

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—109th Cong., 2d Sess.

S. 2370

To promote the development of democratic institutions in areas under the administrative control of the Palestinian Authority, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. MCCONNELL (for himself and Mr. BIDEN)

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Palestinian Anti-Terrorism Act of 2006”.
5

6 **SEC. 2. LIMITATION ON ASSISTANCE TO THE PALESTINIAN AUTHORITY.**
7

8 (a) DECLARATION OF POLICY.—It shall be the policy
9 of the United States—

1 (1) to support a peaceful, two-state solution to
2 end the conflict between Israel and the Palestinians
3 in accordance with the Performance-Based Roadmap
4 to a Permanent Two-State Solution to the Israeli-
5 Palestinian Conflict (commonly referred to as the
6 “Roadmap”);

7 (2) to oppose those organizations, individuals,
8 and countries that support terrorism and violently
9 reject a two-state solution to end the Israeli-Pales-
10 tinian conflict;

11 (3) to promote the rule of law, democracy, the
12 cessation of terrorism and incitement, and good gov-
13 ernance in institutions and territories controlled by
14 the Palestinian Authority; and

15 (4) to urge members of the international com-
16 munity to avoid contact with and refrain from sup-
17 porting the terrorist organization Hamas until it
18 agrees to recognize Israel, renounce violence, disarm,
19 and accept prior agreements, including the Road-
20 map.

21 (b) AMENDMENTS.—Chapter 1 of part III of the For-
22 eign Assistance Act of 1961 (22 U.S.C. 2351 et seq.) is
23 amended—

1 (1) by redesignating the second section 620G
2 (as added by section 149 of Public Law 104-164
3 (110 Stat. 1436)) as section 620J; and

4 (2) by adding at the end the following new sec-
5 tion:

6 **“SEC. 620K. LIMITATION ON ASSISTANCE TO THE PALES-**
7 **TINIAN AUTHORITY.**

8 “(a) LIMITATION.—Assistance may be provided
9 under this Act to the Palestinian Authority only during
10 a period for which a certification described in subsection
11 (b) is in effect.

12 “(b) CERTIFICATION.—A certification described in
13 subsection (a) is a certification transmitted by the Presi-
14 dent to Congress that contains a determination of the
15 President that—

16 “(1) no ministry, agency, or instrumentality of
17 the Palestinian Authority is effectively controlled by
18 Hamas, unless the Hamas-controlled Palestinian Au-
19 thority has—

20 “(A) publicly acknowledged Israel’s right
21 to exist as a Jewish state; and

22 “(B) committed itself and is adhering to
23 all previous agreements and understandings
24 with the United States Government, with the
25 Government of Israel, and with the inter-

1 national community, including agreements and
2 understandings pursuant to the Performance-
3 Based Roadmap to a Permanent Two-State So-
4 lution to the Israeli-Palestinian Conflict (com-
5 monly referred to as the ‘Roadmap’); and

6 “(2) the Hamas-controlled Palestinian Author-
7 ity has made demonstrable progress toward—

8 “(A) completing the process of purging
9 from its security services individuals with ties to
10 terrorism;

11 “(B) dismantling all terrorist infrastruc-
12 ture within its jurisdiction, confiscating unau-
13 thorized weapons, arresting and bringing terror-
14 ists to justice, destroying unauthorized arms
15 factories, thwarting and preempting terrorist
16 attacks, and fully cooperating with Israel’s se-
17 curity services;

18 “(C) halting all anti-American and anti-
19 Israel incitement in Palestinian Authority-con-
20 trolled electronic and print media and in
21 schools, mosques, and other institutions it con-
22 trols, and replacing educational materials, in-
23 cluding textbooks, with materials that promote
24 peace, tolerance, and coexistence with Israel;

1 “(D) ensuring democracy, the rule of law,
2 and an independent judiciary, and adopting
3 other reforms such as ensuring transparent and
4 accountable governance; and

5 “(E) ensuring the financial transparency
6 and accountability of all government ministries
7 and operations.

8 “(c) RECERTIFICATIONS.—Not later than 90 days
9 after the date on which the President transmits to Con-
10 gress an initial certification under subsection (b), and
11 every six months thereafter—

12 “(1) the President shall transmit to Congress a
13 recertification that the conditions described in sub-
14 section (b) are continuing to be met; or

15 “(2) if the President is unable to make such a
16 recertification, the President shall transmit to Con-
17 gress a report that contains the reasons therefor.

18 “(d) CONGRESSIONAL NOTIFICATION.—Assistance
19 made available under this Act to the Palestinian Authority
20 may not be provided until 15 days after the date on which
21 the President has provided notice thereof to the appro-
22 priate congressional committees in accordance with the
23 procedures applicable to reprogramming notifications
24 under section 634A(a) of this Act.

25 “(e) NATIONAL SECURITY WAIVER.—

1 “(1) IN GENERAL.—Subject to paragraph (2),
2 the President may waive subsection (a) with respect
3 to—

4 “(A) the administrative and personal secu-
5 rity costs of the Office of the President of the
6 Palestinian Authority;

7 “(B) the activities of the President of the
8 Palestinian Authority to fulfill his or her duties
9 as President, including to maintain control of
10 the management and security of border cross-
11 ings, to foster the Middle East peace process,
12 and to promote democracy and the rule of law;
13 and

14 “(C) assistance for the judiciary branch of
15 the Palestinian Authority and other entities.

16 “(2) CERTIFICATION.—The President may only
17 exercise the waiver authority under paragraph (1)
18 after—

19 “(A) consulting with, and submitting a
20 written policy justification to, the appropriate
21 congressional committees; and

22 “(B) certifying to the appropriate congres-
23 sional committees that—

24 “(i) it is in the national security inter-
25 est of the United States to provide assist-

1 ance otherwise prohibited under subsection
2 (a); and

3 “(ii) the individual or entity for which
4 assistance is proposed to be provided is not
5 a member of, or effectively controlled by
6 (as the case may be), Hamas or any other
7 foreign terrorist organization.

8 “(3) REPORT.—Not later than 10 days after
9 exercising the waiver authority under paragraph (1),
10 the President shall submit to the appropriate con-
11 gressional committees a report describing how the
12 funds provided pursuant to such waiver will be spent
13 and detailing the accounting procedures that are in
14 place to ensure proper oversight and accountability.

15 “(4) TREATMENT OF CERTIFICATION AS NOTI-
16 FICATION OF PROGRAM CHANGE.—For purposes of
17 this subsection, the certification required under
18 paragraph (2)(B) shall be deemed to be a notifica-
19 tion under section 634A and shall be considered in
20 accordance with the procedures applicable to notifi-
21 cations submitted pursuant to that section.

22 “(f) DEFINITIONS.—In this section:

23 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
24 TEES.—The term ‘appropriate congressional com-
25 mittees’ means—

1 “(A) the Committee on International Rela-
2 tions and the Committee on Appropriations of
3 the House of Representatives; and

4 “(B) the Committee on Foreign Relations
5 and the Committee on Appropriations of the
6 Senate.

7 “(2) FOREIGN TERRORIST ORGANIZATION.—
8 The term ‘foreign terrorist organization’ means an
9 organization designated as a foreign terrorist organi-
10 zation by the Secretary of State in accordance with
11 section 219(a) of the Immigration and Nationality
12 Act (8 U.S.C. 1189(a)).

13 “(3) PALESTINIAN AUTHORITY.—The term
14 ‘Palestinian Authority’ means the interim Pales-
15 tinian administrative organization that governs part
16 of the West Bank and all of the Gaza Strip (or any
17 successor Palestinian governing entity), including
18 the Palestinian Legislative Council.”.

19 “(c) PREVIOUSLY OBLIGATED FUNDS.—The provi-
20 sions of section 620K of the Foreign Assistance Act of
21 1961, as added by subsection (b), shall be applicable to
22 the unexpended balances of funds obligated prior to the
23 date of the enactment of this Act.

1 **SEC. 3. LIMITATION ON ASSISTANCE FOR THE WEST BANK**
2 **AND GAZA.**

3 (a) AMENDMENT.—Chapter 1 of part III of the For-
4 eign Assistance Act of 1961 (22 U.S.C. 2351 et seq.), as
5 amended by section 2(b)(2), is further amended by adding
6 at the end the following new section:

7 **“SEC. 620L. LIMITATION ON ASSISTANCE FOR THE WEST**
8 **BANK AND GAZA.**

9 “(a) LIMITATION.—Assistance may be provided
10 under this Act to nongovernmental organizations for the
11 West Bank and Gaza only during a period for which a
12 certification described in section 620K(b) is in effect with
13 respect to the Palestinian Authority.

14 “(b) EXCEPTIONS.—Subsection (a) shall not apply
15 with respect to the following:

16 “(1) ASSISTANCE TO MEET BASIC HUMAN
17 NEEDS.—Assistance to meet food, water, medicine,
18 health, or sanitation needs, or other assistance to
19 meet basic human needs.

20 “(2) ASSISTANCE TO PROMOTE DEMOCRACY.—
21 Assistance to promote democracy, human rights,
22 freedom of the press, non-violence, reconciliation,
23 and peaceful co-existence, provided that such assist-
24 ance does not directly benefit Hamas or any other
25 foreign terrorist organization.

1 “(3) ASSISTANCE FOR INDIVIDUAL MEMBERS
2 OF THE PALESTINIAN LEGISLATIVE COUNCIL.—As-
3 sistance, other than funding of salaries or salary
4 supplements, to individual members of the Pales-
5 tinian Legislative Council who the President deter-
6 mines are not members of Hamas or any other for-
7 eign terrorist organization, for the purposes of facili-
8 tating the attendance of such members in programs
9 for the development of institutions of democratic
10 governance, including enhancing the transparent and
11 accountable operations of such institutions, and pro-
12 viding support for the Middle East peace process.

13 “(4) OTHER TYPES OF ASSISTANCE.—Any
14 other type of assistance if the President—

15 “(A) determines that the provision of such
16 assistance is in the national security interest of
17 the United States; and

18 “(B) not less than 30 days prior to the ob-
19 ligation of amounts for the provision of such as-
20 sistance—

21 “(i) consults with the appropriate con-
22 gressional committees regarding the spe-
23 cific programs, projects, and activities to
24 be carried out using such assistance; and

1 “(ii) submits to the appropriate con-
2 gressional committees a written memo-
3 randum that contains the determination of
4 the President under subparagraph (A).

5 “(c) MARKING REQUIREMENT.—Assistance provided
6 under this Act to nongovernmental organizations for the
7 West Bank and Gaza shall be marked as assistance from
8 the American people or the United States Government un-
9 less the Secretary of State or, as appropriate, the Admin-
10 istrator of the United States Agency for International De-
11 velopment, determines that such marking will endanger
12 the lives or safety of persons delivering such assistance
13 or would have an adverse effect on the implementation of
14 that assistance.

15 “(d) CONGRESSIONAL NOTIFICATION.—Assistance
16 made available under this Act to nongovernmental organi-
17 zations for the West Bank and Gaza may not be provided
18 until 15 days after the date on which the President has
19 provided notice thereof to the Committee on International
20 Relations and the Committee on Appropriations of the
21 House of Representatives and to the Committee on For-
22 eign Relations and the Committee on Appropriations of
23 the Senate in accordance with the procedures applicable
24 to reprogramming notifications under section 634A(a) of
25 this Act.

1 “(e) DEFINITIONS.—In this section:

2 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
3 TEES.—the term ‘appropriate congressional commit-
4 tees’ means—

5 “(A) the Committee on International Rela-
6 tions and the Committee on Appropriations of
7 the House of Representatives; and

8 “(B) the Committee on Foreign Relations
9 and the Committee on Appropriations of the
10 Senate.

11 “(2) FOREIGN TERRORIST ORGANIZATION.—
12 The term ‘foreign terrorist organization’ means an
13 organization designated as a foreign terrorist organi-
14 zation by the Secretary of State in accordance with
15 section 219(a) of the Immigration and Nationality
16 Act (8 U.S.C. 1189(a)).”.

17 (b) OVERSIGHT AND RELATED REQUIREMENTS.—

18 (1) OVERSIGHT.—For each of the fiscal years
19 2007 and 2008, the Secretary of State shall certify
20 to the appropriate congressional committees not
21 later than 30 days prior to the initial obligation of
22 amounts for assistance to nongovernmental organi-
23 zations for the West Bank or Gaza under the For-
24 eign Assistance Act of 1961 that procedures have
25 been established to ensure that the Comptroller Gen-

1 eral of the United States will have access to appro-
2 priate United States financial information in order
3 to review the use of such assistance.

4 (2) VETTING.—Prior to any obligation of
5 amounts for each of the fiscal years 2007 and 2008
6 for assistance to nongovernmental organizations for
7 the West Bank or Gaza under the Foreign Assist-
8 ance Act of 1961, the Secretary of State shall take
9 all appropriate steps to ensure that such assistance
10 is not provided to or through any individual or entity
11 that the Secretary knows, or has reason to believe,
12 advocates, plans, sponsors, engages in, or has en-
13 gaged in, terrorist activity. The Secretary shall, as
14 appropriate, establish procedures specifying the
15 steps to be taken in carrying out this paragraph and
16 shall terminate assistance to any individual or entity
17 that the Secretary has determined advocates, plans,
18 sponsors, or engages in terrorist activity.

19 (3) PROHIBITION.—No amounts made available
20 for fiscal year 2007 or 2008 for assistance to non-
21 governmental organizations for the West Bank or
22 Gaza under the Foreign Assistance Act of 1961 may
23 be made available for the purpose of recognizing or
24 otherwise honoring individuals who commit, or have
25 committed, acts of terrorism.

1 (4) AUDITS.—

2 (A) IN GENERAL.—The Administrator of
3 the United States Agency for International De-
4 velopment shall ensure that Federal or non-
5 Federal audits of all contractors and grantees,
6 and significant subcontractors and subgrantees,
7 that receive amounts for assistance to non-
8 governmental organizations for the West Bank
9 or Gaza under the Foreign Assistance Act of
10 1961 are conducted for each of the fiscal years
11 2007 and 2008 to ensure, among other things,
12 compliance with this subsection.

13 (B) AUDITS BY INSPECTOR GENERAL OF
14 USAID.—Of the amounts available for each of
15 the fiscal years 2007 and 2008 for assistance to
16 nongovernmental organizations for the West
17 Bank or Gaza under the Foreign Assistance
18 Act of 1961, up to \$1,000,000 for each such
19 fiscal year may be used by the Office of the In-
20 spector General of the United States Agency for
21 International Development for audits, inspec-
22 tions, and other activities in furtherance of the
23 requirements of subparagraph (A). Such
24 amounts are in addition to amounts otherwise
25 available for such purposes.

1 **SEC. 4. DESIGNATION OF TERRITORY CONTROLLED BY THE**
2 **PALESTINIAN AUTHORITY AS TERRORIST**
3 **SANCTUARY.**

4 It is the sense of Congress that, during any period
5 for which a certification described in section 620K(b) of
6 the Foreign Assistance Act of 1961 (as added by section
7 2(b)(2) of this Act) is not in effect with respect to the
8 Palestinian Authority, the territory controlled by the Pal-
9 estinian Authority should be deemed to be in use as a
10 sanctuary for terrorists or terrorist organizations for pur-
11 poses of section 6(j)(5) of the Export Administration Act
12 of 1979 (50 U.S.C. App. 2405(j)(5)) and section 140 of
13 the Foreign Relations Authorization Act, Fiscal Years
14 1988 and 1989 (22 U.S.C. 2656f).

15 **SEC. 5. DENIAL OF VISAS FOR OFFICIALS OF THE PALES-**
16 **TINIAN AUTHORITY.**

17 (a) IN GENERAL.—Except as provided in subsection
18 (b), a visa should not be issued to any alien who is an
19 official of, under the control of, or serving as a representa-
20 tive of the Hamas-led Palestinian Authority during any
21 period for which a certification described in section
22 620K(b) of the Foreign Assistance Act of 1961 (as added
23 by section 2(b)(2) of this Act) is not in effect with respect
24 to the Palestinian Authority.

25 (b) EXCEPTION.—The restriction under subsection
26 (a) should not apply to—

1 (1) the President of the Palestinian Authority
2 and his or her personal representatives, provided
3 that the President and his or her personal represent-
4 atives are not affiliated with Hamas or any other
5 foreign terrorist organization; and

6 (2) members of the Palestinian Legislative
7 Council who are not members of Hamas or any
8 other foreign terrorist organization.

9 **SEC. 6. TRAVEL RESTRICTIONS ON OFFICIALS AND REP-**
10 **RESENTATIVES OF THE PALESTINIAN AU-**
11 **THORITY AND THE PALESTINE LIBERATION**
12 **ORGANIZATION STATIONED AT THE UNITED**
13 **NATIONS IN NEW YORK CITY.**

14 (a) IN GENERAL.—Notwithstanding any other provi-
15 sion of law, and except as provided in subsection (b), the
16 President should restrict the travel of officials and rep-
17 resentatives of the Palestinian Authority and of the Pal-
18 estine Liberation Organization, who are stationed at the
19 United Nations in New York City to a 25-mile radius of
20 the United Nations headquarters building during any pe-
21 riod for which a certification described in section 620K(b)
22 of the Foreign Assistance Act of 1961 (as added by section
23 2(b)(2) of this Act) is not in effect with respect to the
24 Palestinian Authority.

1 (b) EXCEPTION.—The travel restrictions described in
2 subsection (a) should not apply to the President of the
3 Palestinian Authority and his or her personal representa-
4 tives, provided that the President and his or her personal
5 representatives are not affiliated with Hamas or any other
6 foreign terrorist organization.

7 **SEC. 7. PROHIBITION ON PALESTINIAN AUTHORITY REP-**
8 **RESENTATION IN THE UNITED STATES.**

9 (a) PROHIBITION.—Notwithstanding any other provi-
10 sion of law, it shall be unlawful to establish or maintain
11 an office, headquarters, premises, or other facilities or es-
12 tablishments within the jurisdiction of the United States
13 at the behest or direction of, or with funds provided by,
14 the Palestinian Authority during any period for which a
15 certification described in section 620K(b) of the Foreign
16 Assistance Act of 1961 (as added by section 2(b)(2) of
17 this Act) is not in effect with respect to the Palestinian
18 Authority.

19 (b) ENFORCEMENT.—

20 (1) ATTORNEY GENERAL.—The Attorney Gen-
21 eral shall take the necessary steps and institute the
22 necessary legal action to effectuate the policies and
23 provisions of subsection (a).

24 (2) RELIEF.—Any district court of the United
25 States for a district in which a violation of sub-

1 section (a) occurs shall have authority, upon petition
2 of relief by the Attorney General, to grant injunctive
3 and such other equitable relief as it shall deem nec-
4 essary to enforce the provisions of subsection (a).

5 (c) WAIVER.—Subsection (a) shall not apply if the
6 President determines and certifies to the appropriate con-
7 gressional committees that the establishment or mainte-
8 nance of an office, headquarters, premises, or other facili-
9 ties is vital to the national security interests of the United
10 States.

11 **SEC. 8. INTERNATIONAL FINANCIAL INSTITUTIONS.**

12 (a) REQUIREMENT.—The President should direct the
13 United States Executive Director at each international fi-
14 nancial institution to use the voice, vote, and influence of
15 the United States to prohibit assistance to the Palestinian
16 Authority (other than assistance described under sub-
17 section (b)) during any period for which a certification de-
18 scribed in section 620K(b) of the Foreign Assistance of
19 1961 (as added by section 2(b)(2) of this Act) is not in
20 effect with respect to the Palestinian Authority.

21 (b) EXCEPTIONS.—The prohibition on assistance de-
22 scribed in subsection (a) should not apply with respect to
23 the following types of assistance:

1 (3) dismantles the infrastructure in areas with-
2 in its jurisdiction necessary to carry out terrorist
3 acts, including the disarming of militias and the
4 elimination of all instruments of terror; and

5 (4) recognizes and accepts all previous agree-
6 ments and understandings between the State of
7 Israel and the Palestinian Authority.

8 **SEC. 10. ISRAELI-PALESTINIAN PEACE, RECONCILIATION**
9 **AND DEMOCRACY FUND.**

10 (a) ESTABLISHMENT OF FUND.—Not later than 60
11 days after the date of the enactment of this Act, the Sec-
12 retary of State shall establish a fund to be known as the
13 “Israeli-Palestinian Peace, Reconciliation and Democracy
14 Fund” (in this section referred to as the “Fund”). The
15 purpose of the Fund shall be to support, primarily,
16 through Palestinian and Israeli organizations, the pro-
17 motion of democracy, human rights, freedom of the press,
18 and non-violence among Palestinians, and peaceful coex-
19 istence and reconciliation between Israelis and Palestin-
20 ians.

21 (b) ANNUAL REPORT.—Not later than 60 days after
22 the date of the enactment of this Act, and annually there-
23 after for so long as the Fund remains in existence, the
24 Secretary of State shall submit to the appropriate congres-

1 sional committees a report on programs sponsored and
2 proposed to be sponsored by the Fund.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
4 authorized to be appropriated to the Secretary of State
5 \$20,000,000 for fiscal year 2007 for purposes of the
6 Fund.

7 **SEC. 11. REPORTING REQUIREMENT.**

8 Not later than 90 days after the date of the enact-
9 ment of this Act, and annually thereafter, the Secretary
10 of State shall submit to the appropriate congressional
11 committees a report that—

12 (1) describes the steps that have been taken by
13 the United States Government to ensure that other
14 countries and international organizations, including
15 multilateral development banks, do not provide di-
16 rect assistance to the Palestinian Authority for any
17 period for which a certification described in section
18 620K(b) of the Foreign Assistance Act of 1961 (as
19 added by section 2(b)(2) of this Act) is not in effect
20 with respect to the Palestinian Authority; and

21 (2) identifies any countries and international
22 organizations, including multilateral development
23 banks, that are providing direct assistance to the
24 Palestinian Authority during such a period, and de-
25 scribes the nature and amount of such assistance.

1 **SEC. 12. DEFINITIONS.**

2 In this Act:

3 (1) APPROPRIATE CONGRESSIONAL COMMIT-
4 TEES.—The term “appropriate congressional com-
5 mittees” means—

6 (A) the Committee on International Rela-
7 tions and the Committee on Appropriations of
8 the House of Representatives; and

9 (B) the Committee on Foreign Relations
10 and the Committee on Appropriations of the
11 Senate.

12 (2) PALESTINIAN AUTHORITY.—The term “Pal-
13 estinian Authority” has the meaning given the term
14 in section 620K(e)(2) of the Foreign Assistance Act
15 of 1961 (as added by section 2(b)(2) of this Act).