

Calendar No. 458

117TH CONGRESS
2D SESSION**S. 4320**

To enhance security at United States diplomatic facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 26, 2022

Mr. RISCH introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

JULY 21, 2022

Reported by Mr. MENENDEZ, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To enhance security at United States diplomatic facilities,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Secure Embassy Con-
5 struction and Counterterrorism Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) The Secure Embassy Construction and
2 Counterterrorism Act of 1999 (title VI of division A
3 of appendix G of Public Law 106–113) was a nec-
4 essary response to bombings on August 7, 1998, at
5 the United States embassies in Nairobi, Kenya, and
6 in Dar es Salaam, Tanzania that were destroyed by
7 simultaneously exploding bombs. The resulting ex-
8 plosions killed 220 persons and injured more than
9 4,000 others. Twelve Americans and 40 Kenyan and
10 Tanzanian employees of the United States Foreign
11 Service were killed in the attacks.

12 (2) Those bombings, followed by the expedi-
13 tionary diplomatic efforts in Iraq and Afghanistan,
14 demonstrated the need to prioritize the security of
15 United States posts and personnel abroad above
16 other considerations.

17 (3) Between 1999 and 2022, the risk calculus
18 of the Department of State has swung too far to-
19 ward the elimination of risk, leading to a marked de-
20 crease in the ability of United States diplomats
21 around the world to advance the interests of the
22 United States through access to local populations,
23 leaders, and places.

24 (4) America’s competitors and adversaries do
25 not have the same restrictions that United States

1 diplomats have, especially in critically important me-
2 dium-threat and high-threat posts.

3 (5) The Department of State's 2021 Overseas
4 Security Panel report states that—

5 (A) the requirement for setback and col-
6 location of diplomatic posts under paragraphs
7 (2) and (3) of section 606(a) of the Secure Em-
8 bassy Construction and Counterterrorism Act of
9 1999 has led to sky-rocketing costs of new em-
10 bassies and consulates; and

11 (B) the locations of such posts have be-
12 come less desirable, creating an extremely sub-
13 optimal nexus that further hinders United
14 States diplomats who are willing to accept more
15 risk in order to advance United States inter-
16 ests.

17 **SEC. 3. SENSE OF CONGRESS.**

18 It is the sense of Congress that—

19 (1) the setback and collocation requirements re-
20 ferred to in section 2(5)(A), even with available
21 waivers, no longer provide the security such require-
22 ments used to provide because of advancement in
23 technologies, such as remote controlled drones, that
24 can evade walls and other such static barriers;

1 (2) the Department of State should focus on
2 creating performance security standards that—

3 (A) attempt to keep the setback require-
4 ments of diplomatic posts as limited as possible;
5 and

6 (B) provide diplomats access to local popu-
7 lations as much as possible, while still providing
8 a necessary level of security;

9 (3) collocation of diplomatic facilities is often
10 not feasible or advisable, particularly for public di-
11 plomacy spaces in countries with repressive govern-
12 ments; since such spaces are required to permit the
13 foreign public to enter and exit the space easily and
14 openly;

15 (4) the Bureau of Diplomatic Security should—

16 (A) fully utilize the waiver process pro-
17 vided under paragraphs (2)(B) and (3)(B) of
18 section 606(a) of the Secure Embassy Con-
19 struction and Counterterrorism Act of 1999;
20 and

21 (B) appropriately exercise such waiver
22 process as a tool to right-size the appropriate
23 security footing at each diplomatic post rather
24 than only approving waivers in extreme cir-
25 cumstances;

1 ~~(5) the return of great power competition re-~~
 2 ~~quires—~~

3 ~~(A) United States diplomats to do all they~~
 4 ~~can to outperform our adversaries; and~~

5 ~~(B) the Department of State to better uti-~~
 6 ~~lize taxpayer funding to advance United States~~
 7 ~~national interests; and~~

8 ~~(6) this Act will rebalance the Department of~~
 9 ~~State’s risk and provide United States diplomats the~~
 10 ~~tools they need to compete in the 21st century, while~~
 11 ~~saving United States taxpayers potentially billions of~~
 12 ~~dollars in reduced property and maintenance costs at~~
 13 ~~embassies and consulates abroad.~~

14 **SEC. 4. DEFINITION OF UNITED STATES DIPLOMATIC FA-**
 15 **CILITY.**

16 ~~Section 603 of the Secure Embassy Construction and~~
 17 ~~Counterterrorism Act of 1999 (title VI of division A of~~
 18 ~~appendix G of Public Law 106–113) is amended to read~~
 19 ~~as follows:~~

20 ~~“SEC. 603. UNITED STATES DIPLOMATIC FACILITY DE-~~
 21 ~~FINED.~~

22 ~~“In this title, the terms ‘United States diplomatic fa-~~
 23 ~~cility’ and ‘diplomatic facility’—~~

24 ~~“(1) mean any chancery, consulate, or other of-~~
 25 ~~fice considered diplomatic or consular premises; con-~~

1 sistent with the Vienna Convention on Diplomatic
 2 Relations, done at Vienna April 18, 1961, and the
 3 Vienna Convention on Consular Relations, done at
 4 Vienna April 24, 1963, or otherwise subject to a
 5 publicly available bilateral agreement with the host
 6 government (contained in the records of the United
 7 States Department of State) that recognizes the offi-
 8 cial status of the United States Government per-
 9 sonnel present at the facility; and

10 “(2) do not include—

11 “(A) U.S. Customs and Border Protection
 12 preclearance facilities, as established pursuant
 13 to section 629 of the Tariff Act of 1930 (19
 14 U.S.C. 1629) and section 103(a)(7) of the Im-
 15 migration and Nationality Act (8 U.S.C.
 16 1103(a)(7)) and Open Source Centers;

17 “(B) contractor-owned facilities; and

18 “(C) facilities at which United States Gov-
 19 ernment personnel will be present not more
 20 than 60 consecutive days and where the Sec-
 21 retary determines that operational conditions,
 22 security considerations, and mission goals sup-
 23 port exclusion.”.

1 **SEC. 5. SECURITY REQUIREMENTS FOR UNITED STATES**
 2 **DIPLOMATIC FACILITIES.**

3 Section 606(a) of the Secure Embassy Construction
 4 and Counterterrorism Act of 1999 (title VI of division A
 5 of appendix G of Public Law 106–113) is amended—

6 (1) in paragraph (1)(A), by striking “the
 7 threat” and inserting “a range of threats, including
 8 that”;

9 (2) in paragraph (2)—

10 (A) in subparagraph (A)—

11 (i) by striking “abroad” and inserting
 12 “in a high risk, high threat post”; and

13 (ii) by inserting “and Voice of Amer-
 14 ica correspondents on official assignment”
 15 after “military commander”; and

16 (B) in subparagraph (B)—

17 (i) in clause (i), by inserting “if appli-
 18 cable,” after “at the site,”;

19 (ii) in clause (ii)—

20 (I) in subclause (I), by inserting
 21 “at a post designated as high risk,
 22 high threat under section 104 of the
 23 Omnibus Diplomatic Security and
 24 Antiterrorism Act of 1986 (22 U.S.C.
 25 4803)” before the period at the end;
 26 and

1 (II) in subclause (II), by insert-
 2 ing “at a post designated as high risk,
 3 high threat under such section 104”
 4 after “consulate building”; and
 5 (iii) in clause (iii), by striking “waiv-
 6 ers” and inserting “instances of split oper-
 7 ations in which United States diplomatic
 8 facilities are not colocated”; and

9 ~~(3)~~ in paragraph ~~(3)~~—

10 (A) by amending subparagraph (A) to read
 11 as follows:

12 “(A) REQUIREMENT.—

13 “(i) IN GENERAL.—Each newly ac-
 14 quired United States diplomatic facility
 15 shall be constructed or modified to meet
 16 the measured building blast performance
 17 standard applicable to a facility sited not
 18 less than 100 feet from the perimeter.

19 “(ii) LEASED FACILITIES.—If the De-
 20 partment of State is required to commence
 21 or restart diplomatic operations in a coun-
 22 try or city without a previously constructed
 23 diplomatic facility and there is insufficient
 24 time to construct a facility before such
 25 commencement, the Secretary of State—

1 “(I) shall make every effort to
 2 lease an existing facility with the max-
 3 imum setback and security features
 4 that can be reasonably expected; and
 5 “(II) shall submit a setback waiv-
 6 er, with a period of 1 year after leased
 7 occupancy to process the setback
 8 waiver.”; and

9 (B) in subparagraph (B)(ii)—

10 (i) in subclause (I), by inserting “at a
 11 post designated as high risk, high threat
 12 under section 104 of the Omnibus Diplo-
 13 matic Security and Antiterrorism Act of
 14 1986 (22 U.S.C. 4803)” before the period
 15 at the end;

16 (ii) in subclause (II), by inserting “at
 17 a post designated as high risk, high threat
 18 under such section 104” after “consulate
 19 building”; and

20 (iii) in subclause (III), by striking “an
 21 annual” and inserting “a quarterly”.

22 **SECTION 1. SHORT TITLE.**

23 *This Act may be cited as the “Secure Embassy Con-*
 24 *struction and Counterterrorism Act of 2022”.*

1 **SEC. 2. FINDINGS.**

2 *Congress makes the following findings:*

3 (1) *The Secure Embassy Construction and*
4 *Counterterrorism Act of 1999 (title VI of division A*
5 *of appendix G of Public Law 106–113) was a nec-*
6 *essary response to bombings on August 7, 1998, at the*
7 *United States embassies in Nairobi, Kenya, and in*
8 *Dar es Salaam, Tanzania, that were destroyed by si-*
9 *multaneously exploding bombs. The resulting explo-*
10 *sions killed 220 persons and injured more than 4,000*
11 *others. Twelve Americans and 40 Kenyan and Tanza-*
12 *nian employees of the United States Foreign Service*
13 *were killed in the attacks.*

14 (2) *Those bombings, followed by the expedi-*
15 *tionary diplomatic efforts in Iraq and Afghanistan,*
16 *demonstrated the need to prioritize the security of*
17 *United States posts and personnel abroad above other*
18 *considerations.*

19 (3) *Between 1999 and 2022, the risk calculus of*
20 *the Department of State impacted the ability of*
21 *United States diplomats around the world to advance*
22 *the interests of the United States through access to*
23 *local populations, leaders, and places.*

24 (4) *America’s competitors and adversaries do not*
25 *have the same restrictions that United States dip-*

1 *lomats have, especially in critically important me-*
2 *dium-threat and high-threat posts.*

3 *(5) The Department of State’s 2021 Overseas Se-*
4 *curity Panel report states that—*

5 *(A) the requirement for setback and colloca-*
6 *tion of diplomatic posts under paragraphs (2)*
7 *and (3) of section 606(a) of the Secure Embassy*
8 *Construction and Counterterrorism Act of 1999*
9 *(22 U.S.C. 4865(a)) has led to sky-rocketing costs*
10 *of new embassies and consulates; and*

11 *(B) the locations of such posts have become*
12 *less desirable, creating an extremely suboptimal*
13 *nexus that further hinders United States dip-*
14 *lomats who are willing to accept more risk in*
15 *order to advance United States’ interests.*

16 **SEC. 3. SENSE OF CONGRESS.**

17 *It is the sense of Congress that—*

18 *(1) the setback and collocation requirements re-*
19 *ferred to in section 2(5)(A), even with available waiv-*
20 *ers, no longer provide the security such requirements*
21 *used to provide because of advancement in tech-*
22 *nologies, such as remote controlled drones, that can*
23 *evade walls and other such static barriers;*

24 *(2) the Department of State should focus on cre-*
25 *ating performance security standards that—*

1 (A) attempt to keep the setback requirements
2 of diplomatic posts as limited as possible; and

3 (B) provide diplomats access to local popu-
4 lations as much as possible, while still providing
5 a necessary level of security;

6 (3) collocation of diplomatic facilities is often
7 not feasible or advisable, particularly for public di-
8 plomacy spaces whose mission is to reach and be ac-
9 cessible to wide sectors of the public, including in
10 countries with repressive governments, since such
11 spaces are required to permit the foreign public to
12 enter and exit the space easily and openly;

13 (4) the Bureau of Diplomatic Security should—

14 (A) fully utilize the waiver process provided
15 under paragraphs (2)(B) and (3)(B) of section
16 606(a) of the Secure Embassy Construction and
17 Counterterrorism Act of 1999 (22 U.S.C.
18 4865(a)); and

19 (B) appropriately exercise such waiver
20 process as a tool to right-size the appropriate se-
21 curity footing at each diplomatic post rather
22 than only approving waivers in extreme cir-
23 cumstances;

24 (5) the return of great power competition re-
25 quires—

1 (A) *United States diplomats to do all they*
 2 *can to outperform our adversaries; and*

3 (B) *the Department of State to better opti-*
 4 *mize use of taxpayer funding to advance United*
 5 *States national interests; and*

6 (6) *this Act will better enable United States dip-*
 7 *lomats to compete in the 21st century, while saving*
 8 *United States taxpayers millions in reduced property*
 9 *and maintenance costs at embassies and consulates*
 10 *abroad.*

11 **SEC. 4. DEFINITION OF UNITED STATES DIPLOMATIC FA-**
 12 **CILITY.**

13 *Section 603 of the Secure Embassy Construction and*
 14 *Counterterrorism Act of 1999 (title VI of division A of ap-*
 15 *pendix G of Public Law 106–113) is amended to read as*
 16 *follows:*

17 **“SEC. 603. UNITED STATES DIPLOMATIC FACILITY DEFINED.**

18 *“In this title, the terms ‘United States diplomatic fa-*
 19 *cility’ and ‘diplomatic facility’ mean any chancery, con-*
 20 *sulate, or other office that—*

21 *“(1) is considered by the Secretary of State to be*
 22 *diplomatic or consular premises, consistent with the*
 23 *Vienna Convention on Diplomatic Relations, done at*
 24 *Vienna April 18, 1961, and the Vienna Convention*
 25 *on Consular Relations, done at Vienna April 24,*

1 1963, and was notified to the host government as
2 such; or

3 “(2) is otherwise subject to a publicly available
4 bilateral agreement with the host government (con-
5 tained in the records of the United States Department
6 of State) that recognizes the official status of the
7 United States Government personnel present at the
8 facility.”.

9 **SEC. 5. GUIDANCE AND REQUIREMENTS FOR DIPLOMATIC**
10 **FACILITIES.**

11 (a) *GUIDANCE FOR CLOSURE OF PUBLIC DIPLOMACY*
12 *FACILITIES.*—Section 5606 of the Public Diplomacy Mod-
13 ernization Act of 2021 (Public Law 117–81; 22 U.S.C.
14 1475g note) is amended by striking subsection (a) and in-
15 serting the following new subsection:

16 “(a) *IN GENERAL.*—In order to preserve public diplo-
17 macy facilities that are accessible to the publics of foreign
18 countries, not later than 180 days after the date of the en-
19 actment of the Secure Embassy Construction and Counter-
20 terrorism Act of 2022, the Secretary of State shall adopt
21 guidelines to collect and utilize information from each dip-
22 lomatic post at which the construction of a new embassy
23 compound or new consulate compound could result in the
24 closure or co-location of an American Space that is owned
25 and operated by the United States Government, generally

1 *known as an American Center, or any other public diplo-*
 2 *macy facility under the Secure Embassy Construction and*
 3 *Counterterrorism Act of 1999 (22 U.S.C. 4865 et seq.).”.*

4 (b) *SECURITY REQUIREMENTS FOR UNITED STATES*
 5 *DIPLOMATIC FACILITIES.*—Section 606(a) of the *Secure*
 6 *Embassy Construction and Counterterrorism Act of 1999*
 7 *(22 U.S.C. 4865(a)) is amended—*

8 (1) *in paragraph (1)(A), by striking “the threat”*
 9 *and inserting “a range of threats, including that”;*

10 (2) *in paragraph (2)—*

11 (A) *in subparagraph (A)—*

12 (i) *by inserting “in a location that has*
 13 *certain minimum ratings under the Secu-*
 14 *rity Environment Threat List as deter-*
 15 *mined by the Secretary in his or her discre-*
 16 *tion” after “abroad”; and*

17 (ii) *by inserting “, personnel of the*
 18 *Peace Corps, and personnel of any other*
 19 *type or category of facility that the Sec-*
 20 *retary may identify” after “military com-*
 21 *mander”; and*

22 (B) *in subparagraph (B)—*

23 (i) *by amending clause (i) to read as*
 24 *follows:*

1 “(i) *IN GENERAL.*—Subject to clause
 2 (ii), the Secretary of State may waive sub-
 3 paragraph (A) if the Secretary, in consulta-
 4 tion with, as appropriate, the head of each
 5 agency employing personnel that would not
 6 be located at the site, if applicable, deter-
 7 mines that it is in the national interest of
 8 the United States after taking account of
 9 any considerations the Secretary in his or
 10 her discretion considers relevant, which may
 11 include security conditions.”; and

12 (ii) in clause (ii), by striking “(ii)
 13 *CHANCERY OR CONSULATE BUILDING.*—”
 14 and all that follows through “15 days
 15 prior” and inserting the following:

16 “(ii) *CHANCERY OR CONSULATE*
 17 *BUILDING.—Prior*”; and

18 (3) in paragraph (3)—

19 (A) by amending subparagraph (A) to read
 20 as follows:

21 “(A) *REQUIREMENT.*—

22 “(i) *IN GENERAL.*—Each newly ac-
 23 quired United States diplomatic facility in
 24 a location that has certain minimum rat-
 25 ings under the Security Environment

1 *Threat List as determined by the Secretary*
 2 *of State in his or her discretion shall—*

3 “(I) *be constructed or modified to*
 4 *meet the measured building blast per-*
 5 *formance standard applicable to a dip-*
 6 *lomatic facility sited not less than 100*
 7 *feet from the perimeter of the property*
 8 *on which the facility is situated; or*

9 “(II) *fulfill the criteria described*
 10 *in clause (ii).*

11 “(ii) *ALTERNATIVE ENGINEERING*
 12 *EQUIVALENCY STANDARD REQUIREMENT.—*
 13 *Each facility referred to in clause (i) may,*
 14 *instead of meeting the requirement under*
 15 *such clause, fulfill such other criteria as the*
 16 *Secretary is authorized to employ to achieve*
 17 *an equivalent engineering standard of secu-*
 18 *rity and degree of protection as the numer-*
 19 *ical perimeter distance setback described in*
 20 *such clause seeks to achieve.”; and*

21 *(B) in subparagraph (B)—*

22 *(i) in clause (i)—*

23 *(I) by striking “security consider-*
 24 *ations permit and”; and*

1 (II) by inserting “after taking ac-
 2 count of any considerations the Sec-
 3 retary in his or her discretion con-
 4 siders relevant, which may include se-
 5 curity conditions” after “national in-
 6 terest of the United States”;

7 (ii) in clause (ii), by striking “(ii)
 8 CHANCERY OR CONSULATE BUILDING.—”
 9 and all that follows through “15 days
 10 prior” and inserting the following:

11 “(ii) CHANCERY OR CONSULATE
 12 BUILDING.—Prior”; and

13 (iii) in clause (iii), by striking “an
 14 annual” and inserting “a quarterly”.

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