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{ REPORT
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TO PROVIDE THAT THE EXECUTIVE DIRECTOR OF THE INTER-AMERICAN DEVELOPMENT BANK OR THE ALTERNATE EXECUTIVE DIRECTOR OF THE INTER-AMERICAN DEVELOPMENT BANK MAY SERVE ON THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION

MARCH 9, 2007.—Ordered to be printed

Mr. BIDEN, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany S. 676]

The Committee on Foreign Relations, having had under consideration a bill to provide that the Executive Director of the Inter-American Development Bank or the Alternate Executive Director of the Inter-American Development Bank may serve on the Board of Directors of the Inter-American Foundation, reports favorably thereon and recommends that the bill do pass.

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I. PURPOSE

The legislation is designed to permit the President to appoint the U.S. Executive Director of the Inter-American Development Bank, or his alternate, to serve as a member of the Board of the Inter-American Foundation.

II. COMMITTEE ACTION

S. 676 was introduced by Senators Biden and Lugar on February 17, 2007. It is cosponsored by Senator Hagel. On March 6, 2007, the committee ordered the bill reported favorably by voice vote.

III. DISCUSSION

On January 9, 2007, the President nominated Hector Morales to serve as a member of the Board of Directors of the Inter-American Foundation. The nomination is pending before the Committee on Foreign Relations. Mr. Morales is currently serving as the United States Executive Director of the Inter-American Development Bank, a position to which he was appointed after receiving the advice and consent of the Senate in November 2004. The position on the Board of the Inter-American Foundation would be a part-time appointment.

By law, the Board of the Inter-American Foundation consists of nine members. Of these, three members "shall be appointed from among officers or employees of agencies of the United States concerned with inter-American affairs." (Section 401(g) of the Foreign Assistance Act of 1969; 22 U.S.C. 290f(g)). It is not clear that Mr. Morales would qualify for appointment under this statute, if confirmed by the Senate, because the U.S. Executive Director of the Inter-American Development Bank is not considered a U.S. government officer or employee. Most significantly, the salary of the Executive Director is paid by the Bank, not the United States government. In fact, the statute governing U.S. participation in the Bank prohibits salary payments from the Treasury to the Executive Director (Section 3(c) of the Inter-American Development Bank Act, 22 U.S.C. 283a(c)).

Other provisions of federal law support the conclusion that the Executive Director is not an "officer or employee of agencies of the United States." To be an "officer" or "employee" under federal personnel law (title 5 of the United States Code), one must have an appointment "in the civil service." (5 U.S.C. 2104 and 2105). The term "civil service" is separately defined as consisting of appointive positions in one of the three branches of the federal government. (5 U.S.C. 2101(1)) Quite obviously, the Inter-American Development Bank is a multilateral institution, not a branch of the federal government.

Additionally, under a law enacted in 1970, U.S. Executive Directors of international financial institutions are eligible for "all employee benefits afforded employees in the civil service of the United States." (Section 51 of Public Law 91-599; 22 U.S.C. 276c-2). It follows that if the Executive Directors *were* U.S. government employees, such a provision of law would be unnecessary.

To be sure, the Executive Director, and his alternate, receive instructions from the Secretary of the Treasury. The Inter-American Development Bank Act is filled with statutory mandates compelling the Treasury Secretary to instruct the Executive Director to take certain actions at the Bank. The Executive Director is thus acting as a U.S. representative; but doing so does not convert him to the status of a U.S. government employee.

In sum, the committee believes there is a substantial question whether the U.S. Executive Director of the Inter-American Development Bank is an “officer or employee of [an] agenc[y] of the United States” within the meaning of the Inter-American Foundation Act. Accordingly, the committee believes this legislation is necessary in order to permit the Executive Director to serve on the Board of Directors of the Inter-American Foundation. The legislation is drafted so that, in the future, the President may also appoint the Alternate Executive Director to the Board of the Foundation.

IV. COST ESTIMATE

Pursuant to Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the following cost estimate has been provided by the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 9, 2007

S. 676

A BILL TO PROVIDE THAT THE EXECUTIVE DIRECTOR OF THE INTER-AMERICAN DEVELOPMENT BANK OR THE ALTERNATIVE EXECUTIVE DIRECTOR OF THE INTER- AMERICAN DEVELOPMENT BANK MAY SERVE ON THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION

AS ORDERED REPORTED BY SENATE COMMITTEE ON FOREIGN RELATIONS ON MARCH 6, 2007

The Inter-American Foundation is a government agency with a mission to promote development, growth, friendship, and democracy in the Western Hemisphere. Its board of directors consists of nine individuals, three of whom are required to be government officials who work in agencies of the United States concerned with inter-American affairs. S. 676 would specifically allow the United States Executive Director or the Alternative Executive Director of the Inter-American Development Bank to serve on the board of directors for the Inter-American Foundation in one of the three slots reserved for government officials. (The Inter-American Development Bank is a multilateral bank that provides financing for a variety of economic, social, and institutional projects in Latin America and the Caribbean.)

CBO estimates that enacting S. 676 would have no budgetary effect. S. 676 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Sam Papenfuss. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has determined that there is no regulatory impact as a result of this legislation.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

Foreign Assistance Act of 1969

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PART IV—THE INTER-AMERICAN FOUNDATION ACT

SEC. 401. INTER-AMERICAN FOUNDATION.—(a) * * *

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(g) The management of the Foundation shall be vested in a board of directors (hereafter in this section referred to as the “Board”) composed of nine members appointed by the President, by and with the advice and consent of the Senate, one of whom he shall designate to serve as Chairman of the Board and one of whom he shall designate to serve as Vice Chairman of the Board. Six members of the Board shall be appointed from private life. [Three members of the Board shall be appointed from among officers or employees of agencies of the United States concerned with inter-American affairs.] *Three members of the Board shall be appointed from among the following: officers or employees of agencies of the United States concerned with inter-American affairs, the United States Executive Director of the Inter-American Development Bank, or the Alternate Executive Director of the Inter-American Development Bank.* Members of the Board shall be appointed for terms of six years, except that of the members first appointed two shall be appointed for terms of two years and two shall be appointed for terms of four years, as designated by the President at the time of their appointment. A member of the Board appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term; but upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified. Members of the Board shall be eligible for reappointment. All individuals appointed to the Board shall possess an understanding of and sensitivity to community level development processes. No more than 5 members of the Board may be members of any one political party.

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