

UNITED STATES SENATE
COMMITTEE ON FOREIGN RELATIONS

Staff Memorandum

S.2675 - To authorize the Secretary of State to reimburse State and local governments for providing extraordinary protection with respect to foreign consular posts located in the United States outside the metropolitan area of the District of Columbia

Purpose

This legislation is designed primarily to meet United States obligations under the Vienna Convention on Consular Relations, the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, and other international laws and conventions. In essence the legislation would permit the Secretary of State to request extraordinary protective services specified in the proposed legislation for foreign consular personnel from state and local police jurisdictions.

Background

On January 28, 1981, the Turkish Consul General was murdered in Los Angeles and on May 4 the Honorary Turkish Consul General in Boston was killed. This increasing level of terrorist attacks against foreign consular personnel is a matter of serious concern to the Administration. It is the goal of the State Department to provide increased protection for foreign personnel which is comparable to that provided U.S. diplomats abroad.

Other governments, with some exceptions, are carrying out fully the obligations of the Vienna Conventions with respect to American personnel. A 1981 survey of U.S. embassies indicated that foreign governments devote approximately 3,000 work years to the protection of our diplomats.

The Federal Government has recently been directly involved in the protection of foreign consular personnel in the United States at some 1400 locations. In the past, this responsibility has been discharged entirely by the local and state governments within available resources. Their obligation is to provide equal protection of the law to all persons within their jurisdiction as stated by the Constitution. Whenever the Secretary of State has requested that they provide extraordinary protection, such as fixed guard posts of a Consulate building or residence, or bodyguard protection to a consular officer who has been specifically threatened, they have been reluctant, or refused. Local authorities consider

the obligation of the Vienna Conventions to prevent any attack on the person, freedom or dignity of a diplomatic or consular officer a Federal obligation that goes beyond their law enforcement responsibilities.

The Administration considers this position to be reasonable and consistent with the historic and constitutional division of power between the Federal and State Governments. Accordingly, the Administration is requesting in cases of extraordinary need, that the Secretary of State be authorized to reimburse state and local jurisdictions for reasonable expenses in discharging certain requested protective services.

The Administration is requesting an open-ended authorization for carrying out the purposes of this bill. It is estimated that \$6 million will be needed for FY 1983.

Section-by-Section Analysis

Section 1. This Section states the Congressional intent to reaffirm the historical and constitutional policy of the Federal Government that the several states are responsible for assuring the equal protection of the law to every person within their jurisdiction. This responsibility includes foreign diplomatic and consular personnel. This Section also states that Congress recognizes that the obligations accepted by the Federal Government in the Vienna Convention on Consular Relations sometime impose a heavy burden on the several states and that there are instances of extraordinary protective need when Federal assistance to the states is appropriate. Under 3 USC 202, the Uniformed Division of the Secret Service is responsible for the protection of diplomatic premises within the metropolitan area of the District of Columbia.

Section 2. This section sets out the basic authority of the Secretary of State to request the assistance of state and local governments, other than those in the metropolitan area of the District of Columbia, in the performance of certain enumerated security functions for consular offices. The Secretary is authorized to request this assistance when, in his judgment, it is necessary in order to meet the obligations of the United States under the Vienna Convention on Consular Relations (21 UST 77, TIAS 6820, April 24, 1963), the Convention on the Prevention of Punishment of Crimes Against Internationally Protected Persons, commonly known as the "New York Convention" (28 UST 1975, TIAS 8532, February 20, 1977), and any other international law or convention to which the United States is a party.

It is the expectation of the Congress, as expressed in Section 1, that state and local governments will continue to carry out this responsibility and to bear the cost of this protection. However, this Section also provides that when

the Secretary of State has determined that state and local governments have an extraordinary need for financial assistance in order to carry out these responsibilities, the Secretary is authorized to reimburse those governments for reasonable expenses associated with that protection. If the state or local government cannot accede to such a request for assistance because of a lack of manpower, the Secretary is authorized, as a last resort, to procure security services notwithstanding any other provisions of law normally applicable to the acquisition of such services. This section also provides that any private security firm hired by the Secretary under this authority must be duly authorized to perform such services in the jurisdiction in question.

Section 2 also defines the type of assistance which the Secretary is authorized to request, and for which he is authorized to reimburse or procure the services of a private firm. Those are defined as (a) "fixed guard posts at any consular premises or the residences of any consular officers, and (b) "protective security details and other extraordinary functions relating to the protection of consular premises and officers." In practice this will mean two principal things: first, stationary uniformed guards outside the entrance to consular premises and the residence of any consular officials, and secondly, security details to accompany consular officials, while traveling or any other situation requiring protection. Subparagraph b also provides for protection in "other extraordinary functions relating to the protection of consular premises and officers."

It is important to understand that this authority is limited to consular premises outside the metropolitan area of the District of Columbia. Therefore, it will not apply to missions to the United Nations nor to traveling foreign dignitaries. Recent attacks on Turkish consular officials in the United States demonstrate the clear need to protect consular officials.

Section 3. This Section defines "consular premises" and "consular officers" in accordance with the normally accepted definitions under international law.

Section 4. This Section authorizes the Secretary of State to issue the necessary administrative regulations to carry out the law. It is the intention of the Secretary of State to adopt regulations requiring that, prior to reimbursing state and local governments, agreement will have been reached in each case between the Department and the state and local government as to the nature of the services to be provided and as to the total cost. This will provide an effective cost control on expenditures under this authority.

Section 5. This Section, as requested by the Administration, authorizes the appropriation of "such sums as may be necessary" to carry out the purpose of the Act for Fiscal Year 1982 and subsequent fiscal years.

SUGGESTED QUESTIONS

Administration Witnesses

(1) Need - Historically the Federal Government has relied on state and local jurisdictions to protect foreign consular personnel in approximately 1400 locations throughout the United States.

(a) Why, at this time, does the Administration believe that it is necessary to reimburse state and local jurisdictions for the protection of foreign consular personnel?

(b) Could you provide for the record a list of terrorist activities directed against foreign consular personnel within the United States during the last four years?

(c) What types of extraordinary protection do you intend to provide under this legislation?

(2) Cost and Administration - The Administration is requesting an open-ended authorization to fund the services provided by this legislation.

(a) What do you estimate the annual cost of providing such services? How do you intend to control costs?

(b) Public Law 94-196 provides reimbursement to the New York Police Department for the protection of foreign missions assigned to the United Nations. What is the annual cost of that program? Who administers that program? Why is the State Department requesting to be the administrator of this program rather than the Treasury Department (Secret Service) or the Justice Department? Is the Administration actively considering the placement of the New York program under the control of the State Department. If so, why?

(3) Scope of Protection

(a) Will normal routine law enforcement activities be subject to reimbursement under this legislation?

(b) In what types of situation do we (the U.S. Government) have an obligation to provide extraordinary protection?

(c) Can you envision any situation where extraordinary protection is requested and denied or will all requests for such services be honored?

(d) Could you provide a list of all those countries that requested special protection services during the last year and the amount of such service that was provided?

(e) Could you provide a list of all the consular posts in the United States by state and whether the post is honorary or career?

(4) Preemption of State Rights

(a) Under this legislation, will the Department take over a function that the states should handle?

(b) How will the Department of State be in a better position to determine the type of protection necessary rather than the local police departments?

(c) Why are state and local law enforcement agencies no longer capable of providing such protection?

(5) Administration of Program

(a) If this legislation is approved, how would you administer it?

(b) There may be so many jurisdictions involved with some consulates that your proposal will not work. Will the proposal really solve the problem?

(c) Why don't we amend the existing legislation to take care of this security problem?

(d) Rather than reimburse local and state jurisdictions, can this job be done by the deployment of State Department security agents or other Federal agents?

(e) If this legislation is adopted, will there be two Federal agencies dealing with New York City on the same matter?

Panel - Witnesses from Los Angeles and New York cities

(1) Do you feel that this legislation infringes, in any way, on state or local law enforcement jurisdiction?

(2) Are there any parts of this legislation which cause you concern?

(3) Do you have any views with respect to how this program should be administered?

(4) What kinds of protective services do you envision being subject to reimbursement under this legislation?