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SECTION-BY-SECTION ANALYSIS OF THE PROPOSED MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE BILL

(S. 1154)

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

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FOREWORD

By J. W. Fulbright, Chairman

On March 2, 1961, I introduced S. 1154, a bill to provide for the improvement and strengthening of the international relations of the United States by promoting better mutual understanding among the people of the world through educational and cultural exchanges.

In connection with consideration of this proposed legislation, it seemed to me that the members of the Committee on Foreign Relations, other Members of the Senate, and interested citizens might be aided in their understanding of the purposes intended to be achieved, if the bill's objectives were described in some detail. I therefore have had prepared a section-by-section analysis of the provisions of S. 1154, which appears in this committee print.

SECTION-BY-SECTION ANALYSIS OF MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE BILL (S. 1154)

This bill has been prepared with the purpose of (1) consolidating into one piece of legislation the existing provisions of law scattered in separate acts providing authority for international educational and cultural programs, and (2) authorizing a full range of such programs wherever they would contribute to the improvement of U.S. foreign relations. The bill gives all the authority to the President, permitting him to delegate his powers to the head of a regular department or to the head of a new agency if he should consider this more desirable.

This bill is intended to contain authority to carry out and, where appropriate, to enlarge every program in this field that has been authorized by the original Fulbright Act (Public Law 584, 79th Cong.); the Smith-Mundt Act (U.S. Information and Educational Exchange Act of 1948, Public Law 402, 80th Cong.); the International Cultural Exchange and Trade Fair Participation Act of 1956 (Public Law 860, 84th Cong.); the Finnish Debt Payments Act of 1949 (Public Law 265, 81st Cong.); and the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480, 83d Cong.).

Section-by-Section Analysis

The descriptive language preceding the enacting clause is derived from the Smith-Mundt and Trade Fair Acts.

Section 1. The proposed title of the legislation appears in the first section in accordance with established custom.

Section 101. The statement of purpose is included as a point of reference for describing the type of activity covered by various later sections that refer to "the purposes of this Act." The present draft is a combination of the statements of purpose introducing the Smith-Mundt and Trade Fair Acts, omitting portions relating to activities not covered by the programs authorized by this bill.

Section 102(a). The introductory limitation authorizing the various programs only for strengthening "international cooperative relations" continues a limitation found in section 201(a) of the Smith-Mundt Act, limiting the program to countries "prepared to cooperate" in exchanges.

Section 102(a)(1). Using language from the original Fulbright Act and the Smith-Mundt Act, this section authorizes continuation of the educational exchanges carried on under those acts. The past limitation applicable to Fulbright grants for foreign students coming to the United States—i.e., that they could cover only transportation expenses—has, however, been eliminated. That limitation arose out of the original intention to use for these programs only nonconvertible local currencies realized from surplus property sales abroad. Now that a large part of those currencies, to the extent that they still remain unexpended, are actually convertible, and in many countries the original supply of currencies developed by surplus property sales is exhausted, the reasons for the limitation have disappeared. Under section 102(a)(1) any funds available for the purposes of the act—i.e., local currency, regular appropriations, loan repayments, and private contributions—may be used for the named purposes. Another change is the omission of the words, "in schools and institutions of higher learning," since many students and teachers will be doing their studies and research in institutions that are not technically within that description.

It is, therefore, the purpose of the section to authorize all the various forms of educational exchanges that contribute to the aims of such programs. They range from the simplest sending of individual students to other countries for regular schooling on to broad programs such as the "adoption" by an educational institution in one country of a similar institution in another country to help it through regular exchanges of teachers, advisers, and students.

The amounts to be granted for subsistence, transportation, tuition, or other expenses of individuals who travel or visit outside the countries of their normal residence in furtherance of the educational and cultural exchange program are not specified in the legislation. It is recognized that a certain amount of flexibility is needed in the determination of such allowances, so that the needs of particular situations can be taken into account. Such needs apparently are not being met under existing conditions.

Section 102(a)(2)(i). This section contains the language of section 201 of the Smith-Mundt Act authorizing continuation of the "leaders" programs being carried out under that act. The various other authorizations and limitations found in the remainder of section 201 of that act are proposed to be dealt with as follows:

1. Orientation courses are authorized in section 104(e)(2) for all persons involved in exchanges which further the purposes of the act, merely as a necessary incidental expense.

2. The desirability of reciprocity is expressed in section 103(a).

3. The visa status of persons coming to the United States under the programs is to be covered by new language in the Immigration and Nationality Act, amended (by sec. 109) to include the provisions of section 201(b) of Public Law 402. The additional special provisions calling for the expulsion of students and others in these programs are not included. For the more serious offenses, the existing immigration laws are clearly adequate. The special provision calling for expulsion in case of "activities of a political nature detrimental to the interests of the United States" is subject to interpretation, and seems to have on occasion been interpreted as restricting public expression of political views by visiting scholars. This is so much in contradiction to the aims of the program that it seems better to omit the provision and rely on the general requirement of the immigration laws that nonimmigrant visitors be deported if they advocate communism or dictatorship for the United States, or if they advocate, write, or teach the overthrow of the Government by force and violence (e.g., sec. 241 of the Immigration and Nationality Act).

Sections 102(a)(2) (ii), (iii), and (iv). These three paragraphs preserve the language of the International Cultural Exchange and Trade Fair Participation Act of 1956. Paragraph (v) authorizes the use of funds under this act to support the bringing of performers and exhibits to the United States, where the cost is beyond the means of the other government but the value to international understanding is high.

Section 102(b)(1). This authorizes the acquisition and distribution, in furtherance of the educational and cultural exchanges, of books of various types, and laboratory and technical equipment for study and research. Translating is also authorized. Only the authorization of "handicrafts" is new. Similar authorizations are found in various of the acts that are to be supplanted or will expire, especially the Finnish Act (Public Law 265, 81st Cong., Aug. 24, 1949), and in Public Law 480.

Section 102(b)(2). This section is the same as the basic authorizing language of chapter VII (secs. 701–705) of the Mutual Security Act of 1960 (Public Law 86–472), called the Center for Cultural and Technical Interchange Between East and West Act of 1960. The remainder of the authorizations in that chapter, mostly administrative details, are adequately covered in other sections of this bill. This section (102(b)(2)), of course, is intended to authorize the establishment and operation of additional centers similar to the one in Hawaii, such as is contemplated under chapter VIII (secs. 801–802) of the Mutual Security Act of 1960 for Puerto Rico.

Section 102(b)(3). This is taken almost verbatim from section 203 of the Smith-Mundt Act and section 104(o) of Public Law 480, and is intended to continue the authorization of help to schools, colleges, universities, and other educational institutions established abroad by U.S. citizens and foundations. The words "libraries and community centers," found in the Smith-Mundt Act, are omitted here because they relate to information functions of the USIA.

Section 102(b)(4). Similar programs of aid to American studies are found in section 104(p) of Public Law 480 and elsewhere.

Section 102(b)(5). This section authorizes such activities as those covered by section 104(k) of Public Law 480 in connection with scientific research and other cultural and educational programs, all of which will be coordinated through the administration of this act.

Section 102(b)(6). In recognition of the importance of training in our schools and colleges in the languages and culture of other peoples, this section provides for assistance to teachers in those fields. It will enable them to visit the areas whose languages they will be teaching, which is so essential for the attainment of the level of skill required for effective presentation of the subject.

Section 103. This section authorizes the agreements with other nations and with international organizations that may be needed in connection with the programs authorized by the act. Subsection (a) specifies the aim of reciprocity in the form of funds to be made available by other countries, when they are in a financial position to do so, to cover the expenditures for which their currencies may be used (such as international transportation and expenses) within their borders. Thus, in certain cases, the United States would meet the cost of teachers and students coming to institutions here, while the other countries would pay the expenses of Americans going there, and each country might meet the transportation expenses of its own citizens. Such an arrangement would enable each country to spend its funds chiefly in its own territory, and to pay its money to its own educational institutions.

Section 103(b) authorizes the agreement to provide for binational foundations and commissions such as those created for the Fulbright program. Presumably there would be joint responsibility for the expenses incurred by such institutions.

Section 104(a). This is a standard authorization to the President to delegate (see, e.g., sec. 521 of the Mutual Security Act of 1954, as amended). It may be technically unnecessary, as demonstrated by the delegations made in Executive Order 10716 concerning the administration of the Trade Fair Act (Public Law 860), which has no specific authorization of a delegation of the powers therein given to the President. Including a specific power to delegate to a new agency or an established department, however, emphasizes the understanding that either method is acceptable. The section also provides that the person to whom the authority is delegated will plan and coordinate all programs which further the purposes of the act.

Section 104 (b) and (c). The authorization to compensate the administrator of the program, if he is not the head of a regular department or already subject to Senate confirmation, at the rate of $22,500 per annum emphasizes the importance of the program. Similarly, the specific authority to pay a number of other officers in the program at supergrade rates raises the standing of the program and also assures a higher caliber staff. Similar authority is found in section 527(b) of the Mutual Security Act of 1954, as amended.

Section 104(d). These personnel provisions, for work on the program outside the United States for the U.S. Government or for a binational foundation, would be inapplicable, except with respect to the binational foundations or commissions, if the program were administered by the Department of State. They are copied from section 527(c) of the Mutual Security Act of 1954, as amended.

Section 104(e)(1). Much of this section is not new. The authorization to pay for tuition and transportation is found in the Fulbright Act (Public Law 584), in the Finnish Exchange Act of 1949 (Public Law 265), and in the Smith-Mundt Act (Public Law 402). The "incidental expenses" authorized mean dormitory fees and similar costs of the programs, and would, together with other parts of this section, include funds needed to enable the participants to realize a successful experience, including proper housing and admission to programs which are an integral part of our culture. The authority to pay for health and accident insurance premiums has also been included in other acts (see, e.g., sec. 537(b) of the Mutual Security Act of 1954, as amended), and is clearly important because of the problem of grantees' paying for medical care and hospitalization while away from home. The authority to pay for the travel of dependents is included as a recognition that many grantees cannot leave their families behind and, even more important, that the presence of families in the countries where study is carried on frequently contributes more to the purposes of the program than the principal grantee. The authority to pay, out of funds available for this act, the costs of transporting the remains of deceased grantees is similar to the provisions of section 3(e) of Public Law 885, 84th Congress, giving certain basic authorizations to the Department of State.

Section 104(e)(2). The authorization to pay the expenses of orientation courses and language training for anyone in an educational or cultural exchange activity is very important to the success of the program. Precedent is found in section 201(a) of the Smith-Mundt Act (Public Law 402). The reference to "continue" services is to allow "followup" activities to preserve the value of the exchange.

Section 104(f). All employees would be investigated for security anyway, without a special provision, but this section will make it clear that the investigation for people working under this act will be the standard one for Government employees and not the special investigation required by section 1001 (and indirectly by sec. 1009) of the Smith-Mundt Act (Public Law 402). The same change has recently been enacted for ICA employees (see sec. 401(h) of the Mutual Security Act of 1960 (Public Law 86–472)), substituting standard procedures for the special investigation required by the old section 531 of the Mutual Security Act of 1954.

Section 105. Generally, the authorization of appropriations of funds from the Treasury and of the use of local currencies, loan repayments, contributed funds, etc.

Section 105(a). The general authorization of appropriations is for any part of the program. This means that funds can be appropriated even for those activities heretofore limited to the use of local currencies. This is in recognition of (*a*) the exhaustion of many such currencies and (*b*) the convertibility of many such currencies, making them of equal value with dollars. The authorization of contracts in advance of appropriations is useful where long-term contracts must be made with universities or other institutions well before actual expenditures will be completed. A precedent is found in section 515 of the Mutual Security Act of 1954, as amended.

Section 105(b). This section authorizes "no-year" appropriations for long-term programs where obligations may not be completed during one fiscal year. Sometimes an obligation technically made during the year (e.g., a commitment to send a particular individual on a trip) becomes inoperative because that person cannot go and a substitute is not found until the next fiscal year. The program should not suffer in such a case, and this authorization can become essential to avoid embarrassment. There are examples of authorizations for appropriations for comparable programs to remain available "until expended" in section 5 of the Trade Fair Act (Public Law 860), and in the appropriations for the "Special Foreign Currency Program" of the International Educational Exchange activities in the Department of State Appropriation Act for 1961 (Public Law 86–678). Subdivision (2) facilitates acquisition of foreign currencies for the program, which, of course, may be necessary for contributions to foundations and for grants and other expenses outside the country. For example, sufficient funds could be given in a lump sum to a binational foundation to cover operations for 5 years. The phrase "from any source" is intended to make it clear that the currencies for such purposes may be purchased on the market, from special funds or from the U.S. Treasury.

Section 105(c) is intended to allow funds appropriated to other U.S. Government agencies for related activities to be made available for administration under this act. For example, some Defense Department research funds might be more usefully administered in conjunction with programs under this act. Such funds could, under this section, be allocated for administration by the administrator of this program.

Section 105(d). This section authorizes the use of dollars and local currencies coming to the United States from other countries in payment for surplus sales, repayment of loans, and so forth. The authorization is within limits to be fixed by Congress, presumably in appropriation acts, but not necessarily on an annual basis. It includes authority to hold such funds and currencies and to convert, invest, and use them in various ways notwithstanding the restrictions of other laws respecting the way U.S.-owned foreign currencies are to be handled. This latter authorization would be needed in cases where currency is acquired in substantial quantities but will be used only over a long period of years.

Paragraphs (i), (ii), (iii), and (iv) of section 105(d) describe the sources from which foreign currencies are likely to be derived. All the established sources are intended to be covered: (i) surplus and lend-lease sales and settlements; (ii) sales of surplus agricultural commodities (Public Law 480); (iii) repayments of credits or loans generally; and (iv) portions of ERP counterpart deposits allocated to U.S. needs. Under paragraph (iii) it is made clear that debt repayments by Finland will be used exclusively for programs related to Finland.

Section 105(e). This encourages and authorizes the use of private and foreign governmental contributions for projects in furtherance of the purposes of the act. The private funds portion is similar to the provisions of section 4 of the Trade Fair Act (Public Law 860), and there is a comparable provision in section 901 of the Smith-Mundt Act (Public Law 402).

Section 106 (a), (b), and (c). These sections continue the Board of Foreign Scholarships created in the Fulbright Act (Public Law 584), the Advisory Commission on Educational Exchange created in the Smith-Mundt Act, and the Advisory Committee on the Arts created in the Trade Fair Act (Public Law 860). A few significant changes are proposed: (1) that the membership be increased on both the Board and the Commission in order to facilitate the creation of subcommittees and the convening of a quorum; (2) that the disqualification of Federal and State employees on the Commission be eliminated, chiefly to permit the appointment of officers and faculty of State universities (the requirement of Senate confirmation gives Congress the necessary check on appointments anyway); (3) that the Advisory Committee be appointed by the President instead of the Secretary of State; and (4) that the requirement of no more than five members from any political party be eliminated because inappropriate for a Commission whose members are generally remote from political activities.

Section 106(d). This section authorizes the President to appoint other committees, either intragovernmental or outside the Government, similar to the Advisory Committee on the Arts.

Section 106 (e) and (f). These are administrative provisions for the Board, Commission, and committees. The only significant change from former legislation is the authorization to pay compensation to the members at the usual per diem rates for distinguished consultants.

Section 107. This requires the Board, the Commission, and the Advisory Committee on the Arts to submit annual reports to Congress, and also to make reports to the public from time to time to assure a full understanding of the purposes of the exchange programs and how they are being operated.

Section 108. Administrative provisions:

Section 108(a) authorizes the disregard of such laws and regulations respecting Government contracting as the President shall specify, a power found in section 533 of the Mutual Security Act, section 8 of the Trade Fair Act, and elsewhere.

Section 108(b). Reports to Congress, as in related acts, are to be required annually.

Section 108(c). Payment of expenses of exhibits, etc. This section is identical with section 7 of the Trade Fair Act (Public Law 860), and deals with a similar subject.

Section 108(d). Some of the educational and cultural exchange activities heretofore under Public Law 402 have been administered under certain of the administrative provisions of title VIII of that act. This permits continuance of that authorization.

Section 109. This section places in the Immigration and Nationality Act certain provisions that have proved important in furtherance of educational exchanges. Subsection (a) authorizes the granting of nonimmigrant status under paragraph F of section 101(a)(15) to the accompanying alien spouse and minor children of aliens coming here as students. This means that the wives and children of students, for example, can be given student visas instead of having to take tourists' visas. This would enable them, for example, to work for pay to help support the family, a matter of importance, since stipends are generally small and the wives can frequently give language and other lessons to Americans, or work on other jobs.

Subsection (b) transfers to the Immigration Act the authorization to issue exchange visitor visas which has heretofore been found in section 201(a) of the Smith-Mundt Act, and provides a special category (iv) for medical doctors and nurses so that they may enter the United States either as exchange visitors, and thus become subject to the 2-year residence abroad requirements of (d) below, or enter under (iv) and not be subject to such requirements. Under paragraph H of section 101(a)(15), exchange visitors will be grouped with distinguished visitors and others coming temporarily to do particular work, and with industrial trainees. The spouses and minor children, if aliens, are to be authorized to receive the same kind of visa.

Subsection (c) is intended to permit people in a student status and scholars in exchange visitor status, and their spouses, to accept employment in order to support themselves and their families without having to obtain special permission or violating the terms of their visas. This has proved to be of great importance in many cases. Also, it would enable educational and other institutions to take advantage of language and other special skills of visitors from abroad.

Subsection (d). This transfers to the Immigration and Nationality Act the requirement that, except in exceptional circumstances "in the public interest," any person who has come to the United States as an "exchange visitor" must return abroad for at least 2 years before he can obtain permanent residence in the United States. A professor, for example, who is brought to an American university which is considering an offer of a permanent post to him, would have to wait 2 years before he could accept such an offer unless a waiver of the 2-year period is found by the Attorney General, on the recommendation of the Secretary of State and another interested agency, such as the Department of Health, Education, and Welfare, to be "in the public interest." This requirement was originally added to section 201 of the Smith-Mundt Act by the act of June 4, 1956 (Public Law 555, 70 Stat. 241). The purpose of the section, of course, was to make certain that the visitors who have had the assistance of the exchange program will go back home and communicate to their compatriots something of what they had learned about the United States. In administration it has been applied to all "exchange visitors," meaning those who have "exchange visitors" visas, even if they have received no financial help from U.S. Government funds. It is not entirely clear whether Congress intended such a broad application of the requirement. It also applies, of course, to holders of exchange-visitor visas in the categories of students, teachers, and research scholars from abroad who have married Americans. Especially in the case of American men married to alien women who have come here with exchange visitor visas, the requirement of 2 years abroad has frequently seemed burdensome.

Section 110. This section proposes amendments to the Internal Revenue Code of 1954 to relieve foreign students, teachers, and scholars of two burdensome tax requirements which reduce the value of their stipends (that are technically defined as "income") while they are in this country. One is the present flat 30-percent tax rate on amounts received by nonresident aliens who are not engaged in business (including employment) in the United States and who are from countries not having double taxation treaties with the United States. The proposed amendment would merely give them the same tax status as nonresident aliens engaged in business in the United States. The other requirement is the 3-percent tax withheld for social security purposes from which those covered by the amendment could not expect to benefit.

Subsection (a). Under section 871(a) of the Internal Revenue Code of 1954 a nonresident alien individual not engaged in trade or business within the United States is, in general, subject to a tax of 30 percent of all amounts received from sources within the United States. Section 871(b) provides a special rule for taxing a nonresident alien individual not engaged in trade or business within the United States who receives more than $15,400 from sources within the United States. Section 871(c) provides, in effect, that a nonresident alien individual who is engaged in trade or business within the United States shall be subject to the regular income tax imposed on individuals. Sections 872, 873, and 874 provide that the gross income of a nonresident alien individual subject to the individual income tax includes only income from sources within the United States, and set forth special rules with respect to the deductions, personal exemptions, and credits which are allowable in computing the taxable income of a nonresident alien individual. For purposes of these provisions, an individual who performs personal services within the United States is, with minor exceptions, considered as engaged in trade or business within the United States.

Subsection (a) amends section 871 and provides that a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (H)(v) of section 101(a)(15) of the Immigration and Nationality Act, who is not otherwise engaged in trade or business within the United States, and whose income from sources within the United States consists primarily of scholarships or fellowship grants not excluded from gross income under section 117, allowances for living and travel expenses, or other allowances or payments received in connection with his activities as a nonimmigrant under either of such subparagraphs, will be treated, for Federal income tax purposes, as a nonresident alien individual engaged in trade or business within the United States. Such an individual would, therefore, be subject to tax on his taxable income at the graduated rates provided in section 1 of the Internal Revenue Code of 1954. In most cases this tax will be substantially less than the tax under section 871(a) of 30 percent of the amounts received from sources within the United States.

Subsection (b). Section 3121(b) of the Internal Revenue Code of 1954 defines the term "employment" for purposes of the Federal Insurance Contributions Act (commonly referred to as the social security tax), and specifies numerous types of service which are not considered employment for purposes of such tax. Paragraph (1) of subsection (b) amends this provision so as to exclude from the definition of employment, for purposes of such tax, service performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (H)(v) of section 101(a)(15) of the Immigration and Nationality Act. Paragraph (2) of subsection (b) makes a corresponding amendment to section 210(a) of the Social Security Act.

Subsection (c). Subsection (c) provides the effective dates for the amendments made by the preceding subsections. The amendments (subsection (a)) relating to the income tax liability of nonresident alien individuals who are temporarily present in the United States as nonimmigrants under subparagraph (F) or (H)(v) of section 101(a)(15) of the Immigration and Nationality Act shall apply only with respect to taxable years beginning after December 31, 1960. The amendments (subsec. (b)) exempting service of such nonresident alien individuals from the social security tax shall apply with respect to service performed after the date of the enactment of the bill.

Section 111. This section repeals the statutes that are replaced by provisions of the present proposed legislation. The Indian counterpart of the Finnish Act is not mentioned because the original funds are understood to be just about exhausted, so that the specific program will simply expire. The same activities, of course, can be carried out in India under the general authorizations of the proposed act.

The "saving provisions" of subsection (b) are similar in purpose to section 543 of the Mutual Security Act of 1954. Subsection (c) is to clarify the result of transferring certain powers from repealed acts to this act.

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