

# **Comparison of Proposed Palestinian Sanctions Legislation**

## **Prepared by Americans for Peace Now**

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**In the wake of the victory of Hamas – a terrorist organization – in the January 2006 Palestinian elections, new Palestinian sanctions legislation has been introduced, in various forms, in both the House and Senate.**

**Americans for Peace Now (APN) believes that so long as Hamas is in power and has not adopted the reforms demanded by the Quarter (i.e., renouncing terror, recognizing Israel, and recommitting to previous agreements), it is appropriate for the U.S. to deny the PA direct assistance and to take other constructive steps to isolate and pressure Hamas.**

**A comparison of the various texts that have been introduced underscores the very different options that Congress has before it, and the very different goals, strategies, and priorities these approaches reflect.**

**Bills included in this review:**

**HR 4681: “The Palestinian Anti-Terrorism Act of 2006”  
Introduced 2/1/06 by Reps. Ros-Lehtinen (R-FL) and Lantos (D-CA)**

**S. 2370: “The Palestinian Anti-Terrorism Act of 2006”  
Introduced 3/6/06 by Sens. McConnell (R-KY) and Biden (D-DE)**

**HR 4668: “The Limitation on Assistance to the Palestinian Authority Act of 2006”  
Introduced 1/31/06 by Reps. Fossella (R-NY) and Berkeley (D-NV)**

**S. 2237: “The Palestinian Compliance Act of 2006”  
Introduced 2/1/06 by Sens. Santorum (R-PA) and Nelson (D-FL)**

**HR xxxx: “The FY06 Supplemental Appropriations Bill”  
Amendment offered in committee by Rep. Jim Kolbe (R-AZ), Chairman of the Appropriations Committee Foreign Operations Subcommittee, and adopted by voice vote on March 8<sup>th</sup>**

provision	HR 4681	S. 2370	HR 4668	S. 2237	FY06 Supplemental	Comments
<b>Findings</b>	None.	None.	Includes findings focused on Hamas and terrorism.	Includes extensive findings related to Hamas and its history of terrorist activities and rejection of Israel.	None.	If a “findings” section is included, it should focus on Hamas, as both HR 4668 and S. 2237 do.
<b>Declaration of Policy</b>	<p>States that it shall be U.S. policy to “ promote the emergence of a democratic Palestinian governing authority” (NOT a Palestinian state) that meets a list of requirements and demands related to fighting terror, ending incitement, respecting human rights, holding free and fair elections, ensuring financial transparency, and recognizing Israel.</p> <p>Fails to include any mention of a political horizon for the Palestinians, omitting mention of U.S. support for peace efforts, the Road Map, or the even the eventual establishment of a Palestinian state.</p>	<p>States that it shall be U.S. policy to support “a peaceful, two-state solution to end the conflict between Israel and the Palestinians” in accordance with the Road Map; to oppose organizations that use violence to oppose such a solution; to promote rule of law, democracy, etc.; and to urge the international community to deny support for Hamas if it does not reform.</p> <p>Accurately expresses US policy vis à vis the solution to the Israeli-Palestinian conflict, offering a clear political horizon, while also underscoring the issues that are ostensibly the subject of the bill – Hamas and terror.</p>	<p>States that U.S. policy shall be to “promote the emergence of a democratic Palestinian government” that denounces and combats terrorism; is actively working to disarm and dismantle terrorist agencies, networks, and facilities and eliminate incitement; respects the boundaries and sovereignty of its neighbors; recognizes the existence of Israel and its right to secure borders; and acknowledges, respects, and upholds the human rights of all people.</p>	<p>Includes no statement of policy.</p>		<p>If a “statement of policy” is included, it should:</p> <p>(1) accurately reflect the focus and priorities of this legislation; and</p> <p>(2) provide not only conditions but also a political horizon for the Palestinians, by accurately reflecting U.S. policy regarding a solution to the Israeli-Palestinian conflict.</p> <p>S. 2370 meets these requirements. HR 4681 and HR 4668 fail to do so.</p>
<b>Certification Requirements (related to Hamas and fighting terror)</b>	<p>Requires the President to certify that:</p> <ul style="list-style-type: none"> <li>- no part of the PA is controlled by a terrorist organization AND that not a single member of a terrorist organization is employed anywhere in the PA.</li> <li>- the PA has recognized Israel’s “right to exist as a Jewish state” and recommitted to all previous agreements, including the Road Map.</li> </ul>	<p>Requires the President to certify that:</p> <ul style="list-style-type: none"> <li>- no part of the PA is controlled by Hamas</li> <li>- the PA has recognized “Israel's right to exist as a Jewish state” and has committed itself to all previous agreements, including the Road Map.</li> </ul>	<p>Requires the President to certify that:</p> <ul style="list-style-type: none"> <li>- the PA is not controlled by a foreign terrorist organization;</li> <li>- the PA has recognized “the right of Israel to exist,”</li> <li>- disarms all militias;</li> <li>- renounces violence and acts of terrorism against Israel;</li> <li>- is participating in peace negotiations;</li> <li>- removes people with ties to terrorist organizations from its security services.</li> </ul>	<p>Requires the President to certify that the PA has:</p> <ul style="list-style-type: none"> <li>- denounced terrorism and expressed a commitment to combating terrorism;</li> <li>- committed to disarming terrorists, dismantling terrorist infrastructure, and eliminating incitement</li> <li>- pledged to uphold the human rights, civil liberties, and religious liberties of the Palestinian people;</li> <li>- recognized Israel's right to exist and taken appropriate steps to amend the Hamas charter;</li> <li>- renounced the use of violence</li> <li>- “committed to prosecuting those individuals, entities, and organizations that have committed acts of terrorism.”</li> </ul>	<p>Requires the Secretary of State to certify that the PA has “demonstrated its commitment to the principles of nonviolence, the recognition of Israel, and the acceptance of previous agreements, including the Roadmap.”</p>	<p>Serious benchmarks should focus on real priorities – ending terror and setting achievable standards and conditions in terms of:</p> <ul style="list-style-type: none"> <li>- the character and composition of the PA;</li> <li>- Hamas internal reform and actions to fight terror.</li> </ul> <p>Only the FY06 Supplemental meets all of these requirements. S. 2237 comes close, except for the demand related to changing the Hamas charter (something that is desirable but not necessarily should be a precondition if all other conditions are met) and with respect to the requirement that after reforming, Hamas prosecute its own members and leadership.</p>

provision	HR 4681	S. 2370	HR 4668	S. 2237	FY06 Supplemental	Comments
<b>Certification requirements (unrelated to Hamas and the election results)</b>	Requires “demonstrable progress toward” - purging security services of people with ties to terror; - dismantling terrorist infrastructure, collecting weapons, preempting and thwarting attacks, - cooperating with Israeli security services; - halting all incitement, including in textbooks and media; - ensuring democracy, the rule of law, and an independent judiciary - adopting “other reforms such as ensuring transparent and accountable governance”; and - ensuring financial transparency and accountability.	Requires “demonstrable progress toward” - purging security services of people with ties to terror; - dismantling terrorist infrastructure, collecting weapons, preempting and thwarting attacks, - cooperating with Israeli security services; - halting all incitement, including in textbooks and media; - ensuring democracy, the rule of law, and an independent judiciary - adopting “other reforms such as ensuring transparent and accountable governance”; and - ensuring financial transparency and accountability.	None	None	None	HR 4681 and S. 2370 include (virtually identical) benchmarks that are unrelated to the recent victory of Hamas in the elections.  Important as these reforms may be, neither the U.S. nor Israel has ever considered them a prerequisite for engaging with the PA. Moreover, the PA – under any leadership – will likely be unable to meet these requirements outside the context of progress towards a peace agreement.  All of these benchmarks should be removed or turned into a Sense of Congress.
<b>Sunset Clause</b>	None	None	None	None	None	All the bills omit a key element of any effective sanctions legislation: a sunset clause.  A sunset clause linked to the next Palestinian elections and the formation of the next government would provide a clear political horizon of Palestinians who are not affiliated with Hamas or any foreign terrorist organization, and would permit the U.S. to meet positive new developments on the Palestinian front with an effective and constructive policy response.
<b>Definitions specific to this bill</b>	Explicitly defines the PA as including the Palestinian Legislative Council (PLC).	Explicitly defines the PA as including the Palestinian Legislative Council.	Defines the PA as including “any agency or instrumentality of the Palestinian Authority”	None	None	By defining the PA as including the PLC, HR 4681 and S. 2370 extend sanctions to not only Hamas members but, perversely, to all elected members of the PLC, including those who oppose violence, recognize Israel, and support a two-state solution.

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<b>Ban on direct assistance to the Palestinian Authority</b>	<p>If the certification is not in effect, there may be no direct assistance to the Palestinian Authority.</p> <p>No waiver is provided for this section.</p>	<p>If the certification is not in effect, there may be no direct assistance to the Palestinian Authority, except to the office of the President, and then only under certain conditions, including the President determining that such aid is in the national security interests of the U.S.</p> <p>No general waiver is provided for this section.</p>	<p>No direct aid to the PA if certification is not made.</p> <p>No waiver is provided for this section.</p>	<p>No direct aid to the PA if certification is not made.</p> <p>No waiver is provided for this section.</p>	<p>No direct aid unless certification is made, in addition to national security waiver.</p> <p>(applies to funds provided in the FY06 Foreign Operations Appropriations bill, and previous Foreign Operations legislation)</p> <p>No general waiver is provided for this section.</p>	<p>All of these bills sacrifice national security by unnecessarily tying the President's hands in the conduct of foreign policy. The U.S. should be able to maintain a tough line against terrorists without compromising our own national security.</p> <p>Any ban on aid should include a real national security waiver – i.e., one stating that “the President may waive the specified sanction if he determines that it is vital to the national security interests of the U.S.,” subject to no other conditions or limitations.</p>
<b>Limitation on Aid to the West Bank and Gaza</b>	<p>If the certification is not in effect, the bill bars aid for the West Bank and Gaza except in excepted categories:</p> <ul style="list-style-type: none"> <li>- assistance to meet basic human health needs (food, water, medicine, sanitation services, or other assistance).</li> <li>- other assistance, but only if it is in the national security interests of the U.S. and subject to consultation with Congress and a 45 day pre-notification period.</li> </ul> <p>Any aid provided is subject to extensive notification, oversight, vetting, and audit requirements</p> <p>No general waiver is provided for this section.</p>	<p>If the certification is not in effect, the bill bars aid for the West Bank and Gaza except for:</p> <ul style="list-style-type: none"> <li>- assistance to meet basic human needs (food, water, medicine, sanitation, or other assistance).</li> <li>- assistance to promote democracy, human rights, freedom of the press, non-violence, reconciliation, and peaceful co-existence.</li> <li>- other assistance, but only if it is in the national security interests of the U.S. and subject to consultation with Congress and a 45 day pre-notification period.</li> </ul> <p>Any aid provided is subject to extensive notification, oversight, vetting, and audit requirements</p> <p>No general waiver is provided for this section.</p>	None	None	<p>No funds may be expended for the West Bank and Gaza until the Secretary of State reviews the current assistance program, consults with Congress, and submits a revised plan for such assistance. This plan shall include specific steps to ensure that U.S. funds do not go to or through any individual or entity that supports, engages in, or has engaged in terror.</p> <p>(applies to funds provided in the FY06 Foreign Operations Appropriations bill, and previous Foreign Operations legislation)</p>	<p>HR 4668 and S. 2237 exclude this section altogether – a reasonable approach given that existing law bars any aid from going to terrorists.</p> <p>House appropriators took a constructive approach in the FY06 Supplemental, placing no sweeping conditions on aid, but rather demanding a comprehensive program review and extensive consultation with Congress.</p> <p>HR 4681 and S 2370 take the approach of barring all aid, then stipulating exceptions. S. 2370 includes much broader exceptions, including assistance for “basic human needs” (compared with HR 4681, “basic human health needs”) and assistance for democracy programs. Neither bill provides a general waiver to permit the President to act quickly under emergency circumstances or in the case of a change in the political situation.</p>

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<b>UN Reform</b>	<p>Would require a review by the Secretary of State of specified UN entities related to the Palestinians, followed by a report to Congress recommending their elimination. The bill would require mandatory withholding of a portion of U.S. contributions to the UN until the recommended reforms are undertaken. If the certification is not in effect, it would also require mandatory withholding of a portion of U.S. contributions to the UN equal to the proportional amount of the UN budget providing aid to the PA.</p> <p>No waiver is provided for any of this section.</p>	None	None	None	None	<p>Only HR 4681 includes this language, which is entirely unrelated to Hamas or the elections.</p> <p>Including this provision risks undermining the message to Hamas and the Palestinian people about violence and terror, leaving the impression that the real goal is to punish all Palestinians in every possible forum. It also risks undermining the UN's leverage in the West Bank and Gaza at a time when efforts of UN agencies, particularly in the humanitarian arena, are going to be more important than ever.</p>
<b>Terrorist Sanctuary</b>	<p>Sense of Congress that unless the certification is in place, territory controlled by the PA should be considered a terrorist sanctuary.</p>	<p>Sense of Congress that unless the certification is in place, territory controlled by the PA should be considered a terrorist sanctuary.</p>	None	None	None	<p>This is a non-binding Sense of Congress. If the language were viewed as binding by the Administration it would require, among other things, an export license for any U.S. goods exported to the West Bank and Gaza except for medicine, medical supplies, and certain food exports.</p>
<b>Visas for Palestinian Officials</b>	<p>If the certification is not in effect, officials of the PA <i>shall</i> be barred from getting visas (would apply to all members of the PLC, based on definition, above).</p> <p>The bill permits the President to waive this ban on a case-by-case basis, based on national security interests.</p>	<p>If the certification is not in effect, officials of the PA <i>should</i> be barred from getting visas.</p> <p>The provision would make the ban discretionary rather than mandatory (using "should," rather than "shall,") so a waiver is not necessary.</p> <p>The provision explicitly exempts the PA President and his representatives from the ban, so long as they are not affiliated with a foreign terrorist organization.</p>	None	None	None	<p>Members of Hamas and other foreign terrorist organizations are already barred by U. S. law from obtaining visas. This provision thus only impacts Palestinians who are NOT affiliated with foreign terrorist organizations.</p> <p>S. 2370 improves on HR 4681 by making the ban on visas discretionary, rather than mandatory. However, the other bills get it right by leaving out this extraneous provision, which punishes the wrong people.</p>

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<b>Palestinian UN Representatives</b>	<p>If the certification is not in effect, PA and PLO representatives at the UN <i>shall</i> be required to stay within a 25 mile radius of UN headquarters.</p> <p>No waiver is provided.</p>	<p>If the certification is not in effect, PA and PLO representatives at the UN <i>should</i> be required to stay within a 25 mile radius of UN headquarters.</p> <p>The provision would make the ban discretionary rather than mandatory (using “should,” rather than “shall,”) so a waiver is not necessary.</p> <p>The provision explicitly exempts the PA President and his representatives from the ban, so long as they are not affiliated with a foreign terrorist organization.</p>	None	None	None	<p>Under the terms of agreements signed with Israel, the PA does not maintain international diplomatic relations. The PA thus is not represented at the UN – only the PLO is. This provision would only impact the PLO, which is not a foreign terrorist organization, recognizes Israel, and of which Hamas is not a member.</p> <p>S. 2370 improves on HR 4681 by making the travel restriction discretionary, rather than mandatory. However, the other bills get it right by leaving out this extraneous provision, which punishes the wrong people.</p>
<b>Palestinian Representation in the U.S.</b>	<p>If the certification is not in effect, neither the PA nor the PLO may maintain or finance any representative presence in the U.S.</p> <p>No waiver is provided.</p>	<p>If the certification is not in effect, the PA may not maintain or finance any representative presence in the U.S.</p> <p>The provision includes language permitting the President to waive this ban if he determines that doing so is vital to the national security interests of the U.S.</p>	None	None	None	<p>Under the terms of agreements signed with Israel, the PA does not maintain international diplomatic relations, including with the U.S., so the PA does not maintain a representative office in the U.S. – only the PLO does.</p> <p>While it is positive that S. 2370 removed the reference to the PLO that was in HR 4681 and included a waiver, the other bills get it right by leaving out this extraneous provision, which punishes the wrong people.</p>
<b>Palestinian support from International Financial Institutions</b>	<p>If the certification is not in effect, the US <i>shall</i> use voice, vote, and influence to prohibit assistance to the Palestinian Authority from international financial institutions.</p>	<p>If the certification is not in effect, the US <i>should</i> use voice, vote, and influence to prohibit assistance to the Palestinian Authority from international financial institutions, except in the case of assistance to meet basic human needs and assistance to promote democracy, etc. (same as exceptions in West Bank/Gaza program)</p>	None	None	None	<p>S. 2370 improves on HR 4681 by making this section discretionary, rather than mandatory, and by adding the exceptions for key categories of aid.</p> <p>The other bills all leave out this section, which, if included at all, would make more sense as a Sense of Congress.</p>

provision	HR 4681	S. 2370	HR 4668	S. 2237	FY06 Supplemental	Comments
<b>“Diplomatic Contacts” with Palestinian Terrorist Organizations</b>	<p>Would bar officials of the Department of State or any other U.S. government agency from having any contacts with any members of any Palestinian terrorist organization organizations until such organization recognizes Israel’s right to exist, renounces terrorism, dismantles terrorist infrastructure, and recognizes and accepts all previous agreements.</p> <p>(Since State is already barred from such contacts, the impact would be restricted to the activities of U.S. intelligence officials.)</p> <p>No waiver is provided.</p>	<p>Would bar officials of the Department of State or any other U.S. official or employees acting under the authority or financed by the Department of State from negotiating with members of any Palestinian terrorist organizations until such organization recognizes Israel’s right to exist, renounces terrorism, dismantles terrorist infrastructure, and recognizes and accepts all previous agreements.</p> <p>An exception is provided for emergencies or humanitarian situations.</p>	None	None	None	<p>Given that U.S. officials are already barred by law from having contact with members of Foreign Terrorist Organizations, this section is entirely unnecessary (and implies, incorrectly, that U.S. officials can and are having contacts with such groups).</p> <p>S. 2370 improves on HR 4681 by making clear that the intent is to impact only official contacts, rather than to bar U.S. intelligence activities. Given existing anti-terrorism laws, it is not clear that even if the stated conditions for contacts were met the U.S. could talk to these groups, or that the humanitarian exception could actually be exercised.</p>
<b>International Efforts</b>	None	The Secretary of State shall submit to Congress an annual report on US efforts to ensure that, if the required certification is not in effect, other countries and international organizations do not provide aid to the Palestinian Authority and identifying countries and international organizations that are providing assistance to the PA, and the amount and nature of such assistance.	None	None	None	S. 2370 adds this section to address Congressional concerns about other countries and organizations granting support to a Hamas-run Palestinian Authority.