the Department of Agriculture to the extent the President determines to be necessary in order to enable the Department of Agriculture to carry out functions which require service abroad.

(3) The Secretary of Commerce may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to the personnel performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Number 3 of 1979, and

(B) with respect to other personnel of the Department of Commerce to the extent the President determines to be necessary in order to enable the Department of Commerce to carry out functions which require service abroad.

(b) Subject to section 201(b)—

(1) the agency heads referred to in subsection (a), and

(2) the head of any other agency (to the extent authority to utilize the Foreign Service personnel system is granted to such agency head under any other Act,

shall in the case of their respective agencies exercise the functions vested in the Secretary by this Act.

SEC. 203. COMPATIBILITY AMONG AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Service shall be administered to the extent practicable in a manner that will assure maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system. To this end, the other heads of such agencies shall consult regularly with the Secretary of State.

(b) Nothing in this chapter shall be construed as diminishing the authority of the head of any agency authorized by law to utilize the Foreign Service personnel system.

SEC. 204. CONSOLIDATED AND UNIFORM ADMINISTRATION OF THE SERVICE.—The Secretary shall on a continuing basis consider the need for uniformity of personnel policies and procedures and for consolidation (in accordance with section 23 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2695)) of personnel functions among agencies utilizing the Foreign Service personnel system. Where feasible, the Secretary of State shall encourage (in consultation with the other heads of such agencies) the development of uniform policies and procedures and consolidated personnel functions.

SEC. 205. COMPATIBILITY BETWEEN THE FOREIGN SERVICE AND OTHER GOVERNMENT PERSONNEL SYSTEMS.—The Service shall be administered to the extent practicable in conformity with general policies and regulations of the Government. The Secretary shall consult with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and the heads of such other agencies as the President shall determine, in order to assure compatibility of the Foreign Service personnel system with other Government personnel systems to the extent practicable.

SEC. 206. REGULATIONS; DELEGATION OF FUNCTIONS.—(a) The Secretary may prescribe such regulations as the Secretary deems appropriate to carry out functions under this Act.

(b) The Secretary may delegate functions under this Act which are vested in the Secretary to any employee of the Department or any member of the Service.

SEC. 207. CHIEF OF MISSION.—(a) Under the direction of the President, the chief of mission to a foreign country—

(1) shall have full responsibility for the direction, coordination, and supervision of all Government employees in that country (except for employees under the command of a United States area military commander); and

(2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

(3) shall submit a report describing the foreign language competence of the chief of mission and the mission staff in the principal language or other dialect of the country to the chairmen of the Senate Foreign Relations and House Foreign Affairs Committees within six months of assuming the post.

(b) Any agency having employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and

operations of its employees in that country, and shall insure that all of its employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

SEC. 208. DIRECTOR GENERAL OF THE FOREIGN SERVICE.—There shall be a Director General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. The Director General shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary of State may prescribe.

SEC. 209. INSPECTOR GENERAL.—(a) (1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General shall report to and be under the general supervision of the Secretary of State. Neither the Secretary of State nor any other officer of the Department shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe, except that the Secretary of State shall not assign to the Inspector General any general program operating responsibilities.

(2) The Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(b) Inspections, investigations, and audits conducted by or under the direct of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transactions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operation meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c) (1) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards

established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(2) In carrying out the duties and responsibilities established under this section, the Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward insuring effective coordination and cooperation.

(3) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

(d) (1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the reporting period;

(B) a description of the recommendations for corrective action made by the Inspector General during the reporting period with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the reporting period.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those committees, the Secretary of State shall make copies of them available to the public request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e) (1) The Inspector General shall have the same authority in carrying out the provisions of this section as is granted under section 6 of the Inspector General Act of 1978 to each Inspector General of an establishment (as defined in section 11(2) of such Act) for carrying out the provisions of that Act, and the responsibilities of other officers of the Government to the Inspector General shall be the same as the responsibilities of the head of an agency or establishment under section 6(b) and (c) of such Act.

(2) At the request of the Inspector General, employees of the Department and members of the Service may be assigned as employees of the Inspector General. The individuals so assigned and individuals appointed pursuant to paragraph (1) shall be responsible solely to the Inspector General, and the Inspector General or his or her designee shall prepare the performance evaluation reports for such individuals.

(f) (1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of such individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(g) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

SEC. 210. BOARD OF THE FOREIGN SERVICE.—The President shall establish a Board of the Foreign Service to advise the Secretary of State on matters relating to the Service, including furtherance of the objectives of maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system and compatibility between the Foreign Service personnel system and the other personnel systems of the Government. The Board of the Foreign Service shall be chaired by a career member of the Senior Foreign Service designated by the Secretary of State and shall include one or more representatives of the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, the Department of Commerce, the Department of Labor, the Office of Personnel Management, the Office of Management and Budget, the Equal Employment Opportunity Commission, and such other agencies as the President may designate.

SEC. 211. BOARD OF EXAMINERS FOR THE FOREIGN SERVICE.—(a) The President shall establish a Board of Examiners for the Foreign Service to develop, and supervise the administration of, examinations prescribed under section 301(b) to be given to candidates for appointment in the Service. The Board shall consist of 15 members appointed by the President (no fewer than 5 of whom shall be appointed from among individuals who are not Government employees and who shall be qualified for service on the Board by virtue of their knowledge, experience, or

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training in the fields of testing or equal employment opportunity). The Board shall include representatives of agencies utilizing the Foreign Service personnel system and representatives of other agencies which have responsibility for employment testing. The Board shall be chaired by a member of the Board, designated by the President, who is a member of the Service.

(b) The Board of Examiners shall periodically review the examinations prescribed under section 301(b) in order to determine—

(1) whether any such examination has an adverse impact on the hiring, promotion, or other employment opportunity of members of any race, sex, or ethnic group;

(2) methods of minimizing any such adverse impact;

(3) alternatives to any examinations which have such an adverse impact; and

(4) whether such examinations are valid in relation to job performance.

The Board of Examiners shall annually report its findings under this subsection to the Secretary of State and shall furnish to the Secretary of State its recommendations for improvements in the development, use, and administration of the examinations prescribed under section 301(b).

(c) Any vacancy or vacancies on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

CHAPTER 3—APPOINTMENTS

SEC. 301. GENERAL PROVISIONS RELATING TO APPOINTMENTS.—(a) Only citizens of the United States may be appointed to the Service, other than for service abroad as a consular agent or as a foreign national employee.

(b) The Secretary shall prescribe, as appropriate, written, oral, physical, foreign language, and other examinations for appointment to the Service (other than as a chief of mission or ambassador at large).

(c) The fact that an applicant for appointment as a Foreign Service officer candidate is a veteran or disabled veteran shall be considered an affirmative factor in making such appointments. As used in this subsection, the term "veteran or disabled veteran" means an individual who is a preference eligible under subparagraph (A), (B), or (C) of section 2108(3) of title 5, United States Code.

(d) (1) Members of the Service serving under career appointments are career members of the Service. Members of the Service serving under limited appointments are either career candidates or noncareer members of the Service.

(2) Chiefs of mission, ambassadors at large, and ministers serve at the pleasure of the President.

(3) An appointment as a Foreign Service officer is a career appointment.

SEC. 302. APPOINTMENTS BY THE PRESIDENT.—

(a) (1) The President may, by and with the advice and consent of the Senate, appoint an individual as a chief of mission, as an ambassador at large, as a minister, as a career member of the Senior Foreign Service, or as a Foreign Service officer.

(2) (A) The President may, by and with the advice and consent of the Senate, confer the personal rank of career ambassador upon a career member of the Senior Foreign Service in recognition of especially distinguished service over a sustained period.

(B) No person shall be designated as ambassador or minister, or be designated to serve in any position with the title of ambassador or minister, unless that person is appointed as an ambassador or minister with the advice and consent of the Senate or in accordance with clause 3, section 2, of article II of the Constitution relating to recess appointments, except in accordance with this subparagraph. The personal rank of ambassador or minister may be conferred by the President in connection with special missions

for the President of an essentially limited and temporary nature of not exceeding 6 months: *Provided*, That the President, 30 days prior to conferring such rank, reports in writing to the Committee on Foreign Relations of the Senate his intent to confer such rank, the necessity for conferring it, the dates during which the rank shall be held, and the justification for not submitting the nomination for Senate advice and consent prior to such appointment, and transmits therewith all materials relating to any potential conflict of interest relevant to such person.

(C) An individual upon whom a personal rank is conferred under subparagraph (A) or (B) shall not receive any additional compensation solely by virtue of such personal rank.

(b) If a member of the Service is appointed to any position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, the period of service in that position by the member shall be regarded as an assignment under chapter 5 and the member shall not, by virtue of the acceptance of such assignment, lose his or her status as a member of the Service. A member of the Senior Foreign Service who accepts such an assignment may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under chapter 4, and to receive the leave to which such member is entitled under subchapter I of chapter 63 of title 5, United States Code, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.

SEC. 303. APPOINTMENTS BY THE SECRETARY.—The Secretary may appoint the members of the Service (other than the members of the Service who are in the personnel categories specified in section 302(a)) in accordance with this Act and such regulations as the Secretary may prescribe.

SEC. 304. APPOINTMENT OF CHIEFS OF MISSION.—(a) (1) An individual appointed or assigned to be a chief of mission should possess clearly demonstrated competence to perform the duties of a chief of mission, including, to the maximum extent practicable, a useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, the culture, the economic and political institutions, and the interests of that country and its people.

(2) Given the qualifications specified in paragraph (1), positions as chief of mission should normally be accorded to career members of the Service, though circumstances will warrant appointments from time to time of qualified individuals who are not career members of the Service.

(3) Contributions to political campaigns should not be a factor in the appointment of an individual as a chief of mission.

(4) The President shall provide the Committee on Foreign Relations of the Senate, with each nomination for a chief of mission position, a report on that nominee's demonstrated competence to perform the duties of chief of mission in the country in which he or she is to serve.

(b) (1) In order to assist the President in selecting qualified candidates for appointment or assignment as chiefs of mission, the Secretary of State shall from time to time furnish the President with the names of career members of the Service who are qualified to serve as chiefs of mission, together with pertinent information about such members.

(2) Each individual nominated by the President to be a chief of mission, ambassador at large, or minister shall, at the time of nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such indi-

vidual and by members of his or her immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination. The report shall be verified by the oath of the nominee, taken before any individual authorized to administer oaths. The chairman of the Committee on Foreign Relations of the Senate shall have each such report printed in the Congressional Record. As used in this paragraph, the term "contribution" has the same meaning given such term by section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)), and the term "immediate family" means the spouse of the nominee, and any child, parent, grandparent, brother, or sister of the nominee and the spouses of any of them.

SEC. 305. APPOINTMENT TO THE SENIOR FOREIGN SERVICE.—(a) Appointment to the Senior Foreign Service shall be to a salary class established under section 402, and not to a position.

(b) An individual may not be given a limited appointment in the Senior Foreign Service if that appointment would cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total number of members of the Senior Foreign Service, except that (1) members of the Senior Foreign Service assigned to the Peace Corps shall be excluded in the calculation and application of this limitation, and (2) members of the Senior Foreign Service serving under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service shall be considered to be career members of the Senior Foreign Service for purposes of this subsection.

SEC. 306. CAREER APPOINTMENTS.—(a) Before receiving a career appointment in the Service, an individual shall first serve under a limited appointment as a career candidate for a trial period of service prescribed by the Secretary. During such trial period of service, the Secretary shall decide whether—

(1) to offer a career appointment to the candidate under section 303, or

(2) to recommend to the President that the candidate be given a career appointment under section 302.

(b) Decisions by the Secretary under subsection (a) shall be based upon the recommendations of boards, established by the Secretary and composed entirely or primarily of career members of the Service, which shall evaluate the fitness and aptitude of career candidates for the work of the Service.

SEC. 307. ENTRY LEVELS FOR FOREIGN SERVICE OFFICER CANDIDATES.—A career candidate for appointment as a Foreign Service officer may not be initially assigned under section 404 to a salary class higher than class 4 in the Foreign Service Schedule unless—

(1) the Secretary determines in an individual case that assignment to a higher salary class is warranted because of the qualifications and experience of the candidate, foreign language competence and the needs of the Service; or

(2) at the time such initial assignment is made, the candidate is serving under a career appointment in the Service and is receiving a salary at a rate equal to or higher than the minimum rate payable for class 4 in the Foreign Service Schedule.

SEC. 308. RECALL AND REEMPLOYMENT OF CAREER MEMBERS.—(a) Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall any retired career member of the Service for active duty in the same personnel category as that member was serving at the time of retirement. A retired career member may be recalled under this section to any appropriate salary class or rate, except that a retired career member of the Senior Foreign Service may not be recalled to a salary class higher than the one in which the member was serv-

ing at the time of retirement unless appointed to such higher class by the President, by and with the advice and consent of the Senate.

(b) Former career members of the Service may be reappointed under section 302(a) (1) or 303, without regard to section 306, in a salary class which is appropriate in light of the qualifications and experience of the individual being reappointed.

SEC. 309. LIMITED APPOINTMENTS.—A limited appointment in the Service, including an appointment of an individual who is an employee of an agency, may not exceed 5 years in duration and, except as provided in section 311(a), may not be extended or removed. A limited appointment in the Service which is limited by its terms to a period of one year or less is a temporary appointment.

SEC. 310. REEMPLOYMENT RIGHTS FOLLOWING LIMITED APPOINTMENT.—Any employee of an agency who accepts a limited appointment in the Service with the consent of the head of the agency in which the employee is employed shall be entitled, upon the termination of such limited appointment, to be reemployed in accordance with section 3597 of title 5, United States Code.

SEC. 311. EMPLOYMENT OF FAMILY MEMBERS OF GOVERNMENT EMPLOYEES.—(a) The Secretary, when employing individuals abroad in positions to which career members of the Service are not customarily assigned (including, when continuity over a long term is not a significant consideration, vacant positions normally filled by foreign national employees), shall give equal consideration to employing available qualified family members of members of the Service or of other Government employees assigned abroad. Family members so employed shall serve under renewable limited appointments in the Service and may be paid either in accordance with the Foreign Service Schedule or a local compensation plan established under section 408.

(b) Employment of family members in accordance with this section may not be used to avoid fulfilling the need for full-time career positions.

(c) The Secretary of State shall prescribe regulations governing the employment at Foreign Service posts abroad of family members of Government employees by all agencies and other Government establishments (including establishments in the legislative or judicial branch).

SEC. 312. DIPLOMATIC AND CONSULAR COMMISSIONS.—(a) The Secretary of State may recommend to the President that a member of the Service who is a citizen of the United States be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such member of the Service as a diplomatic or consular officer or both. The Secretary of State may commission as a vice consul a member of the Service who is a citizen of the United States. All official functions performed by a diplomatic or consular officer, including a vice consul, shall be performed under such a commission.

(b) Members of the Service commissioned under this section may, in accordance with their commissions, perform any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform.

(c) The Secretary of State shall define the limits of consular districts.

CHAPTER 4—COMPENSATION

SEC. 401. SALARIES OF CHIEFS OF MISSION.—(a) Except as provided in section 302(b), each chief of mission shall receive a salary, as determined by the President, at one of the annual rates payable for levels II through V of the Executive Schedule under sections 5313 through 5316 of title 5, United States Code.

(b) The salary of a chief of mission shall commence upon the effective date of appointment to that position. The official services of a chief of mission are not terminated by the appointment of a successor, but shall continue for such additional period, not to exceed 50 days after relinquishment of charge of the mission, as the Secretary of State may determine. During that period, the Secretary of State may require the chief of mission to perform such functions as the Secretary of State deems necessary in the interest of the Government.

SEC. 402. SALARIES OF THE SENIOR FOREIGN SERVICE.—(a) The President shall prescribe salary classes for the Senior Foreign Service and shall prescribe an appropriate title for each class. Basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, United States Code, and shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.

(b) (1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5, United States Code, and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary for his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5, United States Code, immediately prior to such appointment.

SEC. 403. FOREIGN SERVICE SCHEDULE.—The President shall establish a Foreign Service Schedule which shall consist of 9 salary classes and which shall apply to members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this chapter. The maximum salary rate for the highest class established under this section, which shall be designated class 1, may not exceed the maximum rate of basic pay payable for GS-15 of the General Schedule under section 5332 of title 5, United States Code. Salary rates established under this section shall be adjusted in accordance with subchapter 1 of chapter 53 of title 5, United States Code.

SEC. 404. ASSIGNMENT TO A SALARY CLASS.—(a) The Secretary shall assign all Foreign Service officers and Foreign Service personnel (other than Foreign Service personnel who are paid in accordance with section 407 or who are family members of Government employees paid in accordance with a local compensation plan established under section 408) to appropriate salary classes in the Foreign Service Schedule.

(b) (1) The salary class to which a member of the Service is assigned under this section shall not be affected by the assignment of the member to a position classified under chapter 5.

(2) Except as authorized by subchapter I of chapter 35 of title 5, United States Code, changes in the salary class of a member of the Senior Foreign Service or a member of the Service assigned to a salary class in the Foreign Service Schedule shall be made only in accordance with chapter 6. The Secretary shall prescribe regulations (which shall be consistent with the relevant provisions of

subchapter VI of chapter 53 of title 5, United States Code, and with the regulations prescribed to carry out such provisions) providing for retention of pay by members of the Service in cases in which reduction-in-force procedures are applied.

SEC. 405. PERFORMANCE PAY.—(a) Members of the Senior Foreign Service who are serving—

(1) under career or career candidate appointments, or

(2) under limited appointments with re-employment rights under section 310 as career appointees in the Senior Executive Service,

shall be eligible to compete for performance pay in accordance with this section. Performance pay shall be paid in a lump sum and shall be in addition to the basic salary prescribed under section 402 and any other award. The fact that a member of the Senior Foreign Service competing for performance pay would, as a result of the payment of such performance pay, receive compensation exceeding the compensation of any other member of the Service shall not preclude the award or its payment.

(b) Awards of performance pay shall take into account the criteria established by the Office of Personnel Management for performance awards under section 5384 of title 5, United States Code, and rank awards under section 4507 of title 5, United States Code. Awards of performance pay under this section shall be subject to the following limitations:

(1) Not more than 50 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year.

(2) Except as provided in paragraph (3), performance pay for a member of the Senior Foreign Service may not exceed 20 percent of the annual rate of basic salary for that member.

(3) Not more than 6 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year in an amount which exceeds the percentage limitation specified in paragraph (2). Payments under this paragraph to a member of the Senior Foreign Service may not exceed \$10,000 in any fiscal year, except that payments of up to \$20,000 in any fiscal year may be made under this paragraph to up to 1 percent of the members of the Senior Foreign Service.

(4) The total amount of basic salary plus performance pay received in any fiscal year by any member of the Senior Foreign Service may not exceed the salary payable for level I of the Executive Schedule under section 5312 of title 5, United States Code, as in effect at the end of that fiscal year.

(c) The Secretary shall determine the amount of performance pay available under subsection (b) (2) each year for distribution among the members of the Senior Foreign Service and shall distribute performance pay to particular individuals on the basis of recommendations by boards established under section 602.

(d) The President may grant awards of performance pay under subsection (b) (3) on the basis of annual recommendations by the Secretary of State of members of the Senior Foreign Service who are nominated by their agencies as having performed especially meritorious or distinguished service. Recommendations by the Secretary of State under this subsection shall be made on the basis of recommendations by special inter-agency selection boards established by the Secretary of State for the purpose of reviewing and evaluating the nominations of agencies.

SEC. 406 WITHIN-CLASS SALARY INCREASES.—(a) Any member of the Service receiving a salary under the Foreign Service Schedule shall receive an increase in salary at periodic intervals to the next higher rate

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for the salary class in which such member is serving unless the performance of the member during any such interval is found in a review by a selection board established under section 602 to fall below the standards of performance for his or her salary class.

(b) The Secretary may grant, on the basis of especially meritorious service, to any member of the Service receiving an increase in salary under subsection (a), an additional salary increase to any higher step in the salary class in which the member is serving.

SEC. 407. SALARIES FOR FOREIGN SERVICE PERSONNEL ABROAD WHO PERFORM ROUTINE DUTIES.—(a) The Secretary may establish salary rates at rates lower than those established for the Foreign Service Schedule by section 403 for the Foreign Service personnel described in subsection (b). The rates established under this subsection may be no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(b) The Secretary may pay Foreign Service personnel who are recruited abroad, who are not available or are not qualified for assignment to another Foreign Service post, and who perform duties of a more routine nature than are generally performed by Foreign Service personnel assigned to the lowest class in the Foreign Service Schedule, in accordance with the salary rates established under subsection (a).

SEC. 408. LOCAL COMPENSATION PLANS.—(a) (1) The Secretary shall establish compensation (including position classification) plans for foreign national employees of the Service, and for United States citizens employed in the Service abroad who are family members of Government employees. To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to those family members of Government employees who are paid in accordance with such plans at a rate which is no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)). Any compensation plan established under this section may include provision for leaves of absence with pay for foreign national employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, United States Code.

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or who is receiving an annuity as a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—

(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

(B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by individuals who retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to foreign national employees who retired during similar time periods and after comparable careers with the Government.

(b) For the purpose of performing functions abroad, any agency or other Government establishment (including any establishment in the legislative or judicial branch) may administer employment programs for its employees who are foreign na-

tionals or are family members of Government employees assigned abroad, in accordance with the applicable provisions of this Act.

(c) The Secretary of State may prescribe regulations governing the establishment and administration of local compensation plans under this section by all agencies and other Government establishments.

SEC. 409. SALARIES OF CONSULAR AGENTS.—The Secretary of State shall establish the salary rate for each consular agent. Such salary rate shall be established after taking into account the workload of the consular agency and the prevailing wage rates in the locality where the agency is located, except that, in the case of a consular agent who is a citizen of the United States, the salary rate may not be less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

SEC. 410. COMPENSATION FOR IMPRISONED FOREIGN NATIONAL EMPLOYEES.—(a) The head of any agency or other Government establishment (including any in the legislative or judicial branch) may compensate any current or former foreign national employee, or any foreign national who is or was employed under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of a foreign national employed by the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the employment of the foreign national by the United States. Such compensation may not exceed the amount that the agency head determines approximates the salary and other benefits to which the foreign national would have been entitled had he or she been employed during the period of such imprisonment. Such compensation may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of this section, an agency head shall have the same powers with respect to imprisoned foreign nationals who are or were employed by the agency as an agency head has under subchapter VII of chapter 55 of title 5, United States Code, to the extent that such powers are consistent with this section.

(b) Any period of imprisonment of a current or former foreign national employee which is compensable under this section shall be considered for purposes of any other employee benefit to be a period of employment by the Government, except that a period of imprisonment shall not be creditable—

(1) for purposes of subchapter III of chapter 83 of title 5, United States Code, unless it is expressly creditable under that subchapter; or

(2) for purposes of subchapter I of chapter 81 of title 5, United States Code, unless the individual was employed by the Government at the time of his or her imprisonment.

(c) No compensation or other benefit shall be awarded under this section unless a claim therefor is filed within 3 years after—

(1) the termination of the period of imprisonment giving rise to the claim, or

(2) the date of the claimant's first opportunity thereafter to file such a claim, as determined by the appropriate agency head.

(d) The Secretary of State may prescribe regulations governing payments under this section by all agencies and other Government establishments.

SEC. 411. TEMPORARY SERVICE AS PRINCIPAL OFFICER.—For such time (in excess of such minimum period as the Secretary of State may establish) as any member of the Service is temporarily in charge of a Foreign Service post during the absence or incapacity of the principal officer, that member shall receive, in addition to the basic salary paid

to the member and notwithstanding sections 5535 and 5536 of title 5, United States Code, an amount equal to that position (which the Secretary of State may determine to be appropriate) of the difference between such salary and the basic salary provided for the principal officer, or, if there is no principal officer, for the former principal officer.

SEC. 412. SPECIAL DIFFERENTIALS AND PREMIUM PAY.—(a) The Secretary may pay special differentials, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements.

SEC. 413. DEATH GRATUITY.—(a) The Secretary may provide for payment of a gratuity to the surviving dependents of any Foreign Service employee, who dies as a result of injuries sustained in the performance of duty abroad, in an amount equal to one year's salary at the time of death. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

(b) A death gratuity payment shall be made under this section only if the survivor entitled to payment under subsection (c) is entitled to elect monthly compensation under section 8133 of title 5, United States Code, because the death resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

(c) A death gratuity payment under this section shall be made as follows:

(1) First, to the widow or widower.

(2) Second, to the child, or children in equal shares, if there is no widow or widower.

(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

(d) As used in this section—

(1) the term "Foreign Service employee" means any member of the Service or United States representative to an international organization or commission; and

(2) each of the terms "widow", "widower", "child", and "parent" shall have the same meaning given each such term by section 8101 of title 5, United States Code.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

SEC. 501. CLASSIFICATION OF POSITIONS.—The Secretary shall designate and classify positions in the Department and at Foreign Service posts which are to be occupied by members of the Service (other than by chiefs of mission and ambassadors at large). Positions designated under this section are excepted from the competitive service. Position classifications under this section shall be established, without regard to chapter 51 of title 5, United States Code, in relation to the salaries established under chapter 4. In classifying positions at Foreign Service posts abroad, the Secretary shall give appropriate weight to job factors relating to service abroad and to the compensation practices applicable to United States citizens employed abroad by United States corporations.

SEC. 502. ASSIGNMENTS TO FOREIGN SERVICE POSITIONS.—(a) (1) The Secretary (with the concurrence of the agency concerned) may assign a member of the Service to any position classified under section 501 in which that member is eligible to serve (other than as chief of mission or ambassador at large), and may assign a member from one such position to another such position as the needs of the Service may require. The Secretary shall notify Congress annually of the num-

bers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names and grades of such personnel shall be transmitted in a confidential manner to assure privacy and to safeguard national security.

(2) In making assignments under paragraph (1), the Secretary shall assure that a member of the Service is not assigned to a position at a post in a particular geographic area exclusively on the basis of the race, ethnicity, or religion of that member.

(b) Positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions. Subject to that limitation—

(1) Foreign Service positions may be filled by the assignment for specified tours of duty of employees of the Department and, under interagency agreements, employees of other agencies; and

(2) Senior Foreign Service positions may also be filled by other members of the Service.

(c) The President may assign a career member of the Service to serve as charge d'affaires or otherwise as the head of a mission (or as the head of a United States office abroad which is designated under section 102(a)(3) by the Secretary of State as diplomatic in nature) for such period as the public interest may require.

SEC. 503. ASSIGNMENTS TO AGENCIES, INTERNATIONAL ORGANIZATIONS, AND OTHER BODIES.—

(a) The Secretary may (with the concurrence of the agency, organization, or other body concerned) assign a member of the Service for duty—

(1) in a non-Foreign Service (including Senior Executive Service) position in the Department or another agency, or with an international organization, international commission, or other international body;

(2) with a domestic or international trade, labor, agricultural, scientific, or other conference, congress, or gathering;

(3) for special instruction, training, or orientation at or with a public or private organization; and

(4) in the United States (or in any territory or possession of the United States or in the Commonwealth of Puerto Rico), with a State or local government, a public or private nonprofit organization (including an educational institution), or a Member or office of the Congress.

(b) (1) The salary of a member of the Service assigned under this section shall be the higher of the salary which that member would receive but for the assignment under this section or the salary of the position to which that member is assigned.

(2) The salary of a member of the Service assigned under this section shall be paid from appropriations made available for the payment of salaries and expenses of the Service. Such appropriations may be reimbursed for all or any part of the costs of salaries and other benefits for members assigned under this section.

(3) A member of the Service assigned under subsection (a)(4) to a Member or office of the Congress shall be deemed to be an employee of the House of Representatives or the Senate, as the case may be, for purposes of payment of travel and other expenses.

(c) Assignments under this section may not exceed four years of continuous service for any member of the Service unless the Secretary approves an extension of such period for that member because of special circumstances.

SEC. 504. SERVICE IN THE UNITED STATES AND ABROAD.—(a) Career members of the Service shall be obligated to serve abroad and shall be expected to serve abroad for substantial portions of their careers. The Secretary shall establish by regulation limitations upon assignments of members of the

Service within the United States. A member of the Service may not be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period for that member because of special circumstances.

(b) Consistent with the needs of the Service, the Secretary shall seek to assign each career member of the Service who is a citizen of the United States to duty within the United States at least once during each period of fifteen years that the member is in the Service.

(c) The Secretary may grant a sabbatical to a career member of the Senior Foreign Service for not to exceed eleven months in order to permit the member to engage in study or uncompensated work experience which will contribute to the development and effectiveness of the member. A sabbatical may be granted under this subsection under conditions specified by the Secretary in light of the provisions of section 3396(c) of title 5, United States Code, which apply to sabbaticals granted to members of the Senior Executive Service.

SEC. 505. TEMPORARY DETAILS.—A period of duty of not more than six months in duration by a member of the Service shall be considered a temporary detail and shall not be considered an assignment within the meaning of this chapter.

CHAPTER 6—PROMOTION AND RETENTION

SEC. 601. PROMOTIONS.—(a) Career members of the Senior Foreign Service are promoted by appointment under section 302(a) to a higher salary class in the Senior Foreign Service. Members of the Senior Foreign Service serving under career candidate appointments or noncareer appointments are promoted by appointment under section 303 to a higher salary class in the Senior Foreign Service. Foreign Service officers, and Foreign Service personnel who are assigned to a class in the Foreign Service Schedule, are promoted by appointment under section 302(a) as career members of the Senior Foreign Service or by assignment under section 404 to a higher salary class in the Foreign Service Schedule.

(b) Except as provided in section 606(a), promotions of—

(1) members of the Senior Foreign Service, and

(2) members of the Service assigned to a salary class in the Foreign Service Schedule (including promotions of such members into the Senior Foreign Service),

shall be based upon the recommendations and rankings of selection boards established under section 602, except that the Secretary may by regulation specify categories of career members, and categories of career candidates, assigned to salary classes in the Foreign Service Schedule who may receive promotions on the basis of satisfactory performance.

(c) (1) Promotions into the Senior Foreign Service shall be recommended by selection boards only from among career members of the Service assigned to class FS-1 in the Foreign Service Schedule who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the length of the period after such a request is made (within any applicable time in class limitation established under section 607(a)) during which such members may be considered by selection boards for entry into the Senior Foreign Service. A request by a member for consideration for promotion into the Senior Foreign Service under this subsection may be withdrawn by the member, but if it is withdrawn, that member may not thereafter request consideration for promotion into the Senior Foreign Service.

(2) Decisions by the Secretary on the numbers of individuals to be promoted into

and retained in the Senior Foreign Service shall be based upon a systematic long-term projection of personnel flows and needs designed to provide—

(A) a regular, predictable flow of recruitment in the Service;

(B) effective career development patterns to meet the needs of the Service; and

(C) a regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

(3) The affidavit requirements of sections 3332 and 3333(a) of title 5, United States Code, shall not apply with respect to a member of the Service who has previously complied with those requirements and who subsequently is promoted by appointment to any class in the Senior Foreign Service without a break in service.

SEC. 602. SELECTION BOARDS.—(a) The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selection boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for—

(1) promotions in accordance with section 601;

(2) awards of performance pay under section 405(c);

(3) denials of within class step increases under section 406(a);

(4) offer or renewal of limited career extensions under section 607(b); and

(5) such other actions as the Secretary may prescribe by regulation.

(b) All selection boards established under this section shall include public members. The Secretary shall assure that a substantial number of women and members of minority groups are appointed to each selection board established under this section.

SEC. 603. BASIS FOR SELECTION BOARD REVIEW.—(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of the Department of State and the Foreign Service, performance evaluation reports of supervisors, records of commendations, reports of current language test scores from the Foreign Service Institute, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities, which are to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotions into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise, which are required for the Senior Foreign Service.

SEC. 604. CONFIDENTIALITY OF RECORDS.—The records described in section 603(a) shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work

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on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

SEC. 605. IMPLEMENTATION OF SELECTION BOARD RECOMMENDATIONS.—(a) Recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.

(b) Notwithstanding subsection (a), in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

SEC. 606. OTHER BASES FOR INCREASING PAY.—(a) The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—

(1) recommend to the President a promotion of a member of the Service under section 302(a);

(2) promote a member of the Service under section 303;

(3) grant performance pay to a member of the Senior Foreign Service under section 405(c); or

(4) grant a within-class salary increase under section 406 to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.

(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 605(b), the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

SEC. 607.—RETIREMENT FOR EXPIRATION OF TIME IN CLASS.—(a) (1) The Secretary shall, by regulation, establish maximum time in class limitations for—

(A) career members of the Senior Foreign Service,

(B) Foreign Service officers, and

(C) other career members of the Service who are in such occupational categories as may be designated by the Secretary and who are assigned to salary classes in the Foreign Service Schedule to which Foreign Service officers may also be assigned.

(2) Maximum time in class limitations under this subsection (which may not be less than 3 years for career members of the Senior Foreign Service) may apply with respect to the time a member may remain in a single salary class or in a combination of salary classes.

(3) The Secretary may, by regulation, increase or decrease any maximum time in class established under this subsection as the needs of the Service may require. If maximum time in class is decreased, the Secretary shall provide any member of the Service who is in a category and salary class subject to the new time in class limitation an opportunity to remain in class (notwithstanding the new limitation) for a period which is at least as long as the shorter of—

(A) the period which the member would have been permitted to remain in class but

for the decrease in maximum time in class, or

(B) such minimum period as the Secretary determines is necessary to provide members of the Service who are in the same category and salary class as that member a reasonable opportunity to be promoted into the next higher class or combination of classes, as the case may be.

(b) Members of the Service whose maximum time in class under subsection (a) expires—

(1) after they have attained the highest salary class for their respective occupational categories, or

(2) in the case of members of the Senior Foreign Service, which they are in salary classes designated by the Secretary, may continue to serve only under limited extensions of their career appointments. Such limited extensions may not exceed 5 years in duration and may be granted and renewed by the Secretary in accordance with the recommendations of selection boards established under section 602. Members of the Service serving under such limited career extensions shall continue to be career members of the Service.

(c) Any member of the Service—

(1) whose maximum time in class under subsection (a) expires and who is not promoted to a higher class or combination of classes, as the case may be, or

(2) whose limited career extension under subsection (b) expires and is not renewed, shall be retired from the Service and receive benefits in accordance with section 609, subject to any career extension under subsection (d) of this section.

(d) Notwithstanding any other provision of this section—

(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) expires, or whose limited career extension under subsection (b) expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

(2) if the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances.

SEC. 608. RETIREMENT BASED ON RELATIVE PERFORMANCE.—(a) The Secretary shall prescribe regulations concerning the standards of performance to be met by career members of the Service who are citizens of the United States. Whenever a selection board review indicates that the performance of such a career member of the Service may not meet the standards of performance for his or her class, the Secretary shall provide for administrative review of the performance of the member. The review shall include an opportunity for the member to be heard.

(b) In any case where the administrative review conducted under subsection (a) substantiates that a career member of the Service has failed to meet the standards of performance for his or her class, the member shall be retired from the Service and receive benefits in accordance with section 609.

SEC. 609. RETIREMENT BENEFITS.—(a) A member of the Service—

(1) who is retired under section 607(c) (2); or

(2) who is retired under section 607(c) (1) or 608(b)—

(A) after becoming eligible for voluntary retirement under section 811, or

(B) from the Senior Foreign Service or while assigned to class FS-1 in the Foreign Service Schedule,

shall receive retirement benefits in accordance with section 806.

(b) Any member of the Service (other than a member to whom subsection (a) applies) who is retired under section 607

(c) (1) or 608(b) shall receive—

(1) one-twelfth of a year's salary at his or her then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his or her then current salary rate, payable without interest from the Foreign Service Retirement and Disability Fund in 3 equal installments, such installments to be paid on January 1 of each of the first 3 calendar years beginning after the retirement of the member (except that in special cases, the Secretary of State may accelerate or combine such installments); and

(2) a refund is provided in section 815 of the contributions made by the member to the Foreign Service Retirement and Disability Fund, except that in lieu of such refund a member who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect to receive an annuity, computed under section 806, commencing at age 60.

In the event that a member of the Service has elected to receive retirement benefits under paragraph (2) and dies before reaching age 60, his or her death shall be considered a death in service within the meaning of section 809.

SEC. 610. SEPARATION FOR CAUSE.—(a) (1) The Secretary may separate any member from the Service for such cause as will promote the efficiency of the Service.

(2) A member of the Service who is a member of the Senior Foreign Service or is assigned to a salary class in the Foreign Service Schedule and who either (A) is serving under a career appointment, or (B) if separation is to be by reason of misconduct, is serving under a limited appointment, shall not be separated from the Service under this section until the member has been granted a hearing before the Foreign Service Grievance Board and the cause for separation established at such hearing, unless the member waives in writing the right to a hearing. The hearing provided under this paragraph shall be in accordance with the hearing procedures applicable to grievances under section 1106 and shall be in lieu of any other administrative procedure authorized or required by this or any other law.

(b) Any participant in the Foreign Service Retirement and Disability System who is separated under subsection (a) shall be entitled to receive a refund as provided in section 815 of the contributions made by the participant to the Foreign Service Retirement and Disability Fund. Except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States, a participant who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect, in lieu of such refund, to an annuity, computed under section 806, commencing at age 60.

SEC. 611. TERMINATION OF LIMITED APPOINTMENTS.—Except as provided in section 610(a) (2), the Secretary may terminate at any time the appointment of any member of the Service serving under a limited appointment who is in the Senior Foreign Service, who is assigned to a salary class in the Foreign Service Schedule, or who is a family member of a Government employee serving under a local compensation plan established under section 408.

SEC. 612. TERMINATION OF APPOINTMENTS OF CONSULAR AGENTS AND FOREIGN NATIONAL EMPLOYEES.—(a) The Secretary of State may

terminate at any time the appointment of any consular agent in light of the criteria and procedures normally followed in the locality in similar circumstances.

(b) The Secretary may terminate at any time the appointment of any foreign national employee in light of the criteria and procedures normally followed in the locality in similar circumstances.

SEC. 613. FOREIGN SERVICE AWARDS.—The President shall establish a system of awards to confer appropriate recognition of outstanding contributions to the Nation by members of the Service. The awards system established under this section shall provide for presentation by the President and by the Secretary of medals or other suitable commendations for performance in the course of or beyond the call of duty which involve distinguished, meritorious service to the Nation, including extraordinary valor in the face of danger to life or health.

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

SEC. 701. FOREIGN SERVICE INSTITUTE.—(a) The Secretary of State shall maintain and operate the Foreign Service Institute (hereinafter in this chapter referred to as the "Institute"), originally established under section 701 of the Foreign Service Act of 1946, in order to promote career development within the Service and to provide necessary training and instruction in the field of foreign relations to members of the Service and to employees of the Department and of other agencies. The Institute shall be headed by a Director, who shall be appointed by the Secretary of State.

(b) To the extent practicable, the Secretary of State shall provide training under this chapter which meets the needs of all agencies, and other agencies shall avoid duplicating the facilities and training provided by the Secretary of State through the Institute and otherwise.

SEC. 702. FOREIGN LANGUAGE REQUIREMENTS.—(a) The Secretary shall establish foreign language proficiency requirements for members of the Service who are to be assigned abroad in order that Foreign Service posts abroad will be staffed by individuals having a useful knowledge of the language or dialect common to the country in which the post is located.

(b) The Secretary of State shall arrange for appropriate language training of members of the Service by the Institute or otherwise in order to assist in meeting the requirements established under subsection (a).

SEC. 703. TRAINING AUTHORITIES.—(a) In the exercise of functions under this chapter, the Secretary of State may—

(1) provide for the general nature of the training and instruction to be furnished by the Institute, including functional and geographic area specializations;

(2) correlate training and instruction furnished by the Institute with courses given at other Government institutions and at private institutions which furnish training and instruction useful in the field of foreign affairs;

(3) encourage and foster programs complementary to those furnished by the Institute, including through grants and other gratuitous assistance to nonprofit institutions cooperating in any of the programs under this chapter;

(4) (A) employ in accordance with the civil service laws such personnel as may be necessary to carry out the provisions of this chapter, and

(B) if and to the extent determined to be necessary by the Secretary of State, obtain without regard to the provisions of law governing appointments in the competitive service, by appointment or contract (subject to the availability of appropriations),

the services of individuals to serve as language instructors, linguists, and other academic and training specialists (including, in the absence of suitably qualified United States citizens, qualified individuals who are not citizens of the United States); and

(5) acquire such real and personal property and equipment as may be necessary for the establishment, maintenance, and operation of the facilities necessary to carry out the provisions of this chapter without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) and section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252).

(b) (1) The Secretary shall establish a professional development program to assure that members of the Foreign Service obtain the skills and knowledge required at the various stages of their careers. With regard to Foreign Service Officers (including Foreign Service Information Officers) primary attention shall be given to training for career candidate officers and for midcareer officers, both after achieving tenure and as they approach eligibility for entry to the Senior Foreign Service, to enhance and broaden their qualifications for more senior levels of responsibility in the Foreign Service. Training for other members of the Service shall emphasize programs designed to enhance their particular skills and expert knowledge.

(2) Junior Foreign Service Officer training shall be directed primarily toward providing expert knowledge in the basic functions of analysis and reporting as well as in consular, administrative and linguistic skills relevant to the full range of future job assignments. Midcareer training shall be directed toward development and perfection of management, functional, negotiating and policy development skills to prepare the officers progressively for more senior levels of responsibility.

(3) Training for other members of the Service shall be directed toward maintaining and improving their professional expert knowledge, including development of the management skills appropriate to their occupational categories.

(4) In each case the program of professional development should be designed to provide members of the Service with the opportunity to acquire skills and knowledge relevant to clearly established professional standards of expected performance. Career candidates should satisfactorily complete such training prior to attainment of career status. All members of the Service should satisfactorily complete mid-career training before appointment to the Senior Foreign Service.

(5) In formulating programs under this subsection, the Secretary should establish a system to provide, insofar as possible, credit toward university degrees for successful completion of courses comparable to graduate-level, university courses.

(6) Training provided under this subsection shall be conducted by the Department and by other governmental and nongovernmental institutions as may be considered appropriate by the Secretary.

(7) The Secretary shall report annually to the Congress and the President on the status of the professional development program and the resources needed and made available to achieve it. The first such report, to be submitted 90 days after the effective date of this Act, shall set out the resources required to initiate the program established by this subsection successfully.

(c) In furtherance of the objectives of this Act, the Secretary may—

(1) pay the tuition and other expenses of members of the Service and employees of the Department who are assigned or detailed in accordance with law for special instruction or training, including orientation, language, and career development training;

(2) pay the salary (excluding premium pay or any special differential under section 411) of members of the Service selected and assigned for training; and

(3) provide special monetary or other incentives to encourage members of the Service to acquire or retain proficiency in foreign languages or special abilities needed in the Service.

(d) The Secretary may provide to family members of members of the Service or of employees of the Department or other agencies, in anticipation of their assignment abroad or while abroad—

(1) appropriate orientation and language training; and

(2) functional training for anticipated prospective employment under section 311.

SEC. 704. TRAINING GRANTS.—(a) To facilitate training provided to members of families of Government employees under this chapter, the Secretary may make grants (by advance payment or by reimbursement) to family members attending approved programs of study. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance.

(b) If a member of the Service who is assigned abroad, or a member or his or her family, is unable to participate in language training furnished by the Government through the Institute or otherwise, the Secretary may compensate that individual for all or part of the costs of language training, related to the assignment abroad, which is undertaken at a public or private institution.

SEC. 705. CAREER COUNSELING.—(a) In order to facilitate their transition from the Service, the Secretary may provide (by contract or otherwise, subject to the availability of appropriations) professional career counseling, advice, and placement assistance to members of the Service, and to former members of the Service who were assigned to receive counseling and assistance under this subsection before they were separated from the Service, other than those separated for cause.

(b) (1) The Secretary may facilitate the employment of spouses of members of the Service by—

(A) providing regular career counseling for such spouses;

(B) maintaining a centralized system for cataloging their skills and the various governmental and non-governmental employment opportunities available to them; and

(C) otherwise assisting them in obtaining employment.

(2) The Secretary shall establish a family liaison office to carry out this subsection and such other functions as the Secretary may determine.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 801. ADMINISTRATION OF THE SYSTEM.—In accordance with such regulations as the President may prescribe, the Secretary of State shall administer the Foreign Service Retirement and Disability System (hereinafter in this chapter referred to as the "System"), originally established pursuant to section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 802. MAINTENANCE OF THE FUND.—The Secretary of the Treasury shall maintain the special fund known as the Foreign Service Retirement and Disability Fund (hereinafter in this chapter referred to as the "Fund"), originally created by section 18 of the Act of May 24, 1924, (43 Stat. 144).

SEC. 803. PARTICIPANTS.—(a) The following members of the Service (hereinafter in this chapter referred to as "participants") shall be entitled to the benefits of the System:

(1) Every member serving under a career appointment or as a career candidate under section 306—

(A) in the Senior Foreign Service, or

(B) who is assigned to a salary class in the Foreign Service Schedule.

(2) Every chief of mission, who is not a participant under paragraph (1), who—

(A) has served as chief of mission for an aggregate period of 20 years or more, and

(B) has paid into the Fund a special contribution for each year of such service in accordance with section 805.

(b) Any otherwise eligible member of the Service who is appointed to a position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, shall not by virtue of the acceptance of such appointment cease to be eligible to participate in the System.

Sec. 804. DEFINITIONS.—As used in this chapter, unless otherwise specified, the term—

(1) "annuitant" means any individual, including a former participant or survivor, who meets all requirements for an annuity from the Fund under this or any other Act and who has filed a claim for such annuity;

(2) "child" means an individual—

(A) who—

(i) is an offspring or adopted child of the participant,

(ii) is a stepchild or recognized natural child of the participant and who received more than one-half support from the participant, or

(iii) lived with the participant, for whom a petition of adoption was filed by the participant, and who is adopted by the surviving spouse of the participant after the death of the participant;

(B) who is unmarried; and

(C) who—

(i) is under the age of 18 years,

(ii) is a student under the age of 22 years (for purposes of this clause, an individual whose 22d birthday occurs before July 1 or after August 31 of the calendar year in which that birthday occurs, and while the individual is a student, is deemed to become 22 years of age on the first July 1 which occurs after that birthday), or

(iii) is incapable of self-support because of a physical or mental disability which was incurred before the individual reached the age of 18 years;

(3) "court" means any court of any State or of the District of Columbia;

(4) "court order" means any court decree of divorce or annulment, or any court order or court-approved property settlement agreement incident to any court decree of divorce or annulment;

(5) "Foreign Service normal cost" means the level percentage of payroll required to be deposited in the Fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military and naval service;

(6) "former spouse" means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during periods of service by that participant which are creditable under section 816;

(7) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value, plus

(B) the cash balance of the Fund on the books of the Treasury;

(8) "lump-sum credit" means the compulsory and special contributions to the credit of a participant or former participant in the Fund plus interest on such contributions at 4 percent a year compounded annually to December 31, 1976, and after such date, for a participant who separates from the Service after completing at least 1 year of civilian service and before completing 5 years of such service, at the rate of 3 percent

per year to the date of separation (except that interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity);

(9) "military and naval service" means honorable active service—

(A) in the Armed Forces of the United States,

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or

(C) as a commissioned officer of the National Oceanic and Atmospheric Administration, or a predecessor organization, after June 30, 1961,

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(10) "pro rata share", in the case of any former spouse of any participant or former participant, means a percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the creditable service of that participant is of (B) the total number of years of such creditable service;

(11) "student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, university, or comparable recognized educational institution (for purposes of this paragraph, a child who is a student shall not be deemed to have ceased to be a student during any period between school years, semesters, or terms if the period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Secretary of State that he or she has a bona fide intention of continuing to pursue his or her course of study during the school year, semester, or term immediately following such period);

(12) "surviving spouse" means the surviving wife or husband of a participant or annuitant who, in the case of a death in Service or marriage after retirement, was married to the participant or annuitant for at least one year immediately preceding his or her death or is a parent of a child born of the marriage; and

(13) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund over the sum of—

(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made on their behalf, plus

(B) the present value of Government payments to the Fund under section 821, plus

(C) the Fund balance as of the date the unfunded liability is determined.

Sec. 805. CONTRIBUTIONS TO THE FUND.—

(a) 7 percent of the basic salary received by each participant shall be deducted from the salary and contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the Department.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary. Payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which the participant shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the salary of the individual.

(c) (1) If a member of the Service who is under another retirement system for Government employees becomes a participant in the System by direct transfer, the total contributions and deposits of that member that would otherwise be refundable on separation (except voluntary contributions), including interest thereon, shall be transferred to the Fund effective as of the date such member becomes a participant in the System. Each such member shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered by such member prior to becoming a participant in the System.

(2) A member of the Service whose contributions are transferred to the Fund pursuant to paragraph (1) shall not be required to make additional contributions for periods of service for which required contributions were made to the other Government retirement fund; nor shall any refund be made to any such member on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by subsection (d).

(d) (1) Any participant credited with civilian service after July 1, 1924—

(A) for which no retirement contributions, deductions, or deposits have been made, or

(B) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited, may make a special contribution to the Fund equal to the following percentages of basic salary received for such service:

Time of service:	Percent of basic salary
July 1, 1924, through October 15, 1960, inclusive	5
October 16, 1960, through December 31, 1969, inclusive	6 1/2
On and after January 1, 1970	7

(2) Notwithstanding paragraph (1), a special contribution for prior nondeposit service as a National Guard technician which would be creditable toward retirement under subchapter III of chapter 83 of title 5, United States Code, and for which a special contribution has not been made, shall be equal to the special contribution for such service computed in accordance with the schedule in paragraph (1) multiplied by the percentage of such service that is creditable under section 816.

(3) Special contributions under this subsection shall include interest computed from the midpoint of each service period included in the computation, or from the date refund was paid, to the date of payment of the special contribution or commencing date of annuity, whichever is earlier. Interest shall be compounded at the annual rate of 4 percent to December 31, 1976, and 3 percent thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments (including by allotment of pay) when authorized by the Secretary of State.

(e) Contributions shall not be required for any period of military and naval service or for any period for which credit is allowed to individuals of Japanese ancestry under section 816 for periods of internment during World War II.

(f) A participant or survivor may make a special contribution at any time before receipt of annuity and may authorize payment by offset against initial annuity accruals.

Sec. 806. COMPUTATION OF ANNUITIES.—

(a) The annuity of a participant shall be equal to 2 percent of his or her average basic salary for the highest 3 consecutive years of service multiplied by the number of years,

not exceeding 35, of service credit obtained in accordance with sections 816 and 817, except that the highest 3 years of service shall be used in computing the annuity of any participant who serves an assignment under section 302(b) in a position to which the participant was appointed by the President and whose continuity of service in that position is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary of State to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 percent of any special contribution described in section 805(d) which is due for service for which no contributions were made and which remains unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

(b) (1) (A) Except to the extent provided otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 60), the participant shall receive a reduced annuity and provide a survivor annuity for his or her spouse under this subsection or former spouse under section 814(b), or a combination of such annuities, as the case may be.

(B) At the time of retirement, a married participant or former participant and his or her spouse may jointly elect in writing to waive a survivor annuity for that spouse under this section (or under section 814(b) if the spouse later qualifies as a former spouse under section 804(6)), or to reduce such survivor annuity by designating a portion of the annuity of the participant as the base for the survivor benefit.

(C) If a participant or former participant has a former spouse, the participant and such former spouse may jointly elect in writing to waive a survivor annuity under section 814(b) for that former spouse if the election is made (i) before the end of the 12-month period after the divorce or annulment involving that former spouse becomes final or (ii) at the time of retirement, whichever occurs first.

(2) The annuity of a participant or former participant providing a survivor benefit under this section (or section 814(b)), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first \$3,600 plus 10 percent of any amount over \$3,600. The reduction under this paragraph shall be calculated before any reduction under section 814(a)(5).

(3) (A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1)(B).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 814(b) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 814(b)(4)(B).

(C) An annuity payable from the Fund to a surviving spouse under this paragraph shall commence on the day after the participant dies and shall terminate on the last day of the month before (a) the surviving spouse's death or (b) if the surviving spouse remarries before attaining age 60. If such a sur-

vivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(c) (1) If an annuitant who was a participant dies and is survived by a spouse and by a child or children, in addition to the annuity payable to the surviving spouse, there shall be paid to or on behalf of each child an annuity equal to the smaller of—

- (A) \$900, or
- (B) \$2,700 divided by the number of children.

(2) If an annuitant who was a participant dies and is not survived by a spouse but by a child or children, each surviving child shall be paid an annuity equal to the smaller of—

- (A) \$1,080, or
- (B) \$3,240 divided by the number of children.

(3) The amounts specified in this subsection are subject to—

(A) cost-of-living adjustments as specified under section 826(c)(3), and

(B) the minimum specified in subsection (1)(2) of this section.

(d) If a surviving spouse dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

(e) The annuity payable to a child under subsection (c) or (d) shall begin on the day after the participant dies, or if the child is not then qualified, on the first day of the month in which the child becomes eligible. The annuity of a child shall terminate on the last day of the month which precedes the month in which eligibility ceases.

(f) At the time of retirement an unmarried participant who does not have a former spouse for whose benefit a reduction is made under subsection (b) may elect to receive a reduced annuity and to provide for an annuity equal to 55 percent of the reduced annuity payable after his or her death to a beneficiary whose name is designated in writing to the Secretary of State. The annuity payable to a participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) and by 5 percent of an annuity so computed for each full 5 years the designated beneficiary is younger than the retiring participant, but such total reduction shall not exceed 40 percent. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant has satisfactorily passed a physical examination as prescribed by the Secretary of State. The annuity payable to a beneficiary under this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the death of the beneficiary. An annuity which is reduced under this subsection (or any similar prior provision of law) shall, effective the first day of the month following the death of the beneficiary named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(g) A participant or former participant who was unmarried at retirement and who later marries may, within one year after such marriage, irrevocably elect in writing to receive a reduced annuity and to provide a survivor annuity for the spouse (if such spouse qualifies as a surviving spouse under section 804(12)). Receipt by the Secretary of State of notice of an election under this subsection voids prospectively any election previously made under subsection (f). The reduction in

annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined in accordance with subsections (b) (2) and (3). The annuity reduction or recomputation shall be effective the first day of the month beginning one year after the date of marriage.

(h) A surviving spouse or surviving former spouse of any participant or former participant shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which he or she may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than that participant.

(i) (1) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 823 shall, unless the annuitant and his or her spouse jointly elect in writing to the contrary at that time, have the supplemental annuity reduced by 10 percent to provide a supplemental survivor annuity for his or her spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or to whom the annuitant had been married for at least one year at the time of death or who is a parent of a child born of the marriage.

(2) The Secretary of State shall issue regulations to provide for the application of paragraph (1) of this subsection and of section 823 of this Act in any case in which an annuitant has a former spouse who was married to the participant during a period of recall service and who qualifies for an annuity under section 814(b).

(j) An annuity which is reduced under this section or any similar prior provision of law to provide a survivor benefit for a spouse shall, if the marriage of the participant to such spouse is dissolved, be recomputed and paid for each full month during which an annuitant is not married (or is remarried if there is no election in effect under the following sentence) as if the annuity had not been so reduced. Upon remarriage the retired participant may irrevocably elect, by means of a signed writing received by the Secretary within one year after such remarriage, to receive during such marriage a reduction in annuity for the purpose of allowing an annuity for the new spouse of the annuitant in the event such spouse survives the annuitant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 814(b)(5)), and shall be effective the first day of the first month beginning one year after the date of remarriage. A survivor annuity elected under this subsection shall be treated in all respects as a survivor annuity under subsection (b).

(k) The Secretary of State shall, on an annual basis—

(1) Inform each participant of his or her right of election under subsection (g) and (j); and

(2) to the maximum extent practicable, inform spouses or former spouses of participants or former participants of their rights under this section and section 814.

(l) (1) The monthly rate of an annuity payable under this chapter to an annuitant, other than a child, shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

(2) The monthly rate of an annuity payable under this chapter to a surviving child shall not be less than the smallest primary

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insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.) or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) This subsection does not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

SEC. 807. PAYMENT OF ANNUITY.—(a) Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for an annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under this Act shall become effective on the day he or she attains age 60.

(b) The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Secretary of State may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to his or her estate.

(c) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary of State. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(d) Recovery of overpayments under this chapter may not be made from an individual when, in the judgment of the Secretary of State, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

SEC. 808. RETIREMENT FOR DISABILITY OR INCAPACITY.—(a) Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant) shall, upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 806. If the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age 60.

(b) Before being retired under this section, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to conduct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like

examinations shall be made annually until the annuitant has attained age 60. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within 1 year from the date recovery is determined. Upon application, the Secretary shall reinstate such recovered annuitant in the class in which the annuitant was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his or her contemporaries in the Service, appoint or recommend that the President appoint the annuitant to a higher class. Payment of the annuity shall continue until a date 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this section, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this subsection, payment of the annuity shall be suspended until continuance of the disability or incapacity is satisfactorily established.

(c) If a recovered annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he or she shall be considered to have been separated within the meaning of section 810 as of the date of retirement for disability or incapacity and shall, after the discontinuance of the annuity, be entitled to the benefits of that section or of section 815, except that he or she may elect voluntary retirement if eligible under section 811.

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself or herself under subchapter I of chapter 81 of title 5, United States Code, covering the same period of time, except that a participant may simultaneously receive both an annuity under this section and scheduled disability payments under section 8107 of title 5, United States Code. This subsection shall not bar the right of any claimant to the greater benefit conferred by either this Act or such subchapter for any part of the same period of time. Neither this subsection nor any provision of such subchapter shall be construed to deny the right of any participant to receive an annuity under this Act and to receive concurrently any payment under such subchapter by reason of the death of any other individual.

(e) Notwithstanding any other law, the right of any individual entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, United States Code, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such individual receives such annuity, he or she shall—

(1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or

(2) authorize the deduction of such amount from the annuity payable under this Act, which amount shall be transmitted to the Department of Labor for reimbursement to such Fund.

Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever the Secretary of Labor finds that the financial circumstances of the annuitant warrant deferred refunding.

(f) A claim may be allowed under this section only if the application is filed with the Secretary of State before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary of State for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary of State within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, which is earlier.

SEC. 809. DEATH IN SERVICE.—(a) If a participant dies and no claim for annuity is payable under this Act, the lump-sum credit shall be paid in accordance with section 815.

(b) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or former spouse qualifying for an annuity under section 814 (b), such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with subsections (e) and (g) of this section and section 806(a) and any surviving former spouse shall be entitled to an annuity under section 814 (b) as if the participant died after being entitled to an annuity under this chapter. If the participant had less than 3 years creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

(c) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(1) and (d) of section 806.

(d) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is not survived by a spouse, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(2) and (d) of section 806.

(e) If, at the time of his or her death, the participant had less than 20 years of service credit toward retirement under the System, the annuity payable in accordance with subsection (b) shall be computed in accordance with section 806 on the assumption he or she has had 20 years of service, except that the additional service credit that may accrue to a deceased participant under this subsection shall in no case exceed the difference between his or her age on the date of death and age 60. In all cases arising under this subsection or subsection (b), (c), (d), or (g), it shall be assumed that the deceased participant was qualified for retirement on the date of death.

(f) If an annuitant who elected a reduced annuity dies in service after being recalled under section 808 and is survived by a spouse or former spouse entitled to a survivor annuity based on such an election, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with section 823. If such death occurs after the annuitant had completed sufficient

recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant during a period of recall service shall be entitled to elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 806 (i) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under this chapter, to have the rights of the annuitant redetermined and to receive a survivor annuity computed under subsection (b) on the basis of the total service of the annuitant.

(g) Notwithstanding subsection (b), if the participant or former participant had a former spouse qualifying for an annuity under section 814(b), the annuity of the spouse under this section shall be subject to the limitation of section 806(b) (3) (B).

(h) Annuities that become payable under this section shall commence, terminate, and be resumed in accordance with subsection (b) (4), (e), or (h) of section 806, as appropriate.

SEC. 810. DISCONTINUED SERVICE RETIREMENT.—Any participant who voluntarily separates from the Service after obtaining at least 5 years of service credit toward retirement under the System (excluding military and naval service) may upon separation from the Service or at any time prior to becoming eligible for an annuity elect to have his or her contributions to the Fund returned in accordance with section 815, or to leave his or her contributions in the Fund and receive an annuity, computed under section 806, commencing at age 60.

SEC. 811. VOLUNTARY RETIREMENT.—Any participant who is at least 50 years of age and has 20 years of creditable service, including at least 5 years of service credit toward retirement under the System (excluding military and naval service), may on his or her own application and with the consent of the Secretary be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 812. MANDATORY RETIREMENT.—(a) Except as provided in subsection (b), any participant shall be retired from the Service at the end of the month in which the participant reaches age 60 if the participant has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and shall receive retirement benefits in accordance with section 806.

(b) Any participant who reaches age 60 while occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, may continue to serve until that appointment is terminated. In addition, whenever the Secretary determines it to be in the public interest, any participant who has reached age 60 may be retained on active service for a period not to exceed 5 years. Any participant who completes a period of service after reaching age 60 as authorized by this subsection shall be retired at the end of the month in which such authorized service is completed.

SEC. 813. RETIREMENT OF FORMER PRESIDENTIAL APPOINTEES.—If a participant completes an assignment under section 302(b) in a position to which he or she was appointed by the President and has not been reassigned within 3 months after the termination of such assignment (plus any period of authorized leave), the participant shall be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 814. FORMER SPOUSES.—(a) (1) Unless otherwise expressly provided by any court

order under section 820(b) (1), a former spouse of a participant or former participant is entitled to an annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant through such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) The annuity of a former spouse under this subsection commences on the later of the day the participant upon whose service the annuity is based becomes entitled to an annuity under this title or the first day of the month in which the divorce or annulment involved becomes final. The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the former spouse dies or remarries before 60 years of age; or

(B) the date the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5) (B)).

(4) No court order under section 820(b) (1) involving any participant may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the participant, nor may any such order relating to an annuity under this subsection be given effect if it is issued more than 12 months after the date the divorce or annulment involved becomes final.

(5) (A) The annuity payable to any participant or former participant shall be reduced by the amount of an annuity under this subsection of any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating the survivor annuity for any spouse, former spouse, or other survivor under this chapter, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) or section 806 (b) (3).

(B) If any annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 303, or reinstated or reappointed in the Service in the case of a recovered disability annuitant or if any annuitant is reemployed as provided for under section 824, the salary of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Fund.

(6) Notwithstanding paragraph (3), in the case of any former spouse of a disability annuitant—

(A) the annuity of that former spouse shall commence on the later of the date the participant would qualify on the basis of his or her creditable service for an annuity under this chapter (other than a disability annuity) or the date the disability annuity begins, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(7) An annuity under this subsection shall be treated the same as a survivor annuity under subsection (b) for purposes of section 806(h) or any comparable provision of law.

(b) (1) Subject to any election under section 806(b) (1) (C) and unless otherwise expressly provided by any court order under section 820(b) (1), if a former participant who is entitled to receive an annuity is survived by a former spouse, the former spouse shall be entitled to a survivor annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 55 percent of the full amount of the participant's annuity, as computed under section 806(a); or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 55 percent of the full amount of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4) (A) The maximum survivor annuity or combination of survivor annuities under this section (and section 806(b) (3)) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 806(a).

(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annuity may thereafter be provided for under this subsection (or section 806(b) (3)) with respect to a participant or former participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) After the death of a participant or former participant, a court order under section 820(b) (1) may not adjust the amount of the annuity of any former spouse under this section.

(5) For each full month after a former spouse of a participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced unless the participant is then married and elects in writing within one year after the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 806(b) (3) for any spouse of the participant.

(c) (1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (b) for a former spouse—

(A) such participant may elect, or

(B) a court order under section 820(b) (1) may provide for, an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities elected or ordered under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 806(b) (3), shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 806(a).

(3) (A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved shall provide for any annuity under this subsection—

(i) by a reduction in the annuity or salary of the participant,

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(ii) by a lump sum payment or installment payments to the Fund, or

(iii) by any combination of such reduction and payments.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity or salary reduction under subparagraph (A) is in effect for that spouse or former spouse, the annuity or salary shall be recomputed and paid as if it had not been reduced, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 826 shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State.

(d) Section 806(1) shall not apply—

(1) to any annuity payable under subsection (a) or (b) to any former spouse if the amount of that annuity varies by reason of a court order under section 820(b)(1) from the amount which would be calculated under subsection (a)(1) or (b)(1), as the case may be, in the absence of such court order; and

(2) to any annuity payable under subsection (c).

SEC. 815. LUMP-SUM PAYMENTS.—(a) Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this chapter, a lump-sum credit shall be paid to the participant (and to any former spouse of the participant, in accordance with subsection (1)).

(b) Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 823 the compulsory contributions of the annuitant to the Fund for such service, together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned to the annuitant (and any former spouse of the annuitant who was married to the participant during the period of recall service, in accordance with subsection (1)).

(c) If all annuity rights under this chapter based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in accordance with subsection (f).

(d) If a participant or former participant dies and is not survived by an individual eligible for an annuity under this chapter or by such an individual or individuals all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit shall be paid in accordance with subsection (f).

(e) If an annuitant who was a former participant dies, any annuity accrued and un-

paid shall be paid in accordance with subsection (f).

(f) Payments under subsection (c) through (e) shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing filed with the Secretary of State prior to the death of the participant, for which purpose a designation, change, or cancellation of beneficiary in a will or other document which is not so executed and filed shall have no force or effect.

(2) If there is no such beneficiary, to the surviving wife or husband of the participant.

(3) If none of the above, to the child (without regard to the definition in section 804(2)) or children of the participant (including adopted and natural children but not stepchildren) and descendants of deceased children by representation.

(4) If none of the above, to the parents of the participant or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of the participant.

(6) If none of the above, to such other next of kin of the participant as may be determined in the judgment of the Secretary of State to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days after the death of the participant or annuitant.

(g) Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no such executor or administrator, to such person as may be determined by the Secretary of State (after the expiration of 30 days from the date of death of the survivor annuitant) to be entitled under the laws of the domicile of the survivor annuitant at the time of death.

(h) Amounts deducted and withheld from basic salary of a participant under section 805 from the beginning of the first pay period after the participant has completed 35 years of service computed under section 816 (excluding service credit for unused sick leave under section 816(b)), together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under section 805 (d), and any balance not so required shall be refunded in a lump sum to the participant after separation or, in the event of a death in service, to a beneficiary in order of precedence specified in subsection (f).

(i) Unless otherwise expressly provided by any court order under section 820(b)(1), the amount of a participant's or former participant's lump-sum credit payable to a former spouse of that participant shall be—

(1) if the former spouse was married to the participant throughout the period of creditable service of the participant, 50 percent of the lump-sum credit to which such participant would be entitled in the absence of this subsection; or

(2) if such former spouse was not married to the participant throughout such creditable service, an amount equal to such former spouse's pro rata share of 50 percent of such lump-sum credit.

The lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the former spouse.

SEC. 816. CREDITABLE SERVICE.—(a) Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that the Secretary of State determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined in accordance with section 8332 of title 5, United States Code), shall be creditable for purposes of this chapter. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under this chapter under the same conditions.

(b) In computing any annuity under this chapter, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes (without regard to the 35-year limitation imposed by section 806 (a)) the days of unused sick leave to the credit of the participant, except that these days shall not be counted in determining average basic salary or annuity eligibility under this chapter. A contribution to the Fund shall not be required from a participant for this service credit.

(c) (1) A participant who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may, within 60 days after entering on that leave without pay, file with the employing agency an election to receive full retirement credit for such periods or leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after November 7, 1976, the participant may not receive any credit for such periods of leave without pay occurring after such date.

(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving before November 7, 1976, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate and shall be computed in accordance with section 805. A participant who makes such contributions shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to 6 months' retirement credit shall be allowed for such periods of leave without pay each calendar year.

(d) A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service under section 805. Credit may not be allowed for service covered by the refund unless the special contribution is made.

(e) No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless—

(1) the right to any annuity under the other system which is based on such service is waived, and

(2) a special contribution is made under section 805 covering such service.

(f) A participant who during a period of war, or national emergency proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the purpose of this chapter, as not separated from the Service unless the

participant applies for and receives a lump-sum payment under section 815. However, the participant is deemed to be separated from the Service after the expiration of 5 years of such military service.

(g) (1) An annuity or survivor annuity based on the service of a participant of Japanese ancestry who would be eligible under section 8332(1) of title 5, United States Code, for credit for civilian service for periods of internment during World War II shall, upon application to the Secretary of State, be recomputed to give credit for that service. Any such recomputation of an annuity shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Secretary of State.

(2) The Secretary of State shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credit or annuity recomputed under this subsection of their entitlement to such credit of recomputation.

(3) The Secretary of State shall, on request, assist any individual referred to in paragraph (1) in obtaining from any agency or other Government establishment information necessary to verify the entitlement of the individual to have any service credited or any annuity recomputed under this subsection.

(4) Any agency or other Government establishment shall, upon request, furnish to the Secretary of State any information it possesses with respect to the internment or other detention, as described in section 8332(1) of title 5, United States Code, of any participant.

(h) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this chapter and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

(i) (1) Service of a participant shall be considered creditable service for purposes of applying provisions of this chapter relating to former spouses if such service would be creditable—

(A) under subsection (c)(1) or (2) but for the fact an election was not made under subsection (c)(1) or a special contribution was not made under subsection (c)(2), and

(B) under subsection (d) but for the fact that a refund of contributions has not been repaid unless the former spouse received under this chapter a portion of the lump sum (or a court order provided otherwise).

(2) A former spouse shall not be considered as married to a participant—

(A) for periods assumed to be creditable service under section 808(a) or section 809(e), or

(B) for any extra period of creditable service provided under section 817 for service of a participant at an unhealthful post unless the former spouse resided with the participant at that post during that period.

SEC. 817. EXTRA CREDIT FOR SERVICE AT UNHEALTHFUL POSTS.—The Secretary of State may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one and a half

years in computing the length of the service of a participant for the purpose of retirement, fractional months being considered as full months in computing such service. No such extra credit for service at such unhealthful posts shall be credited to any participant who is paid a differential under section 5925 or 5928 of title 5, United States Code, for such service.

SEC. 818. ESTIMATE OF APPROPRIATIONS NEEDED.—The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of the System at intervals of not more than five years. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding \$5,000 per year for the incidental expenses necessary in administering the provisions of this chapter, including actuarial advice.

SEC. 819. INVESTMENT OF THE FUND.—The Secretary of the Treasury shall invest from time to time in interest-bearing securities of the United States such portions of the Fund as in the judgment of the Secretary of the Treasury may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances. The income derived from such investments shall constitute a part of the Fund.

SEC. 820. ASSIGNMENT AND ATTACHMENT OF MONEYS.—(a) (1) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from such annuity for such purposes as the Secretary of State in his or her sole discretion considers appropriate.

(2) Notwithstanding section 3477 of the Revised Statutes of the United States (31 U.S.C. 203) or any other law, a member of the Service who is entitled to receive benefits under section 609(b)(1) may assign to any person the whole or any part of those benefits. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy of such assignment form shall be deposited with the Secretary of the Treasury by the member executing the assignment.

(b) (1) (A) In the case of any participant or annuitant who has a former spouse with respect to whom there is a court order—

(i) any right of any former spouse to any annuity under section 814(a) in connection with any retirement or disability annuity of the participant, and the amount of any annuity under such section 814(a);

(ii) any right of a former spouse to a survivor annuity under section 814(b) or (c), and the amount of any such annuity under section 814(b) or (c) for any surviving former spouse of the participant or annuitant; and

(iii) any right of any former spouse to any payment of a lump-sum credit under section 815(a) or (b); shall be determined in accordance with a court order, if and to the extent expressly provided for in the terms of that court order.

(B) This subsection shall not apply in the case of any court order which is inconsistent with the requirements of this chapter, as determined by the Secretary of State.

(2) Except with respect to obligations between participants and former spouses, payments under this chapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary of State to another individual to the extent expressly provided for in the terms of any order, or any court decree of legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(3) Paragraphs (1) and (2) shall apply only to payments made under this chapter for periods beginning after the date of receipt by the Secretary of State of written

notice of such decree, order, or agreement, and such additional information and such documentation as the Secretary of State may require.

(f) Any payment under this subsection to an individual bars recovery by any other individual.

(5) The 10-year requirement of section 804(b)(6), or any other provision of this chapter, shall not be construed to affect the rights of any spouse or individual formerly married to a participant or annuitant may have, under any law or rule of law of any State or the District of Columbia, with respect to an annuity of a participant or annuitant under this chapter.

(c) None of the moneys mentioned in this chapter shall be assignable either in law or equity, except under subsection (a) or (b) of this section, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal law.

SEC. 821. PAYMENTS FOR FUTURE BENEFITS.—

(a) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 825;

(2) extension of the benefits of the System to new groups of employees; or

(3) increases in salary on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of benefits, or increase in salary is effective.

(b) There is authorized to be appropriated to the Fund for each fiscal year an amount equal to the amount of the Foreign Service normal cost for that year which is not met by contributions to the Fund under section 805(a).

SEC. 822. UNFUNDED LIABILITY OBLIGATIONS.—(a) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount equivalent to—

(1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and

(2) that portion of disbursement for annuities for that year which the Secretary of State estimates is attributable to credit allowed for military and naval service.

(b) Before closing the accounts for each fiscal year, the Secretary of the Treasury shall credit such amounts to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated.

(c) Requests for appropriations to the Fund under section 821(b) shall include reports to the Congress on the sums credited to the Fund under this section.

SEC. 823. ANNUITY ADJUSTMENT FOR RECALL SERVICE.—(a) Any annuitant recalled to duty in the Service under section 808(a) shall, while so serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service the recalled annuitant shall make contributions to the Fund in accordance with section 805. On the day following termination of the recall service, the former annuity shall be resumed, adjusted by any cost-of-living increases under section 825 that became effective during the recall period.

(b) If the recall service lasts less than one year, the contributions of the annuitant to the Fund during recall service shall be refunded in accordance with section 815. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect

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a supplemental annuity computed under section 806 on the basis of service credit and average salary earned during the recall period irrespective of the number of years of service credit previously earned. If the recall service continues for at least 5 years, the annuitant may elect to have his or her annuity determined anew under section 806 in lieu of any other benefits under this section. Any annuitant who is recalled under section 308 may upon written application count as recall service any prior service that is creditable under section 816 that was performed after the separation upon which his or her annuity is based.

SEC. 824. REEMPLOYMENT.—(a) Notwithstanding any other law, any member of the Service who has retired and is receiving an annuity under this chapter, and who is reemployed in the Government service in any part-time or full-time appointive position, shall be entitled to receive the salary of the position in which he or she is serving plus so much of the annuity payable under this chapter which when combined with such salary does not exceed during any calendar year the basic salary the member would be entitled to receive under this Act if currently employed in the Foreign Service class which the Secretary determines most comparable to the class the member held on the date of retirement from the Service. Any such reemployed member of the Service who receives salary during any calendar year in excess of the maximum amount which he or she may be entitled to receive under this paragraph shall be entitled to such salary in lieu of benefits under this chapter.

(b) When any such retired member of the Service is reemployed, the employer shall send a notice of such reemployment to the Secretary of State, together with all pertinent information relating to such employment, and shall pay directly to such member the salary of the position in which he or she is serving.

(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed member of the Service or from any other moneys, including annuity payments, payable under this chapter.

SEC. 825. VOLUNTARY CONTRIBUTIONS.—(a) The voluntary contribution account shall be the sum of unrefunded amounts voluntarily contributed prior to the effective date of this Act by any participant or former participant under any prior law authorizing such contributions to the Fund, plus interest compounded at the rate of 3 percent per year to the date of separation from the Service or (in case of participant or former participant separated with entitlement to a deferred annuity) to the date the voluntary contribution account is claimed, the commencing date fixed for the deferred annuity, or the date of death, whichever is earlier. Effective on the date the participant becomes eligible for an annuity or a deferred annuity and at the election of the participant, his or her account shall be—

- (1) returned in a lump sum;
- (2) used to purchase an additional life annuity;
- (3) used to purchase an additional life annuity for the participant and to provide for a cash payment on his or her death to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant; or
- (4) used to purchase an additional life annuity for the participant and a life annuity commencing on his or her death payable to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant, with a guaranteed return to the beneficiary or his or her legal representative of an amount equal to the cash payment referred to in paragraph (3).

(b) The benefits provided by subsection (a) (2), (3), or (4) shall be actuarially equivalent in value to the payment provided for by subsection (a) (1) and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Secretary of the Treasury.

(c) A voluntary contribution account shall be paid in a lump sum following receipt of an application therefor from a present or former participant if application is filed prior to payment of any additional annuity. If not sooner paid, the account shall be paid at such time as the participant separates from the Service for any reason without entitlement to an annuity or a deferred annuity or at such time as a former participant dies or withdraws compulsory contributions to the Fund. In case of death, the account shall be paid in the order of precedence specified in section 815(f).

SEC. 826. COST-OF-LIVING ADJUSTMENTS OF ANNUITIES.—(a) A cost-of-living annuity increase shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5, United States Code. Each such increase shall be applied to each annuity payable from the Fund which has a commencing date not later than the effective date of the increase.

(b) Each annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(b) of title 5, United States Code.

(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase except as follows:

(1) An annuity (except a deferred annuity) payable from the Fund to a participant who retires and receives an immediate annuity, or to a surviving spouse or former spouse of a deceased participant who dies in service or who dies after being separated with benefits under section 609(b) (2), which has a commencing date after the effective date of the then last preceding general annuity increase under this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of such last preceding increase. In the administration of this paragraph, the number of days of unused sick leave to the credit of a participant or deceased participant on the effective date of the then last preceding general annuity increase under this section shall be deemed to be equal to the number of days of unused sick leave to his or her credit on the day of separation from the Service.

(2) Effective from its commencing date, an annuity payable from the Fund to the survivor of an annuitant, except a child entitled to an annuity under section 806(c) or 809(c) or (d), shall be increased by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing or recomputing an annuity to a child under section 806(c) or (d) or 809(c) or (d), the items \$900, \$1,080, \$2,700, and \$3,240 appearing in section 806(c) shall be increased by the total percentage increases by which corresponding amounts are being increased under section 8340 of title 5, United States Code, on the date the annuity of the child becomes effective.

(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except such installment shall after adjustment reflect an increase of at least \$1.

(f) Effective from its commencing date, there shall be an increase of 10 percent in the annuity of each surviving spouse whose

entitlement to annuity resulted from the death of an annuitant who, prior to October 1, 1976, elected a reduced annuity in order to provide a spouse's survivor annuity.

SEC. 827. COMPATIBILITY BETWEEN CIVIL SERVICE AND FOREIGN SERVICE SYSTEMS.—(a) In order to maintain existing conformity between the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code, and the Foreign Service Retirement and Disability System, whenever a law of general applicability is enacted which—

(1) affects the treatment of current or former participants, annuitants, or survivors under the Civil Service Retirement and Disability System; and

(2) affects treatment which, immediately prior to the enactment of such law, was substantially identical to the treatment accorded to participants, former participants, annuitants, or survivors under the Foreign Service Retirement and Disability System;

such law shall be extended in accordance with subsection (b) to the Foreign Service Retirement and Disability System so that it applies in like manner with respect to participants, former participants, annuitants, or survivors under that System.

(b) The President shall be Executive order prescribe regulations to implement this section and to make such extension retroactive to a date no earlier than the effective date of the provision of law applicable to the Civil Service Retirement and Disability System. Any provision of an Executive order issued under this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) all provisions of law enacted prior to the effective date of that provision of the Executive order, and

(2) any prior provision of an Executive order issued under this section.

CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

SEC. 901. TRAVEL AND RELATED EXPENSES.—The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for—

(1) proceeding to and returning from assigned posts of duty;

(2) authorized or required home leave;

(3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty;

(4) representational travel within the country to which the member of the Service is assigned or, when not more than one family member participates, outside such country;

(5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care (without regard to those laws and regulations limiting or restricting the furnishing or payment of transportation and traveling expenses), as well as expenses for—

(A) an attendant or attendants for a member of the Service or a family member who is too ill to travel unattended or for a family member who is too young to travel alone, and

(B) a family member incapable of caring for himself or herself if he or she remained at the post at which the member of the Service is serving;

(6) rest and recuperation travel of members of the Service who are United States citizens, and members of their families, while serving at locations abroad specifically designated by the Secretary for purposes of this paragraph, to—

(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which the member of the Service is serving, or

(B) locations in the United States;

except that, unless the Secretary otherwise specifies in extraordinary circumstances, travel expenses under this paragraph shall be limited to the cost for a member of the Service, and for each member of the family of the member, of 1 round trip during any continuous 2-year tour unbroken by home leave and of 2 round trips during any continuous 3-year tour unbroken by home leave;

(7) removal of the family members of a member of the Service, and the furniture and household and personal effects (including automobiles) of the family, from a Foreign Service post where there is imminent danger because of the prevalence of disturbed conditions, and the return of such individuals, furniture, and effects to such post upon the cessation of such conditions, or to such other Foreign Service post as may in the meantime have become the post to which the member of the Service has been reassigned;

(8) trips by a member of the Service for purposes of family visitation in situations where the family of the member is prevented by official order from accompanying the member to, or has been ordered from, the assigned post of the member because of imminent danger due to the prevalence of disturbed conditions, except that—

(A) with respect to any such member whose family is located in the United States, the Secretary may pay the costs and expenses for not to exceed 2 round trips in a 12-month period; and

(B) with respect to any such member whose family is located abroad, the Secretary may pay such costs and expenses for trips in a 12-month period as do not exceed the cost of 2 round trips (at less than first class) to the District of Columbia;

(9) round-trip travel from a location abroad for purposes of family visitation in emergency situations involving personal hardship;

(10) preparing and transporting to the designated home in the United States or to a place not more distant, the remains of a member of the Service, or of a family member of a member of the Service, who dies abroad or while in travel status;

(11) transporting the furniture and household and personal effects of a member of the Service (and of his or her family) to successive posts of duty and, on separation of a member from the Service, to the place where the member will reside (or if the member has died, to the place where his or her family will reside);

(12) packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a member of the Service (and of his or her family)—

(A) when the member is absent from his or her post of assignment under orders or is assigned to a Foreign Service post to which such furniture and household and personal effects cannot be taken or at which they cannot be used, or when it is in the public interest or more economical to authorize storage;

(B) in connection with an assignment of the member to a new post, except that costs and expenses may be paid under this subparagraph only for the period beginning on the date of departure from his or her last post or (in the case of a new member) on the date of departure from the place of residence of the member and ending on the earlier of the date which is 3 months after arrival of the member at the new post or the date on which the member establishes residence quarters; and

(C) in connection with separation of the member from the Service, except that costs or expenses may not be paid under this subparagraph for storing furniture and household and personal effects for more than 3 months;

(13) transporting, for or on behalf of a member of the Service, a privately owned

motor vehicle in any case in which the Secretary determines that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, but transportation may be provided under this paragraph for only one motor vehicle of a member during any 48-month period while the member is continuously serving abroad, except that another motor vehicle may be so transported as a replacement for such motor vehicle if such replacement—

(A) is determined, in advance, by the Secretary to be necessary for reasons beyond the control of the member and in the interest of the Government, or

(B) is incident to a reassignment when the cost of transporting the replacement motor vehicle does not exceed the cost of transporting the motor vehicle that is replaced;

(14) the travel and relocation of members of the Service, and members of their families, assigned to or within the United States (or any territory or possession of the United States or the Commonwealth of Puerto Rico), including assignments under subchapter VI of chapter 33 of title 5, United States Code (notwithstanding section 3375(a) of such title, if an agreement similar to that required by section 3375(b) of such title is executed by the member of the Service); and

(15) 1 round-trip per year for each child below age 21 of a member of the Service assigned abroad—

(A) to visit the member abroad if the child does not regularly reside with the member and the member is not receiving an education allowance or educational travel allowance for the child under section 5924(4) of title 5, United States Code; or

(B) to visit the other parent of the child if the other parent resides in a country other than the country to which the member is assigned and the child regularly resides with the member and does not regularly attend school in the country in which the other parent resides,

except that a payment under this paragraph may not exceed the cost of round-trip travel between the post to which the member is assigned and the port of entry in the contiguous 48 States which is nearest to that post.

SEC. 902. LOAN OF HOUSEHOLD EFFECTS.—The Secretary may, as a means of eliminating transportation costs, provide members of the Service with basic household furnishing and equipment for use on a loan basis in personally owned or leased residences.

SEC. 903. REQUIRED LEAVE IN THE UNITED STATES.—(a) The Secretary may order a member of the Service who is a citizen of the United States to take a leave of absence under section 6305 of title 5, United States Code (without regard to the introductory clause of subsection (a) of that section), upon completion by that member of 18 months of continuous service abroad. The Secretary shall order on such a leave of absence a member of the Service who is a citizen of the United States as soon as possible after completion by that member of 3 years of continuous service abroad.

(b) Leave ordered under this section may be taken in the United States, its territories and possessions, or the Commonwealth of Puerto Rico.

(c) While on a leave of absence ordered under this section, the services of any member of the Service shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties shall not be counted as leave.

SEC. 904. HEALTH CARE.—(a) The Secretary of State may establish a health care program to promote and maintain the physical and mental health of members of the Service, and (when incident to service abroad) other designated eligible Government employees, and members of the families of such mem-

(b) Any such health care program may include (1) medical examinations for applicants for employment, (2) medical examinations and inoculations or vaccinations for members of the Service and employees of the Department who are citizens of the United States and for members of their families, and (3) examinations necessary in order to establish disability or incapacity of participants in the Foreign Service Retirement and Disability System or to provide survivor benefits under chapter 8.

(c) The Secretary of State may establish health care facilities and provide for the services of physicians, nurses, or other health care personnel at Foreign Service posts abroad at which, in the opinion of the Secretary of State, a sufficient number of Government employees are assigned to warrant such facilities or services.

(d) If an individual eligible for health care under this section incurs an illness, injury, or medical condition while abroad which requires hospitalization or similar treatment, the Secretary may pay all or part of the cost of such treatment. Limitations on such payments established by regulation may be waived whenever the Secretary determines that the illness, injury, or medical condition clearly was caused or materially aggravated by the fact that the individual concerned is or has been located abroad.

(e) Health care may be provided under this section to a member of the Service or other designated eligible Government employee after the separation of such member or employee from Government service. Health care may be provided under this section to a member of the family of a member of the Service or of a designated eligible Government employee after the separation from Government service or the death of such member of the Service or employee or after dissolution of the marriage.

(f) The Secretary of State shall review on a continuing basis the health care program provided for in this section. Whenever the Secretary of State determines that all or any part of such program can be provided for as well and as cheaply in other ways, the Secretary may, for such individuals, locations, and conditions as the Secretary of State deems appropriate, contract for health care pursuant to such arrangements as the Secretary deems appropriate.

SEC. 905. REPRESENTATION EXPENSES.—Notwithstanding section 5536 of title 5, United States Code, the Secretary may provide for official receptions and may pay entertainment and representational expenses (including expenses of family members) to enable the Department and the Service to provide for the proper representation of the United States and its interests. In carrying out the provisions of the preceding sentence, the Secretary shall, to the maximum extent practicable, provide for the use of American products, including American wines.

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

SEC. 1001. LABOR-MANAGEMENT POLICY.—The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of workers to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlement of disputes between workers and their employers involving conditions of employment;

(2) the public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of modern and progressive work practices to facilitate improved performance and efficiency; and

(3) the unique conditions of Foreign Serv-

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ice employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representing members of the Service.

Therefore, labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

SEC. 1002. DEFINITIONS.—As used in this chapter, the term—

(1) "Authority" means the Federal Labor Relations Authority, described in section 7104(a) of title 5, United States Code;

(2) "Board" means the Foreign Service Labor Relations Board, established by section 1006(a);

(3) "collective bargaining" means the performance of the mutual obligation of the management representative of the Department and of the exclusive representative of employees to meet at reasonable times and to consult and bargain in good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession;

(4) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining under the provisions of this chapter;

(5) "conditions of employment" means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5, United States Code;

(B) relating to the designation or classification of any position under section 501;

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multi-agency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system;

(6) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(7) "dues" means dues, fees, and assessments;

(8) "employee" means—

(A) a member of the Service who is a citizen of the United States, wherever serving, other than a management official, a confidential employee, a consular agent, or any individual who participates in a strike in violation of section 7311 of title 5, United States Code; or

(B) a former member of the Service as described in subparagraph (A) whose employment has ceased because of an unfair labor practice under section 1015 and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Board;

(9) "exclusive representative" means any labor organization which is certified as the exclusive representative of employees under section 1011;

(10) "General Counsel" means the General Counsel of the Authority;

(11) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Department concerning grievances (as defined in section 1101) and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by the Department; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(12) "management official" means an individual who—

(A) is a chief of mission or principal officer; (B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in subparagraph (A) or (B);

(D) is serving as a deputy to any individual described by subparagraph (A), (B), or (C);

(E) is assigned to carry out functions of the Inspector General of the Department of State and the Foreign Service under section 209; or

(F) is engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department;

(13) "Panel" means the Foreign Service Impasse Disputes Panel, established by section 1010(a); and

(14) "person" means an individual, a labor organization, or an agency to which this chapter applies.

SEC. 1003. APPLICATION.—(a) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

(b) The President may by Executive order exclude any subdivision of the Department from coverage under this chapter if the President determines that—

(1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(2) the provisions of this chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(c) The President may by Executive order suspend any provision of this chapter with respect to any post, bureau, office, or activity of the Department, if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.

SEC. 1004. EMPLOYEE RIGHTS.—(a) Every employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right.

(b) Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and, in that

capacity, to present the views of the labor organization to the Secretary and other officials of the Government, including the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

SEC. 1005. MANAGEMENT RIGHTS.—(a) Subject to subsection (b), nothing in this chapter shall affect the authority of any management official of the Department, in accordance with applicable law—

(1) to determine the mission, budget, organization, and internal security practices of the Department, and the number of individuals in the Service or in the Department;

(2) to hire, assign, direct, lay off, and retain individuals in the Service or in the Department, to suspend, remove, or take other disciplinary action against such individuals, and to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member in accordance with regulations prescribed under section 605(b);

(3) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Department shall be conducted;

(4) to fill positions from any appropriate source;

(5) to determine the need for uniform personnel policies and procedures between or among the agencies to which this chapter applies; and

(6) to take whatever actions may be necessary to carry out the mission of the Department during emergencies.

(b) Nothing in this section shall preclude the Department and the exclusive representative from negotiating—

(1) at the election of the Department, on the numbers, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Department will observe in exercising any function under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any function under this section by such management officials.

SEC. 1006. FOREIGN SERVICE LABOR RELATIONS BOARD.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Labor Relations Board. The Board shall be composed of 3 members, 1 of whom shall be the Chairman of the Authority, who shall be the Chairperson of the Board. The remaining 2 members shall be appointed by the Chairperson of the Board from nominees approved in writing by the agencies to which this chapter applies, and the exclusive representative (if any) of employees in each such agency. In the event of inability to obtain agreement on a nominee, the Chairperson shall appoint the remaining 2 members from among individuals the Chairperson considers knowledgeable in labor-management relations and the conduct of foreign affairs.

(b) The Chairperson shall serve on the Board while serving as Chairman of the Authority. Of the 2 original members of the Board other than the Chairperson, one shall be appointed for a 2-year term and one shall be appointed for a 3-year term. Thereafter, each member of the Board other than the Chairperson shall be appointed for a term of 3 years, except that an individual appointed to fill a vacancy occurring before the end of a term shall be appointed for the unexpired term of the member replaced. The Chairperson may at any time designate an alternate Chairperson from among the members of the Authority.

(c) A vacancy on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

(d) The members of the Board, other than the Chairperson, may not hold another office or position in the Government except as authorized by law, and shall receive compensation at the daily equivalent of the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day they are performing their duties (including traveltime).

(e) The Chairperson may remove any other Board member, upon written notice, for corruption, neglect of duty, malfeasance, or demonstration incapacity to perform his or her functions, established at a hearing, except where the right to a hearing is waived in writing.

SEC. 1007. FUNCTIONS OF THE BOARD.—(a) The Board shall—

(1) supervise or conduct elections and determine whether a labor organization has been selected as the exclusive representative by a majority of employees who cast valid ballots and otherwise administer the provisions of this chapter relating to the accord- ing of exclusive recognition to a labor organization;

(2) resolve complaints of alleged unfair labor practices;

(3) resolve issues relating to the obligation to bargain in good faith;

(4) resolve disputes concerning the effect, the interpretation, or a claim of breach of a collective bargaining agreement, in accordance with section 1014; and

(5) take any action considered necessary to administer effectively the provisions of this chapter.

(b) Decisions of the Board under this chapter shall be consistent with decisions rendered by the Authority under chapter 71 of title 5, United States Code, other than in cases in which the Board finds that special circumstances require otherwise. Decisions of the Board under this chapter shall not be construed as precedent by the Authority, or any court or other authority, for any decision under chapter 71 of title 5, United States Code.

(c) In order to carry out its functions under this chapter—

(1) the Board shall by regulation adopt procedures to apply in the administration of this chapter; and

(2) the Board may—

(A) adopt other regulations concerning its functions under this chapter;

(B) conduct appropriate inquiries wherever persons subject to this chapter are located;

(C) hold hearings;

(D) administer oaths, take the testimony or deposition of any individual under oath, and issue subpoenas;

(E) require the Department or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action the Board considers appropriate to carry out this chapter; and

(F) consistent with the provisions of this chapter, exercise the functions the Authority has under chapter 71 of title 5, United States Code, to the same extent and in the same manner as is the case with respect to persons subject to chapter 71 of such title.

SEC. 1008. FUNCTIONS OF THE GENERAL COUNSEL.—The General Counsel may—

(1) investigate alleged unfair labor practices under this chapter,

(2) file and prosecute complaints under this chapter, and

(3) exercise such other powers of the Board as the Board may prescribe.

SEC. 1009. JUDICIAL REVIEW AND ENFORCEMENT.—(a) Except as provided in section 1014(d), any person aggrieved by a final order of the Board may, during the 60-day period beginning on the date on which the or-

der was issued, institute an action for judicial review of such order in the United States Court of Appeals for the District of Columbia.

(b) The Board may petition the United States Court of Appeals for the District of Columbia for the enforcement of any order of the Board under this chapter and for any appropriate temporary relief or restraining order.

(c) Subsection (c) of section 7123 of title 5, United States Code, shall apply to judicial review and enforcement of actions by the Board in the same manner that it applies to judicial review and enforcement of actions of the Authority under chapter 71 of title 5, United States Code.

(d) The Board may, upon issuance of a complaint as provided in section 1016 charging that any person has engaged in or is engaging in an unfair labor practice, petition the United States District Court for the District of Columbia, for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the Department to carry out its essential functions or if the Board fails to establish probable cause that an unfair labor practice is being committed.

SEC. 1010. FOREIGN SERVICE IMPASSE DISPUTES PANEL.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Impasse Disputes Panel, which shall assist in resolving negotiating impasses arising in the course of collective bargaining under this chapter. The Chairperson shall select the Panel from among individuals the Chairperson considers knowledgeable in labor-management relations or the conduct of foreign affairs. The Panel shall be composed of 5 members, as follows:

(1) 2 members of the Service (other than a management official, a confidential employee, or a labor organization official);

(2) one individual employed by the Department of Labor;

(3) one member of the Federal Service Impasses Panel; and

(4) one public member who does not hold any other office or position in the Government.

The Chairperson of the Board shall set the terms of office for Panel members and determine who shall chair the Panel.

(b) Panel members referred to in subsection (a) (3) and (4) shall receive compensation for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, except that the member who is also a member of the Federal Service Impasses Panel shall not be entitled to pay under this subsection for any day for which he or she receives pay under section 7119(b)(4) of title 5, United States Code. Members of the Panel shall be entitled to travel expenses as provided under section 5703 of title 5, United States Code.

(c) (1) The Panel or its designee shall promptly investigate any impasse presented to it by a party. The Panel shall consider the impasse and shall either—

(A) recommend to the parties to the negotiation procedures for the resolution of the impasse; or

(B) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(2) If the parties do not arrive at a settlement after assistance by the Panel under paragraph (1), the Panel may—

(A) hold hearings;

(B) administer oaths, take the testimony or deposition of any individual under oath, and issue subpoenas as provided in section 7132 of title 5, United States Code; and

(C) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(3) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the collective bargaining agreement unless the parties agree otherwise.

SEC. 1011. EXCLUSIVE RECOGNITION.—(a) The Department shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in a unit who cast valid ballots in the election.

(b) If a petition is filed with the Board—

(1) by any person alleging—

(A) in the case of a unit for which there is no exclusive representative, that 30 percent of the employees in the unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of a unit for which there is an exclusive representative, that 30 percent of the employees in the unit alleged that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation; the Board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Board finds on the record of the hearing that a question of representation exists, the Board shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any unit within which a valid election under this subsection has been held during the preceding 12 calendar months or with respect to which a labor organization has been certified as the exclusive representative during the preceding 24 calendar months.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit; or

(2) is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) and shall be placed on the ballot of any election under subsection (b) with respect to the petition.

(d) (1) The Board shall determine who is eligible to vote in any election under this section and shall establish regulations governing any such election, which shall include regulations allowing employees eligible to vote the opportunity to choose—

(A) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(B) not to be represented by a labor organization.

(2) In any election in which more than two choices are on the ballot, the regulations of the Board shall provide for preferential voting. If no choice receives a majority of first preferences, the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election

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shall be certified by the Board as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Board determines that the labor organization is subject to corrupt influence or influences opposed to democratic principles; or

(2) in the case of a petition filed under subsection (b) (1) (A), if there is not credible evidence that at least 30 percent of the employees wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Board.

SEC. 1012. EMPLOYEES REPRESENTED.—The employees of the Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded—

(1) employees engaged in personnel work in other than a purely clerical capacity; and

(2) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

SEC. 1013. REPRESENTATION RIGHTS AND DUTIES.—(a) A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit described in section 1012. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(b) (1) An exclusive representative shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance (as defined in section 1101) or any personnel policy or practice or other general condition of employment; and

(B) any examination of an employee by a Department representative in connection with an investigation if—

(1) the employee reasonably believes that the examination may result in disciplinary action against the employee, and

(2) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1) (B).

(c) The Department and the exclusive representative, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the Department and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 1010, to assist in any negotiation.

(d) The rights of an exclusive representative under this section shall not preclude an employee from—

(1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any separation described in section 1101(a) (1) (A) or any proceeding relating to such a separation; or

(2) exercising grievance or appeal rights established by law, rule, or regulation.

(e) The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) for the Department to furnish to the exclusive representative, or its authorized representative, upon request and to the extent not prohibited by law, data—

(A) which is normally maintained by the Department in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of such agencies; and

(6) if agreement is reached, to execute, upon the request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

(f) (1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.

(2) The Secretary shall approve the agreement within 30 days after the date of the agreement unless the Secretary finds in writing that the agreement is contrary to applicable law, rule, or regulation.

(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2), the agreement shall take effect after 30 days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(g) The Department shall consult with the exclusive representative with respect to government-wide or multi-agency matters affecting the rights, benefits, or obligations of individuals employed in agencies not authorized to utilize the Foreign Service personnel system. The exclusive representative shall be informed of any change proposed by the Department with respect to such matters, and shall be permitted reasonable time to present its views and recommendations regarding such change. The Department shall consider the views and recommendations of the exclusive representative before taking final action on any such change, and shall provide the exclusive representative a written statement of the reasons for taking the final action.

SEC. 1014. RESOLUTION OF IMPLEMENTATION DISPUTES.—(a) Any dispute between the Department and the exclusive representative concerning the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled.

(b) Either party to an appeal under subsection (a) (3) may file with the Board an exception to the action of the Foreign Service Grievance Board in resolving the implementation dispute. If, upon review, the Board finds that the action is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Board may take such action and make such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) If no exception to a Foreign Service Grievance Board action is filed under subsection (b) within 30 days after such action is communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Resolutions of disputes under this section shall not be subject to judicial review.

SEC. 1015. UNFAIR LABOR PRACTICES.—(a) It shall be an unfair labor practice for the Department—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5, United States Code) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to fail or refuse otherwise to comply with any provision of this chapter.

(b) It shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's functions as an employee;

(4) to discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with the Department, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the Department in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Department's operations shall not be an unfair labor practice); and

(B) to condone any unfair labor practice

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described in subparagraph (A) by failing to take action to prevent or stop such activity;

(8) to deny membership to any employee in the unit represented by the labor organization except—

(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

(B) in the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and this chapter; or

(9) to fail or refuse otherwise to comply with any provision of this chapter.

(c) The expression of any personal view, argument, or opinion, or the making of any statement, which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—

(A) constitute an unfair labor practice under this chapter, or

(B) constitute grounds for the setting aside of any election conducted under this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 1109(b), an employee has an option of using the grievance procedure under chapter 11 or an appeals procedure issues which can be raised under section 1014 or chapter 11 may, in the discretion of the aggrieved party, be raised either under such section or chapter or else raised as an unfair labor practice under this section, but may not be raised both under this section and under section 1014 or chapter 11.

SEC. 1016. PREVENTION OF UNFAIR LABOR PRACTICES.—(a) If the Department or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the Department or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge falls to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(b) Any complaint under subsection (a) shall contain a notice—

(1) of the charge;

(2) that a hearing will be held before the Board (or any member thereof or before an individual employed by the Board and designated for such purpose); and

(3) of the time and place fixed for the hearing.

(c) The labor organization or Department involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(d) (1) Except as provided in paragraph (2), no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Board.

(2) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in paragraph (1) by reason of—

(A) any failure of the Department or labor organization against which the charge is

made to perform a duty owed to the person, or

(B) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person or the alleged unfair labor practice.

(e) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(f) The Board (or any member thereof or any individual employed by the Board and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Board, in its discretion, may upon notice receive further evidence or hear argument.

(g) If the Board or any member thereof or any individual employed by the Board and designated for such purpose) determines after any hearing on a complaint under subsection (f) that the preponderance of the evidence received demonstrates that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the Department or labor organization an order—

(1) to cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) requiring reinstatement of an employee with backpay in accordance with section 5596 of title 5, United States Code; or

(4) including any combination of the actions described in paragraphs (1) through (3) or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the Department (as provided in section 5596 of title 5, United States Code) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(h) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

SEC. 1017. STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS.—(a) The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b), an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor

organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a); or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and others employed by the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a confidential employee, or any other employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such management official or such employee.

(f) If the Board finds that any labor organization has willfully and intentionally violated section 1015(b)(7) by omission or commission with regard to any strike, work stoppage, slowdown, the Board shall—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

SEC. 1018. ADMINISTRATIVE PROVISIONS.—(a) If the Department has received from any in-

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dividual a written assignment which authorizes the Department to deduct from the salary of that individual amounts for the payment of regular and periodic dues of the exclusive representative, the Department shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representative or the individual. Except as provided in subsection (b), any such assignment may not be revoked for a period of one year from its execution.

(b) An assignment for deduction of dues shall terminate when—

(1) the labor organization ceases to be the exclusive representative;

(2) the individual ceases to receive a salary from the Department as a member of the Service; or

(3) the individual is suspended or expelled from membership in the exclusive representative.

(c) During any period when no labor organization is certified as the exclusive representative of employees in the Department, the Department shall have the duty to negotiate with a labor organization which has filed a petition under section 1011(b)(1)(A) alleging that 10 percent of the employees in the Department have membership in the organization if the Board has determined that the petition is valid. Negotiations under this subsection shall be concerned solely with the deduction of dues of the labor organization from the salary of the individuals who are members of the labor organization and who make a voluntary allotment for that purpose. Any agreement between the Department and a labor organization under this subsection shall terminate upon the certification of an exclusive representative of any employees to whom the agreement applies.

(d) The following provisions shall apply to the use of official time:

(1) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a nonduty status.

(3) Except as provided in paragraph (1), the Board shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs (1), (2), and (3), any employee representing an exclusive representative, or engaged in any other matter covered by this chapter, shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.

CHAPTER 11—GRIEVANCES

SEC. 1101. DEFINITION OF GRIEVANCE.—(a) (1) Except as provided in subsection (b), for purposes of this chapter, the term "grievance" means any act, omission, or condition subject to the control of the Secretary which is alleged to deprive a member of the Service who is a citizen of the United States of a right or benefit authorized by law or regulation or which is otherwise a source of con-

cern or dissatisfaction to the member, including—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any part of the official personnel record of the member;

(B) other alleged violation, misinterpretation, or misapplication of applicable laws, regulations, or published policy affecting the terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the member which is or could be prejudicial to the member;

(F) action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by the member in procedures under this chapter; and

(G) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2) The scope of grievances described in paragraph (1) may be modified by written agreement between the Department and the labor organization accorded recognition as the exclusive representative under chapter 10 (hereinafter in this chapter referred to as the "exclusive representative").

(b) For purposes of this chapter, the term "grievance" does not include—

(1) an individual assignment of a member under chapter 5, other than an assignment alleged to be contrary to law or regulation;

(2) the judgment of a selection board established under section 602, a tenure board established under section 306(b), or any other equivalent body established by laws or regulations which similarly evaluates the performance of members of the Service on a comparative basis;

(3) the expiration of a limited appointment, the termination of a limited appointment under section 611, or the denial of a limited career extension or of a renewal of a limited career extension under section 607 (b); or

(4) any complaint or appeal where a specific statutory hearing procedure exists, except as provided in section 1109(b).

(c) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

SEC. 1102. GRIEVANCES CONCERNING FORMER MEMBERS.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this chapter only with respect to allegations described in section 1101 (a)(1)(G).

SEC. 1103. FREEDOM OF ACTION.—(a) Any individual filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b) Any grievant filing a grievance, and any witness or other person involved in a proceeding before the board, shall be free from any restraint, interference, coercion, discrimination, or reprisal. The grievant has the right to a representative of his or her own choosing at every stage of the proceeding. The grievant and his or her representa-

tives who are under the control, supervision, or responsibility of the Department shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the grievance of such grievant. Any witness under the control, supervision, or responsibility of the Department shall be granted reasonable periods of administrative leave to appear and testify at any such proceeding.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d) (1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards to preserve confidentiality.

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department will use its best endeavors to expedite security clearance procedures whenever necessary to assure a fair and prompt resolution of a grievance.

SEC. 1104. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance or such shorter period as may be agreed to by the Department and the exclusive representative. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days after it is filed with the Department, the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) or a grievant who is not a member of such bargaining unit or whose grievance is described in section 1101(a)(1)(A) shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 1105. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 5 members who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not employees of the Department or members of the Service.

(b) The Chairperson and other members of the Board shall be appointed by the Secretary of State, from nominees approved in writing by the agencies to which this chapter applies and the exclusive representative (if any) for each such agency. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section. In the event of inability to obtain agreement on a nominee, each such agency and exclusive representative shall select 2 nominees and shall, in an order de-

terminated by lot, in turn strike a name from a list of such nominees until only one name remains. For purposes of this section, the nominee whose name remains shall be deemed to be approved in writing by each such agency head and exclusive representative.

(c) Members of the Board who are not employees of the Government shall be paid for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(d) The Secretary of State may, upon written notice, remove a Board member for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing (unless the right to a hearing is waived in writing by the Board member).

(e) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards to preserve confidentiality.

SEC. 1106. BOARD PROCEDURES.—The Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. The Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given under oath, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing or by deposition any witness under its control, supervision, or responsibility, except that if the Board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available

at the hearing, with necessary costs and travel expenses paid by the Department.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial, or unduly repetitious evidence, as determined under section 556 of title 5, United States Code.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) In those grievances in which the Board does not hold a hearing, the Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designated by the Chairperson, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate. All members of the Board shall act as impartial individuals in considering grievances.

(8) If the Board determines that the Department is considering the involuntary separation of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence.

SEC. 1107. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board shall have the authority to direct the Department—

(1) to correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(2) to reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(3) to retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;

(4) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(5) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(6) to take such other remedial action as may be appropriate under procedures agreed

to by the Department and the exclusive representative (if any).

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion or assignment of the grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence before it warrants disciplinary action against any employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary. The Secretary shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation. The Secretary shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the Secretary rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Pending the decision of the Secretary, there shall be no ex parte communication concerning the grievance between the Secretary and any person involved in the proceedings of the Board. The Secretary shall, however, have access to the entire record of the proceedings of the Board.

SEC. 1108. ACCESS TO RECORDS.—(a) If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1) (A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the head or deputy head of such agency personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant and material to the grievance.

(e) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board.

SEC. 1109. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that

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the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. An election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

SEC. 1110. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of a final action of the Secretary or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 708 of title 5, United States Code, shall apply without limitation or exception.

TITLE II—TRANSITION, AMENDMENTS TO OTHER LAWS, AND MISCELLANEOUS PROVISIONS

CHAPTER 1—TRANSITION

SEC. 2101. PAY AND BENEFITS PENDING CONVERSION.—(a) Until converted under the provisions of this chapter, individuals who were Foreign Service officers immediately before the effective date of this Act shall be treated for purposes of salary as follows:

(1) Individuals who were serving under appointments at class 2 or a higher class of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2103 of this Act on the first day in such pay period to the Senior Foreign Service in the appropriate class (as determined by the Secretary) established under section 403 of this Act.

(2) Individuals who were serving under appointments at or below class 3 of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2102 of this Act on the date specified in subsection (e) to the appropriate class and step (as determined under section 2106(a) of this Act) in the Foreign Service Schedule established under section 403 of this Act.

(b) (1) Except as provided in section 2104(b), until converted under the provisions of this chapter, individuals who were Foreign Service Reserve officers or Foreign Service staff officers or employees immediately before the effective date of this Act shall be treated for purposes of salary in accordance with paragraphs (3) and (4) of this subsection.

(2) Not later than 30 days after the effective date of this Act, the Secretary—

(A) shall make an initial determination of the availability for worldwide assignment of each individual who was a Foreign Service Reserve officer or a Foreign Service staff officer or employee immediately before the effective date of this Act, and

(B) shall notify any such individual who is not initially determined to be available for worldwide assignment of that initial determination.

(3) Individuals who are initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as follows:

(A) Individuals who could be converted under section 2103 shall be paid as if they had been converted under section 2103, on the date specified in subsection (e) which begins on or after the effective date of this Act, to the Senior Foreign Service in the ap-

propriate class (as determined by the Secretary) established under section 402.

(B) Individuals who could be converted under section 2102 shall be paid as if they had been converted under section 2102, on such date, to the appropriate class and step (as determined under section 2106(a)) of the Foreign Service Schedule established under section 403.

(4) (A) Individuals who are not initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as if they had been converted under section 2104(a), on the date specified in subsection (e), to the grade and step in the General Schedule which most closely corresponds to the class and step at which the individual was serving immediately before the effective date of this Act, subject to the prohibition on reductions in basic rate of salary which is contained in the second sentence of section 2106(a) (1).

(B) If an individual who is not initially determined under paragraph (2) of this subsection to be available for worldwide assignment is subsequently converted under section 2102(a), 2103(b), or 2103(c) on the basis of a decision that the initial determination with respect to the availability of that individual for worldwide assignment was erroneous, the salary of that individual shall be adjusted, retroactively to the date specified in subsection (e), to the rate at which that individual could have been paid under paragraph (3) of this subsection if he or she had been initially determined to be available for worldwide assignment under paragraph (2) of this subsection.

(c) For the period beginning on the effective date of this Act and ending on the day before the date specified in subsection (e) (if such date occurs after the effective date of this Act), the individuals to whom this section applies shall continue to receive a salary at the rate at which they were being paid immediately before the effective date of this Act.

(d) Except as provided in section 2104(b), until converted under the provisions of this chapter, individuals who, immediately before the effective date of this Act, were foreign Service officers, Foreign Service Reserve officers, or Foreign Service staff officers or employees, shall be treated for purposes of allowances and all other matters (except salary) as if they had been converted on the effective date of this Act under section 2102 or section 2103 (as appropriate for the class in which they were serving immediately before the effective date of this Act).

(e) Except as otherwise provided, any adjustment of salary under this section shall take effect on the first day of the first pay period which begins on or after—

(1) such date (on or after the date of enactment of this Act and before the effective date of this Act) as the President may specify by Executive order for purposes of this paragraph, or

(2) if the President does not specify a date under paragraph (1), the effective date of this Act.

SEC. 2102. CONVERSION TO THE FOREIGN SERVICE SCHEDULE.—(a) Not later than 120 days after the effective date of this Act, the Secretary shall, in accordance with section 2108, convert to the appropriate class in the Foreign Service Schedule established under section 403 of this Act those individuals in the Foreign Service who are serving immediately before the effective date of this Act under appointments at or below class 3 of the schedule established under section 412 or 414 of the Foreign Service Act of 1946, or at any class in the schedule established under section 415 of such Act, as—

(1) Foreign Service officers, or

(2) Foreign Service Reserve officers with limited or unlimited tenure, and Foreign Service staff officers or employees, who the Secretary determines are available for worldwide assignment.

(b) Not later than 3 years after the effective date of this Act, Foreign Service Reserve officers and staff officers and employees who the Secretary determines under subsection (a) (2) are not available for worldwide assignment shall also be converted, in accordance with section 2106, to the appropriate class in the Foreign Service Schedule established under section 403 if—

(1) the Secretary certifies that there is a need for their services in the Foreign Service; and

(2) they agree in writing to accept availability for worldwide assignment as a condition of continued employment.

SEC. 2103. CONVERSION TO THE SENIOR FOREIGN SERVICE.—(a) Foreign Service officers and Foreign Service Reserve officers with limited or unlimited tenure who, immediately before the effective date of this Act, are serving under appointments at class 2 or a higher class of the schedule established under section 412 or 414 of the Foreign Service Act of 1946 may at any time within 120 days after such date submit to the Secretary a written request for appoint to the Senior Foreign Service.

(b) Except as provided in subsection (d), if a request is submitted under subsection (a) by a Foreign Service Reserve officer with limited tenure, the Secretary shall grant to such officer a limited appointment to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(c) If a request is submitted under subsection (a) by a Foreign Service officer or, except as provided in subsection (d), a Foreign Service Reserve officer with unlimited tenure, the Secretary shall recommend to the President a career appointment of such officer, by and with the advice and consent of the Senate, to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(d) If the Secretary determines that a Foreign Service Reserve officer with limited or unlimited tenure who submits a request under subsection (a) is not available for worldwide assignment, an appointment under subsection (b) or a recommendation for appointment under subsection (c) shall be made only if—

(1) the Secretary certifies that there is a need for the services of such officer in the Senior Foreign Service; and

(2) such officer agrees in writing to accept availability for worldwide assignment as a condition of continued employment.

(e) If a Foreign Service officer or a Foreign Service Reserve officer who is eligible to submit a request under subsection (a) submits a written request for appointment to the Senior Foreign Service to the Secretary more than 120 days after the effective date of this Act and before the end of the 3-year period beginning on such effective date, the Secretary (in the case of a Foreign Service Reserve officer with limited tenure) may grant a limited appointment to, or (in the case of a Foreign Service officer or Foreign Service Reserve officer with unlimited tenure) may recommend to the President a career appointment of, the requesting officer to the appropriate class established under section 402 of this Act, subject to the conditions specified in subsection (d) and such other conditions as the Secretary may prescribe consistent with the provisions of chapter 6 of title I of this Act relating to promotion into the Senior Foreign Service.

(f) Any officer of the Foreign Service who is eligible to submit a request under subsection (a) and—

(1) who does not submit a request under subsection (a), or

(2) who submits such a request more than 120 days after the effective date of this Act and is not appointed to the Senior Foreign Service for any reason other than failure to meet the conditions specified in subsection (d),

may not remain in the Foreign Service for more than 3 years after the effective date of this Act. During such period, the officer shall be subject to the provisions of title I of this Act applicable to members of the Senior Foreign Service, except that such officer shall not be eligible to compete for performance pay under section 405, and shall not be eligible for a limited career extension as described in section 607(b). Upon separation from the Service, any such officer who is a participant in the Foreign Service Retirement and Disability System shall be entitled to retirement benefits determined in accordance with chapter 8 of title I of this Act.

SEC. 2104. CONVERSION FROM THE FOREIGN SERVICE.—(a) Except as provided in subsection (b), in the case of any individual in the Foreign Service who, immediately before the effective date of this Act, is serving under an appointment described in section 2102(a) or 2103(a) and who is not converted under section 2102 or section 2103 because such individual does not meet the conditions specified in section 2102(b) or 2103(d), the Secretary shall, not later than 3 years after the effective date of this Act, provide that—

(1) the position such individual holds shall be subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code; (2) such individual shall be appointed to such position without competitive examination; and

(3) such position shall be considered to be in the competitive service so long as the individual continues to hold that position; except that any such individual who meets the eligibility requirements for the Senior Executive Service and who elects to join that Service shall be converted by the Secretary to the Senior Executive Service in the appropriate rate of basic pay established under section 5382 of title 5, United States Code.

(b) (1) Notwithstanding any other provision of law, the status, promotion, class, and tenure of individuals who, immediately before the date of enactment of this Act are in the Foreign Service in the International Communication Agency and are covered by a collective bargaining agreement between the Agency and the exclusive representative of those individuals shall, continue to be governed by the Foreign Service Act of 1946 and Public Law 90-494 (as those Acts were in effect immediately before the effective date of this Act). This Act (except sections 402, 403, 404, 405, 504) shall also apply to such individuals, and such individuals shall be considered members of the Foreign Service for purposes of sections 103, 406, 501, 502, 503, 610, 803, 1002, 1101 of this Act.

(2) The President shall prescribe salary rates for the individuals in the Foreign Service who are covered by this subsection in accordance with the salary classes established under sections 414 and 415 of the Foreign Service Act of 1946. Salary rates for such individuals shall not be less than those rates in effect on the effective date of this Act and shall be adjusted at the same time and to the same extent as rates of basic pay are adjusted for the General Schedule.

SEC. 2105. CONVERSION OF CERTAIN POSITIONS IN THE DEPARTMENT OF AGRICULTURE.—(a) Not later than 15 days after the effective date of this Act, the Secretary of Agriculture shall—

(1) designate and classify under section 501 of this Act those positions in the Foreign Agricultural Service under the General Schedule described in section 5332 of title 5, United States Code, which the Secretary of

Agriculture determines are to be occupied by career members of the Foreign Service, and

(2) provide written notice to individuals holding those positions of such designation and classification of the personnel category under section 103 which will apply to such individual.

(b) Each employee serving in a position at the time it is designated under subsection (a) shall, not later than 120 days after notice of such designation, elect—

(1) to accept conversion to the Foreign Service, in which case such employee shall be converted in accordance with the provisions of subsection (c); or

(2) to decline conversion to the Foreign Service and have the provisions of subsection (d) apply.

(c) (1) The Secretary of Agriculture shall recommend to the President for appointment to the appropriate class (as determined under paragraph (2)), by and with the advice and consent of the Senate, those employees who elect conversion under subsection (a) (1).

(2) The Secretary of Agriculture shall appoint as Foreign Service personnel those employees who elect to accept conversion and who are not eligible for appointment under paragraph (1).

(d) Any employee who declines conversion under subsection (b) (2) shall for so long as that employee continues to hold the designated position be deemed to be a member of the Foreign Service for purposes of allowances, differentials, and similar benefits (as determined by the Secretary of Agriculture).

SEC. 2106. PRESERVATION OF STATUS AND BENEFITS.—(a) (1) Every individual who is converted under this chapter shall be converted to the class or grade and pay rate that most closely corresponds to the class or grade and step at which the individual was serving immediately before conversion. No conversion under this chapter shall cause any individual to incur a reduction in his or her class, grade, or basic rate of salary.

(2) An individual converted under section 2104 to a position in the competitive service shall be entitled to have that position, or any other position to which the individual is subsequently assigned (other than at the request of the individual), be considered for all purposes as at the grade which corresponds to the class in which the individual served immediately before conversion so long as the individual continues to hold that position.

(b) (1) Any participant in the Foreign Service Retirement and Disability System who would, but for this paragraph, participate in the Civil Service Retirement and Disability System by virtue of conversion under this chapter shall remain a participant in the Foreign Service Retirement and Disability System for 120 days after participation in the Foreign Service Retirement and Disability System would otherwise cease. During such 120-day period, the individual may elect in writing to continue to participate in the Foreign Service Retirement and Disability System instead of the Civil Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is not made, the individual shall then be covered by the Civil Service Retirement and Disability System and contributions made by the participant to the Foreign Service Retirement and Disability Fund shall be transferred to the Civil Service Retirement and Disability Fund.

(2) Any Foreign Service Reserve officer with limited tenure who has reemployment rights to a personnel category in the Foreign Service in which he or she would be a participant in the Foreign Service Retirement and Disability System and who would, but for this paragraph, continue to participate in the Civil Service Retirement and Disability

System by virtue of conversion under section 2104 may elect, during the 120-day period beginning on the date of such conversion, to become a participant in the Foreign Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is made, the individual shall be transferred to the Foreign Service Retirement and Disability System and contributions made by that individual to the Civil Service Retirement and Disability Fund shall be transferred to the Foreign Service Retirement and Disability Fund.

(c) Individuals who are converted under this chapter shall be converted to the type of appointment which corresponds most closely in tenure to the type of appointment under which they were serving immediately prior to such conversion, except that this chapter shall not operate to extend the duration of any limited appointment or previously applicable time in class.

(d) Any individual who on the effective date of this Act is serving—

(1) under an appointment in the Foreign Service, or

(2) in any other office or position continued by this Act.

may continue to serve under such appointment, subject to the provisions of this Act, and need not be reappointed by virtue of the enactment of this Act.

(e) Any individual in the Foreign Service—

(1) who is serving under a career appointment on the date of enactment of this Act, and

(2) who was not subject to section 633(a) of the Foreign Service Act of 1946 immediately before effective date of this Act, may not be retired under section 608 of this Act until 10 years after the effective date of this Act or when such individual first becomes eligible for an immediate annuity under chapter 8 of title I of this Act, whichever occurs first.

SEC. 2107. REGULATIONS.—Under the direction of the President, the Secretary shall prescribe regulations for the implementation of this chapter.

SEC. 2108. AUTHORITY OF OTHER AGENCIES.—The heads of agencies other than the Department of State which utilize the Foreign Service personnel system shall perform functions under this chapter in accordance with regulations prescribed by the Secretary of State under section 2107. Such agency heads shall consult with the Secretary of State in the exercise of such functions.

CHAPTER 2—AMENDMENTS RELATING TO FOREIGNS AFFAIRS AGENCIES

SEC. 2201. BASIC AUTHORITIES OF THE DEPARTMENT OF STATE.—(a) The Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956, is amended by adding at the end thereof the following new sections:

"Sec. 25. (a) The Secretary of State may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department of State (including the Foreign Service) or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, except that no gift shall be accepted which is conditioned upon any expenditure which will not be met by the gift or the income from the gift unless such expenditure has been approved by Act of Congress.

"(b) Any unconditional gift of money accepted under subsection (a), the income from any gift property held under subsection (c) or (d) (except income made available for expenditure under subsection (d) (2)),

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the net proceeds from the liquidation of gift property under subsection (c) or (d), and the proceeds of insurance on any gift property which are not used for its restoration, shall be deposited in the Treasury of the United States. Such funds are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department of State (including the Foreign Service). The Secretary of the Treasury may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such funds and the income from such investments shall be available for expenditure in the operation of the Department of State (including the Foreign Service) and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Foreign Service by the Congress.

"(c) The evidences of any unconditional gift of intangible personal property (other than money) accepted under subsection (a), shall be deposited with the Secretary of the Treasury who may hold or liquidate them, except that they shall be liquidated upon the request of the Secretary of State whenever necessary to meet payments required in the operation of the Department of State (including the Foreign Service) or the performance of its functions.

"(d) (1) The Secretary of State shall hold any real property or any tangible personal property accepted unconditionally pursuant to subsection (a) and shall either use such property for the operation of the Department of State (including the Foreign Service) and the performance of its functions or lease or hire such property, except that any such property not required for the operation of the Department of State (including the Foreign Service) or the performance of its functions may be liquidated by the Secretary of State whenever in the judgment of the Secretary of State the purposes of the gift will be served thereby. The Secretary of State may insure any property held under this subsection. Except as provided in paragraph (2), the Secretary shall deposit the income from any property held under this subsection with the Secretary of the Treasury as provided in subsection (b).

"(2) The income from any real property or tangible personal property held under this subsection shall be available for expenditure at the discretion of the Secretary of State for the maintenance, preservation, or repair and insurance of such property and any proceeds from insurance may be used to restore the property insured.

"(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted under this section shall be deemed to be a gift, devise, or bequest to and for the use of the United States.

"(f) The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"Sec. 28. (a) The Secretary of State may, without regard to section 3106 of title 5, United States Code, authorize a principal officer of the Foreign Service to procure legal services whenever such services are required for the protection of the interests of the Government or to enable a member of the Service to carry out the member's work efficiently.

"(b) The authority available to the Secretary of State under this section shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"Sec. 27. (a) In order to expand employment opportunities for family members of United States Government personnel assigned abroad, the Secretary of State shall seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies.

"(b) Any member of a family of a member of the Foreign Service may accept gainful employment in a foreign country unless such employment—

"(1) would violate any law of such country or of the United States; or

"(2) could, as certified in writing by the United States chief of mission to such country, damage the interests of the United States.

"Sec. 28. The Secretary of State may authorize the principal officer of a Foreign Service post to provide for the use of Government owned or leased vehicles located at that post for transportation of United States Government employees and their families when public transportation is unsafe or not available or when such use is advantageous to the Government.

"Sec. 29. Whenever the Secretary of State determines that educational facilities are not available, or that existing educational facilities are inadequate, to meet the needs of children of United States citizens stationed outside the United States who are engaged in carrying out Government activities, the Secretary may, in such manner as he deems appropriate and under such regulations as he may prescribe, establish, operate, and maintain primary schools, and school dormitories and related educational facilities for primary and secondary schools, outside the United States, make grants of funds for such purposes, or otherwise provide for such educational facilities. The authorities of the Foreign Service Buildings Act, 1926, and of paragraphs (h) and (i) of section 3 of this Act, may be utilized by the Secretary in providing assistance for educational facilities. Such assistance may include hiring, transporting, and payment of teachers and other necessary personnel.

"Sec. 30. (a) The remedy—

"(1) against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, or

"(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

"(b) The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as may be determined by the Attorney General, all process served upon him or her or an attested true copy thereof to whomever was designated by the Secretary to receive such papers. Such per-

son shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

"(c) Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

"(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, United States Code, and with the same effect.

"(e) For purposes of this section, the provisions of section 2680(h) of title 28, United States Code, shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

"(f) The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsections (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.

"(g) For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States chief of mission or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

"Sec. 31. (a) The Secretary of State may authorize and assist in the establishment, maintenance, and operation by civilian officers and employees of the Government of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the Government for use by its diplomatic, consular, and other missions and posts abroad. The provisions of the For-

Foreign Service Buildings Act, 1926 (22 U.S.C. 292-300) and section 13 of this Act may be utilized by the Secretary in providing such assistance.

"(b) The Secretary may establish and maintain emergency commissary or mess services in places abroad where, in the judgment of the Secretary, such services are necessary temporarily to insure the effective and efficient performance of official duties and responsibilities. Reimbursements incident to the maintenance and operation of commissary or mess service under this subsection shall be at not less than cost as determined by the Secretary and shall be used as working funds, except that an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

"(c) Services and facilities established under this section shall be made available, insofar as practicable, to officers and employees of all agencies and their dependents who are stationed in the locality abroad. Such services and facilities shall not be established in localities where another agency operates similar services or facilities unless the Secretary determines that additional services or facilities are necessary. Other agencies shall to the extent practicable avoid duplicating the facilities and services provided or assisted by the Secretary under this section.

"(d) Charges at any post abroad for a service or facility provided, authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.

"Sec. 32. The Secretary of State may pay, without regard to section 5702 of title 5, United States Code, subsistence expenses of (1) security officers of the Department of State who are on authorized protective missions, and (2) members of the Foreign Service and employees of the Department who are required to spend extraordinary amounts of time in travel status.

"Sec. 33. This Act may be cited as the 'State Department Basic Authorities Act of 1956'."

(b) Section 13(a) of such Act (22 U.S.C. 2684(a)) is amended by striking out "Foreign Service Act of 1946, as amended," and inserting in lieu thereof "Foreign Service Act of 1980".

Sec. 2202. PEACE CORPS ACT.—(a) Section 5 of the Peace Corps Act (22 U.S.C. 2504) is amended—

(1) in subsection (f) (1)—

(A) in subparagraph (A) by striking out "section 852(a) (1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a) (1))," and inserting in lieu thereof "section 816(a) of the Foreign Service Act of 1980", and

(B) in subparagraph (B) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980"; and (2) in subsection (a)—

(A) by striking out "section 1091 of the Foreign Service Act of 1946" and inserting in lieu thereof "section 30 of the State Department Basic Authorities Act of 1956", and

(B) by striking out "Director of ACTION" and inserting in lieu thereof "President".

(b) (1) Section 7(a) of the Peace Corps Act (22 U.S.C. 2506(a)) is amended—

(A) in paragraph (1)—

(1) by striking out " , who shall receive compensation at any of the rates provided for persons appointed to the Foreign Service Reserve and Staff under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates established

under section 402 or 403 of the Foreign Service Act of 1980";

(ii) by striking out "section 528" and inserting in lieu thereof "section 310"; and

(iii) by striking out "Reserve" the last place it appears and all that follows and inserting in lieu thereof a period; and

(B) by amending paragraph (2) to read as follows:

"(2) In order to employ such individuals as may be necessary to perform duties that reasonably require availability for worldwide assignment, the President may utilize such authority contained in the Foreign Service Act of 1980 relating to members of the Foreign Service and other United States Government officers and employees as the President deems necessary to carry out functions under this Act, except that—

(A) no Foreign Service appointment or assignment under this paragraph shall be for a period of more than five years unless the Director of the Peace Corps, under special circumstances, personally approves an extension of not more than one year on an individual basis; and

(B) no individual whose Foreign Service appointment or assignment under his paragraph has been terminated shall be reappointed or reassigned under this paragraph before the expiration of a period of time equal to the preceding tour of duty of that individual.

Such provisions of the Foreign Service Act of 1980 as the President deems appropriate shall apply to individuals appointed or assigned under this paragraph, including in all cases, the provisions of section 310 of that Act, except that (1) the President may by regulation make exceptions to the application of section 310 in cases in which the period of the appointment or assignment exceeds thirty months, (ii) members of the Foreign Service appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe, and (iii) under such regulations as the President may prescribe, individuals who are to perform duties of a more routine nature than are generally performed by members of the Foreign Service assigned to the lowest class of the Foreign Service Schedule may be appointed to an unenumerated class ranking below the lowest class of the Foreign Service Schedule and be paid basic compensation at rates lower than those of the lowest class, except that such rates may be no less than the then applicable minimum wage rate specified in section 6(a) (1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a) (1)).

(2) Section 7(a) (4) of the Peace Corps Act (22 U.S.C. 2506(a) (4)) is amended—

(A) by striking out "Until" and all that follows through "paragraph or" and inserting in lieu thereof "An individual who has received an appointment or assignment in the Foreign Service under this subsection may, not later than September 30, 1982, or three years";

(B) by striking out "such person" and inserting in lieu thereof "such individual"; and

(C) by striking out "substantially continuous basis" and inserting in lieu thereof "continuous basis without a break in service of more than three days".

(c) Section 13(b) of the Peace Corps Act (22 U.S.C. 2512(b)) is amended by striking out "section 872 of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 824 of the Foreign Service Act of 1980".

(d) Section 14(b) of the Peace Corps Act (22 U.S.C. 2513(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946 (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(e) Section 15(a) of the Peace Corps Act (22 U.S.C. 2514) is amended by striking out

"Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

SEC. 2203. FOREIGN ASSISTANCE ACT.—(a) Section 625(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2385(d)) is amended to read as follows:

"(d) For the purpose of performing functions under this Act outside the United States, the President may employ or assign individuals, or may authorize the employment or assignment of officers or employees by agencies of the United States Government which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates provided for under section 402 or section 403 of the Foreign Service Act of 1980, together with allowances and benefits under that Act. Individuals so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignments exceeds thirty months, to the same benefits as are provided by section 310 of that Act for individuals appointed to the Foreign Service."

(b) Section 629(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2389(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(c) Section 631(b) of such Act (22 U.S.C. 2391(b)) is amended by amending the second sentence to read as follows: "Such chief shall be entitled to receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a) (3) of that Act), as the President shall determine to be appropriate."

(d) Section 631(c) of such Act (22 U.S.C. 2391(c)) is amended by amending the second sentence to read as follows: "Such person may receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a) (3) of that Act), as the President shall determine to be appropriate. Such person is to be considered an employee of the United States Government for the purpose of any benefit under any law administered by the Office of Personnel Management."

SEC. 2204. ARMS CONTROL AND DISARMAMENT ACT.—(a) Section 42 of the Arms Control and Disarmament Act (22 U.S.C. 2582) is amended to read as follows:

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"Sec. 42. (a) The Secretary of State may authorize the Director to exercise, with respect to members of the Foreign Service appointed or employed for the Agency—

"(1) the authority available to the Secretary under the Foreign Service Act of 1980, and

"(2) the authority available to the Secretary under any other provisions of law pertaining specifically or applicable generally to members of the Foreign Service.

"(b) Limited appointments of members of the Foreign Service for the Agency may be extended or renewed, notwithstanding section 309 of the Foreign Service Act of 1980, so long as the service of the individual under such appointment does not exceed ten consecutive years without a break in service of at least one year."

(b) Section 48 of the Arms Control and Disarmament Act (22 U.S.C. 2588) is amended by striking out "Foreign Service Act of 1946, as amended" and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2205. REPEALED PROVISIONS.—The following are repealed:

(1) The Act entitled "An Act to improve,

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strength, and expand the Foreign Service of the United States and to consolidate and revise the laws relating to its administration", approved August 13, 1946, titles I through X of such Act being the Foreign Service Act of 1946 (22 U.S.C. 801-810, 816, 817, 821, 826, 827, 841-843, 846, 861, 866-873, 876, 877, 881, 882, 886, 889, 890, 896, 900, 901, 902, 906-915, 921-924, 926-928, 936-939, 946, 947, 951, 961-966, 968, 981, 986, 987, 991-996, 1001-1009, 1016, 1017, 1021, 1022, 1026-1028, 1031, 1036, 1037-1037c, 1041-1048, 1061-1065, 1071, 1076; 1076a, 1081, 1082, 1084, 1086, 1091, 1093, 1095, 1101, 1103-1106, 1111, 1112, 1116, 1121, 1131, 1136-1138a, 1139, 1148-1151, and 1156-1160).

(2) Sections 401 and 413 of the Foreign Relations Authorization Act, Fiscal Year 1979 (92 Stat 981, 986).

(3) Section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978 (91 Stat. 857).

(4) Sections 117, 120, and 522 of the Foreign Relations Authorization Act, Fiscal Year 1977 (90 Stat. 827, 829, 846).

(5) Section 6 of the Department of State Appropriations Authorization Act of 1973 (87 Stat. 452).

(6) The Act entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968 (22 U.S.C. 929-932, 1221-1234).

(7) Section 104(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(c)).

(8) Subsections (e), (g), (j), and (k) of section 625 of the Foreign Assistance Act of 1961 (22 U.S.C. 2385 (e), (g), (j), and (k)), except that the repeal of subsection (k) shall not become effective until January 1, 1982.

(9) Section 7(b) of the Peace Corps Act (22 U.S.C. 2506(b)).

(10) Sections 14 and 16 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2679a, 2680a).

(11) Section 124(a)(2) of the International Development and Food Assistance Act of 1977 (91 Stat. 542).

(12) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 21, 1952 (22 U.S.C. 1077, 1078).

(13) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 1, 1956 (22 U.S.C. 1079-1079f).

(14) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved September 2, 1958 (22 U.S.C. 1079g-1079j).

(15) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved July 12, 1960 (22 U.S.C. 1079l).

(16) The Foreign Service Annuity Adjustment Act of 1965 (22 U.S.C. 1079m-1079s).

SEC. 2206. OTHER CONFORMING AMENDMENTS.—(a)(1) Section 3(b) of the Asian Development Bank Act (22 U.S.C. 285a(b)) is amended by striking out the "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(2) The United Nations Participation Act of 1945 is amended—

(A) in section 2(g) (22 U.S.C. 287(g)) by striking out "sections 411 and 412 of the Foreign Service Act of 1946 (Public Law 724,

Seventy-ninth Congress) for chiefs of mission" and inserting in lieu thereof "sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 8 (22 U.S.C. 287e) by striking out section 901(3) of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress) and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(3) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the United Nations Educational, Scientific, and Cultural Organization, and authorizing an appropriation therefor", approved July 30, 1946 (22 U.S.C. 287n), is amended by striking out "Foreign Service officers in the scheduled contained in section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "members of the Senior Foreign Service under section 402 of the Foreign Service Act of 1980, or provided for Foreign Service officers under section 403 of that Act,".

(4) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the World Health Organization and authorizing an appropriation therefor", approved June 14, 1948 (22 U.S.C. 290a), is amended by striking out "provided by section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "established under section 402 or 403 of the Foreign Service Act of 1980".

(5) Section 203(b) of the African Development Fund Act (22 U.S.C. 290g-1(b)) is amended by striking out "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(6) Section 408 of the Mutual Security Act of 1954 (22 U.S.C. 1928) is amended—

(A) in subsection (a) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801)," and inserting in lieu thereof "Foreign Service Act of 1980";

(B) in subsection (b) by striking out "chief of mission, class 1, within the meaning of the Foreign Service Act of 1946, as amended (22 U.S.C. 801)" and inserting in lieu thereof "chief of mission under the Foreign Service Act of 1980"; and

(C) in subsection (c) by striking out "section 529 of this Act who are appointed as Foreign Service Reserve officers may serve for periods of more than five years notwithstanding the limitation in section 522 of the Foreign Service Act of 1946, as amended (22 U.S.C. 922)" and inserting in lieu thereof "section 628 of the Foreign Assistance Act of 1961 who are members of the Foreign Service serving under limited appointments may serve for periods of more than five years notwithstanding the limitation in section 309 of the Foreign Service Act of 1980".

(7) The International Atomic Energy Agency Participation Act of 1957 is amended—

(A) in section 2(d) (22 U.S.C. 2021(d))—

(i) in the first sentence by striking out "sections 411 and 412 of the Foreign Service Act of 1946, as amended (22 U.S.C. 866, 867), for Chiefs of Mission" and inserting in lieu thereof "sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,"; and

(ii) in the second sentence by striking out "by Chiefs of Mission" and inserting in lieu thereof "under the Foreign Service Act of 1980 by chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 5 (22 U.S.C. 2024)—

(i) by striking out "Foreign Service Act of 1946, as amended," and inserting in lieu thereof "Foreign Service Act of 1980", and

(ii) by striking "Foreign Service Act of 1946, as amended;" and inserting in lieu thereof "Foreign Service Act of 1980";.

(8) Section 704(b) of the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2056 (b)) is amended by striking out "title X, part C of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 25 of the State Department Basic Authorities Act of 1956".

(9) Section 104(d) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(d)) is amended by striking out "section 528" and all that follows through "such persons" and inserting in lieu thereof "section 310 of the Foreign Service Act of 1980 for individuals appointed to the Foreign Service".

(10) Section 5 of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2605(a)) is amended—

(A) in paragraph (1) by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service";

(B) in paragraph (2) by striking out "Foreign Service Reserve officers" and inserting in lieu thereof "members of the Foreign Service serving under limited appointments"; and

(C) in paragraph (4) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "Foreign Service Act of 1980".

(11) Section 403(c) of the International Development Cooperation Act of 1979 (22 U.S.C. 3503(c)) is amended by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

(b)(1) Section 605A(h) of the Act entitled "An Act to provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes", approved August 28, 1954 (7 U.S.C. 1765a(h)), is amended by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

(2) Section 606D of such Act (7 U.S.C. 1766c) is amended by striking out "title IX of the Foreign Service Act of 1946" and inserting in lieu thereof "chapter 9 of title I of the Foreign Service Act of 1980".

(c)(1) Section 2002(a) of title 10, United States Code, is amended—

(A) in the text preceding paragraph (1) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(b) of the Foreign Service Act of 1980"; and

(B) in paragraph (2) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(a) of the Foreign Service Act of 1980".

(d) Section 8(a)(1) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 906(a)(1)) is amended by striking out "section 901(2) of the Foreign Service Act of 1946 (22 U.S.C. 1131(2))" and inserting in lieu thereof "section 5924 of title 5, United States Code".

(e)(1) Section 104(a)(4) of the Internal Revenue Code of 1954 (26 U.S.C. 104(a)(4)) is amended by striking out "section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081)" and inserting in lieu thereof "section 808 of the Foreign Service Act of 1980".

(2) Section 170(l) of the Internal Revenue Code of 1954 (26 U.S.C. 170(l)) is amended by amending paragraph (6) to read as follows:

"(6) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25, of the State Department Basic Authorities Act of 1956."

(3) Section 912(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 912(1)(A)) is amended to read as follows:

"(A) chapter 9 of title I of the Foreign Service Act of 1980,".

(4) Section 2055(f)(5) of the Internal Revenue Code of 1954 (26 U.S.C. 2055(f)(5)) is amended to read as follows:

"(5) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises or bequests to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956."

(f) Section 235 of title 38, United States Code, is amended—

(1) in paragraph (1) by striking out "Section 1131 of title 22" and inserting in lieu thereof "Section 905 of the Foreign Service Act of 1980";

(2) in paragraph (2) by striking out "Section 1136 (1), (2), (3), (4), (5), (7), and (11) of title 22" and inserting in lieu thereof "Sections 901 (1), (2), (3), (4), (7), (8), (9), (11), and (12) of the Foreign Service Act of 1980";

(3) in paragraph (3) by striking out "Section 1138 of title 22" and inserting in lieu thereof "Section 901(13) of the Foreign Service Act of 1980";

(4) in paragraph (4) by striking out "Section 1148 of title 22" and inserting in lieu thereof "Section 903 of the Foreign Service Act of 1980"; and

(5) in paragraph (5) by striking out "Section 1156 of title 22" and inserting in lieu thereof "Section 904(d) of the Foreign Service Act of 1980".

(g) Section 415(c) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5055 (c)) is amended—

(1) in paragraph (1) by striking out "Section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)), and every other" and inserting in lieu thereof "any"; and

(2) in paragraph (2) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2207. RETIREMENT FOR BINATIONAL CENTER EMPLOYEES.—Any person who was appointed as a Binational Center Grantee and who has completed at least five years of satisfactory service as such a grantee or under any other appointment under the Foreign Service Act of 1946 may become a participant in the Foreign Service retirement and disability system and may make an appropriate contribution to the Foreign Service retirement and disability fund in accordance with the provisions of this Act.

CHAPTER 3—AMENDMENTS TO TITLE 5, UNITED STATES CODE

SEC. 2301. REEMPLOYMENT RIGHTS.—(a) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"§ 3597. Reemployment following limited appointment in the Foreign Service

"An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employee's former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had re-

mained in the former position in the agency."

(b) The analysis for chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"3597. Reemployment following limited appointment in the Foreign Service."

SEC. 2302. SALARY FOR AMBASSADORS AT LARGE.—Section 5313 of title 5, United States Code, is amended by adding the following at the end thereof:

"Ambassadors at Large."

SEC. 2303. ADVANCES OF PAY INCIDENT TO DEPARTURES FROM POSTS ABROAD.—(a) Section 5522(a) of title 5, United States Code, is amended—

(1) by striking out "evacuation" and inserting in lieu thereof "departure"; and

(2) by striking out "is ordered for military or other reasons which create imminent danger to the life or lives of the employee or of his dependents or immediate family" and inserting in lieu thereof "is officially authorized or ordered—

"(1) from a place outside the United States from which the Secretary of State determines it is in the national interest to require the departure of some or all employee, their dependents, or both; or

"(2) from any place where there is imminent danger to the life of the employee or the lives of the dependents or immediate family of the employee."

(b) Section 5522(b) of title 5, United States Code, is amended by striking out "evacuation" and inserting in lieu thereof "departure".

(c) Section 5523(a)(1) of title 5, United States Code, is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) whose departure is authorized or ordered under section 5522(a) of this title; and"; and

(2) in subparagraph (B) by striking out "evacuation" and inserting in lieu thereof "departure".

(d) Section 5523(b) of title 5, United States Code, is amended by striking out "evacuation" both places it appears and inserting in lieu thereof "departure".

(e) Section 405a(a) of title 37, United States Code, is amended by striking out "evacuated" and "evacuation" wherever they appear and inserting in lieu thereof "to depart" and "departure", respectively.

SEC. 2304. PREMIUM PAY.—(a) Paragraph (2) of section 5541 of title 5, United States Code, is amended—

After clause (xv), add "(xvi) a member of the Senior Foreign Service; or"

(b) Nothing in this Act shall be construed as precluding compensatory time for Foreign Service officers.

SEC. 2305. SEVERANCE PAY.—Section 5595(a)(2)(vi) of title 5, United States Code, is amended by inserting after "to receive" the following: "benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any".

SEC. 2306. ATTORNEYS FEES IN BACKPAY CASES.—Section 5596(b) of title 5, United States Code, is amended—

(1) in paragraph (1)(A)(ii) by inserting "or under chapter 11 of title I of the Foreign Service Act of 1980," immediately after "chapter 71 of this title,"; and

(2) in paragraph (3)—

(A) by inserting "and (with respect to members of the Foreign Service) in sections 1101 and 1002 of the Foreign Service Act of 1980" immediately after "section 7103 of this title"; and

(B) by inserting "and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980" immediately after "section 7116 of this title".

SEC. 2307. SEPARATE MAINTENANCE ALLOWANCE.—Section 5924(3) of title 5, United States Code, is amended—

(1) by inserting "or authorized" immediately after "compelled"; and

(2) by inserting "or who requests such an allowance because of special needs or hardship involving the employee or the employee's spouse or dependents," immediately after "for the convenience of the Government,".

SEC. 2308. EDUCATION ALLOWANCE.—Section 5924(4)(B) of title 5, United States Code, is amended by striking out "(1)" and all that follows through and including "each type of education" and inserting in lieu thereof "one annual trip each way for each dependent".

SEC. 2309. POSTS REQUIRING SPECIAL INCENTIVES.—Section 5925 of title 5, United States Code, is amended—

(1) by striking out "A post" in the first sentence and inserting in lieu thereof "(a) A post";

(2) by inserting "under this subsection" immediately after "differential" in the last sentence; and

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

"(b) Any employee granted a differential under subsection (a) of this section may be granted an additional differential for an assignment to a post determined to have especially adverse conditions of environment which warrant additional pay as a recruitment and retention incentive for the filling of positions at that post. An additional differential for any employee under this subsection—

"(1) may be paid for each assignment to a post determined to have such conditions;

"(2) may be paid periodically or in a lump sum; and

"(3) may not exceed 15 percent of the rate of basic pay for that employee for the period served under that assignment."

SEC. 2310. ADVANCES OF PAY.—(a) Subchapter III of chapter 59 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5927. Advances of pay

"Up to three months' pay may be paid in advance to an employee upon the assignment of the employee to a post in a foreign area."

(b) The analysis of chapter 59 of title 5, United States Code, is amended by inserting after the item relating to section 5926 the following:

"5927. Advances of pay."

SEC. 2811. DANGER PAY ALLOWANCE.—(a) Subchapter III of chapter 59 of title 5, United States Code, as amended by section 2310(a), is further amended by adding at the end thereof the following new section:

"§ 5928. Danger pay allowance

"An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. A danger pay allowance may not exceed twenty-five percent of the basic pay of the employee, except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed 25 percent of the basic pay of the employee."

(b) The analysis for chapter 59 of title 5, United States Code, is amended by section 23(b), is further amended by inserting after the item relating to section 5927 the following:

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"5928. Danger pay allowance."

SEC. 2312. LEAVE.—(a) Section 6301 of title 5, United States Code, is amended by adding at the end thereof the following new sentence:

"Notwithstanding clauses (x)-(xii) of paragraph (2), the term 'employee' includes any member of the Senior Foreign Service or any Foreign Service Officer (other than a member or officer serving as chief of mission or in a position which requires appointment by and with the advice and consent of the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980."

(b) Section 6304 of title 5, United States Code, is amended—

(1) in subsection (a) by striking out "and (f)" and inserting in lieu thereof "(f), and (g)"; and

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

"(g) Annual leave accrued by a member of the Senior Foreign Service shall not be subject to the limitation on accumulation otherwise imposed by this section."

"(c) Section 6305(a) of title 5, United States Code, is amended by inserting immediately after "States" in the first sentence "(or after a shorter period of such service if the employee's assignment is terminated for the convenience of the Government)".

SEC. 2313. RETIREMENT CREDIT FOR IMPRISONED FOREIGN NATIONALS.—Section 8332(b) of title 5, United States Code, is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and", and by inserting after paragraph (9) the following new paragraph:

"(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual."

SEC. 2314. CONFORMING AMENDMENTS TO TITLE 5.—(a) Section 3323(c) of title 5, United States Code, is amended by striking out "Foreign Service officer retired under section 1001 or 1002 of title 22 of a Foreign Service staff officer or employee retired under section 1063 of title 22" and inserting in lieu thereof "member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980".

(b) Section 5102(c) (2) of title 5, United States Code, is amended by striking out "employees in the Foreign Service of the United States whose pay is fixed under chapter 14 of title 22" and insert in lieu thereof "members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980".

(c) (1) Section 5301(c) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2).

(2) Section 5303(a) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by redesignating paragraph (3) as paragraph (2);

(C) by striking out "; or" at the end of such redesignated paragraph and inserting in lieu thereof a period; and

(D) by striking out paragraph (4).

(23) Section 5304 of title 5, United States Code, is amended by striking out "chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(d) Section 5724(g) of title 5, United States Code, is amended by striking out

"chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(e) Section 5727(e) (2) of title 5, United States Code, is amended to read as follows:

"(2) This section, except subsection (a), does not affect section 403e(4) of title 50."

(f) (1) Section 6301(2) (xii) of title 5, United States Code, is amended by striking out an officer who receives pay under section 866 of title 22" and inserting in lieu thereof "a chief of mission (as defined in section 102(a) (3) of the Foreign Service Act of 1980)".

(2) Section 6305(b) of title 5, United States Code, is amended by striking out "an officer" and inserting in lieu thereof "a chief of mission".

(g) Section 7103(a) (2) (iv) of title 5, United States Code, is amended by striking out "the Agency for International Development, or" and inserting before the semicolon "the United States International Development Cooperative Agency, the Department of Agriculture, or the Department of Commerce".

(h) Section 8501(1) (C) of title 5, United States Code, is amended by striking out "Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22" and inserting in lieu thereof "members of the Foreign Service for whom payments are provided under section 609(b) (1) of the Foreign Service Act of 1980".

SEC. 231. RETIREMENT CREDIT FOR "RADIO" SERVICE.—(a) Subsection 8332(b) of title 5, United States Code, is amended by adding the following new paragraph (10) immediately following paragraph (9) thereof to read as follows:

"(10) Subject to sections 8334(c) and 8339(1) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946 for the National Committee for a Free Europe; Free Europe Committee, Inc.; Free Europe, Inc.; Radio Liberation Committee; Radio Liberty Committee; or their subdivisions; Radio Free Europe/Radio Liberty, Inc.; Radio Free Asia; the Asia Foundation; or the American Forces Network, Europe (AFN-E)".

(b) Such subsection 8332(b) is further amended by adding at the very end the following:

"The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type performed by an employee named by paragraph (10) of this subsection."

CHAPTER 4—SAVING PROVISIONS, CONGRESSIONAL OVERSIGHT, AND EFFECTIVE DATE

SEC. 2401. SAVING PROVISIONS.—(a) All determinations, authorizations, regulations, orders, agreements, exclusive recognition of an organization or other actions made, issued, undertaken, entered into, or taken under the authority of the Foreign Service Act of 1946 or any other law repealed, modified, or affected by this Act shall continue in full force and effect until modified, revoked, or superseded by appropriate authority. Any grievances, claims, or appeals which were filed or made under any such law and are pending resolution on the effective date of this Act shall continue to be governed by the provisions repealed, modified, or affected by this Act.

(b) This Act shall not affect any increase in annuity or other rights to benefits, which was provided by any provision amended or repealed by this Act, with respect to any individual who became entitled to such benefit prior to the effective date of this Act.

(c) References in law to provisions of the Foreign Service Act of 1946 or other law superseded by this Act shall be deemed to include reference to the corresponding provisions of this Act.

SEC. 2402. CONGRESSIONAL OVERSIGHT OF

IMPLEMENTATION.—(a) Within fifteen months after the effective date of this Act, the Secretary of State shall submit to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a report describing the implementation of this Act during the fiscal year 1981 by the agencies utilizing the Foreign Service personnel system. Such report shall—

(1) describe the steps taken and planned in furtherance of (A) maximum compatibility among such agencies, as provided for in section 203, and (B) the development of uniform policies and procedures and consolidated personnel functions, as provided for in section 204;

(2) indicate the progress made by each such agency in the conversion of personnel and position classifications in accordance with chapter 1 of this title; and

(3) specify the upper and lower limits planned by each such agency for recruitment, advancement, and retention of members of the Service, as provided for in section 601 (c) (2), including with respect to each of the relevant promotion competition groups the projected ranges of rates of appointment, promotion, and attrition over each of the five fiscal years 1981 through 1985.

(b) Beginning in 1982, the Secretary of State shall submit each year to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a supplemental report describing any relevant developments with respect to the matters reported on under paragraphs (1) and (2) of subsection (a) and, with respect to paragraph (3) of such subsection, a revised projection of the ranges of rates of appointment, promotion, and attrition over each of the next five years, as well as a comparison of such projections with the projections for the preceding year and with actual rates of appointment, promotion, attrition. The report shall explain fully any deviations from projections reported in the preceding year.

(c) The Secretary shall consult, in accordance with the procedures set out in section 1013(g), with the exclusive representative (if any) of members of the Foreign Service in each agency specified in section 1003(a) with respect to steps to be taken in implementing this Act and reported under this section. To that end, each such exclusive representative will have timely access to all relevant information at each stage. Each such report shall include the views of each such exclusive representative on any and all aspects of the report and the information contained in such report.

SEC. 2403. EFFECTIVE DATE.—(a) Except as otherwise provided, this Act shall take effect at the end of the 90-day period beginning on the date of enactment of this Act.

(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.

(c) Appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and application of the limitation in section 305(b) until October 1, 1985. Prior to that date, the number of members serving in the Senior Foreign Service under limited appointments by the Secretary of Commerce may not exceed 10 at any one time (excluding individuals with reemployment rights under section 310 as career appointees in the Senior Executive Service).

(d) The provisions of chapter 8 of title I regarding the rights of former spouses to any annuity under section 814(a) shall apply in the case of any individual who after the effective date of this Act becomes a former spouse of an individual who separates from the Service after such date.

(2) The provisions of such chapter regarding the rights of former spouses to re-

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ceive survivor annuities under section 814 (b) shall apply in the case of participants or former participants in the Foreign Service Retirement and Disability System who die after such effective date.

Mr. PELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PERCY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, I ask that S. 3058 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I would like the record to reflect that if the yeas and nays had been ordered on the previous vote, I would have been recorded in the affirmative as voting on that.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT — INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 7631, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes today. Rollcall votes are expected tomorrow on the military construction authorization bill and on the HUD appropriations bill. There will be no session this coming Saturday. I expect rollcall votes daily, however, through Friday of this week.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business and that Senators may speak therein for a period not to extend beyond 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENFORCEMENT OF SUBPENA OF THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 981.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. There is no objection. The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 502) directing the Senate Legal Counsel to bring civil action to enforce subpoena of the Permanent Subcommittee on Investigations.

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 502) was agreed to.

The preamble was agreed to. The resolution, with its preamble, reads as follows:

S. RES. 502

Whereas the Senate Permanent Subcommittee on Investigations subpoenaed William Cammisano to testify at a subcommittee hearing on May 1, 1980, and was immunized under court order against self-incrimination by his testimony but refused to answer the subcommittee's questions, and

Whereas under section 703(b) of the Ethics in Government Act of 1978 (2 U.S.C. 288(b)), the Senate Legal Counsel shall bring a civil action to enforce a subpoena of a Senate subcommittee only when directed to do so by the adoption of a resolution by the Senate: Therefore be it

Resolved, That the Senate Legal Counsel shall bring a civil action in the name of the Senate Permanent Subcommittee on Investigations to enforce the subcommittee's subpoena to William Cammisano, and that the Senate Legal Counsel shall conduct all appeals, contempt proceedings, and other ancillary legal proceedings, relating to testimony of William Cammisano before the subcommittee; and be it further

Resolved, That the Senate Permanent Subcommittee on Investigations has certified a continuing interest in and need for the proposed testimony of William Cammisano concerning organized crime in Kansas City and related matters for the remainder of the Ninety-sixth Congress and throughout the Ninety-seventh Congress.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WITHDRAWAL AND RELEASE OF CERTAIN RECORDS AND DOCUMENTS

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a Senate resolution on behalf of Mr. CHLES and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 519) to authorize the withdrawal and release of certain records and documents created or obtained by and in the possession of the Special Committee on Aging to the Office of Disciplinary Counsel, Supreme Court State of Hawaii.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 519) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 519

Whereas the Office of Disciplinary Counsel, Supreme Court, State of Hawaii, has requested certain materials and information created or obtained by and in the possession of the Special Committee on Aging as a result of its official activities; and

Whereas, by the privileges of the Senate of the United States and by Rule XI of the Standing Rules of the Senate, no Member, officer, or employee of the Senate is authorized to produce documents, papers, or records of the Senate but by order of the Senate and information secured by Members, officers, and employees of the Senate pursuant to their official duties may not be revealed without the consent of the Senate: Now, therefore, be it

Resolved, that the Chairman of the Special Committee on Aging is authorized, at his discretion and subject to such conditions as he may deem appropriate, to provide the Office of Disciplinary Counsel, Supreme Court, State of Hawaii, with certain records, documents, papers, and other information, or copies thereof, created or obtained by and in the possession of the Committee as requested by the Office of Disciplinary Counsel, Supreme Court, State of Hawaii.

ORDER TO HOLD MESSAGE ON HOUSE JOINT RESOLUTION 607 AT THE DESK UNTIL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a message from the House on House Joint Resolution 607 be held at the desk until tomorrow.

Mr. STEVENS. Mr. President, there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.