

107TH CONGRESS
2^D SESSION

S. 2846

To establish a commission to evaluate investigative and surveillance technologies to meet law enforcement and national security needs in the manner that best preserves the personal dignity, liberty, and privacy of individuals within the United States.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2002

Mr. EDWARDS (for himself and Mr. SCHUMER) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To establish a commission to evaluate investigative and surveillance technologies to meet law enforcement and national security needs in the manner that best preserves the personal dignity, liberty, and privacy of individuals within the United States.

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 “Security and Liberty
5 Preservation Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) The terrorist attacks of September 11,
2 2001, and the continuing threat of further attacks,
3 are an assault on the safety and security of all
4 Americans.

5 (2) The threat of further acts of terrorism has
6 necessitated an expansion of the authority of govern-
7 ment to conduct surveillance and collect data.

8 (3) While recognizing the need for additional
9 security measures, Americans remain deeply com-
10 mitted to the individual dignity, liberty, and privacy
11 rooted in United States history and protected by the
12 Constitution of the United States.

13 (4) Different investigative technologies and
14 methods can achieve the same security goals in ways
15 that have substantially different impacts on indi-
16 vidual rights.

17 (5) The government should conduct investiga-
18 tions and surveillance in a manner that fully ad-
19 dresses law enforcement and national security needs
20 in the manner that best preserves the personal dig-
21 nity, liberty, and privacy of individuals within the
22 United States.

1 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

2 (a) ESTABLISHMENT.—There is established the Com-
3 mission on Enhancing Security and Preserving Freedom
4 (in this Act referred to as the “Commission”).

5 (b) MEMBERSHIP.—

6 (1) COMPOSITION.—The Commission shall be
7 composed of 17 members of whom—

8 (A) five shall be representatives of the
9 Federal Government, including—

10 (i) the Attorney General, or the Attor-
11 ney General’s designee;

12 (ii) the Secretary of the Treasury, or
13 the Secretary’s designee;

14 (iii) the Secretary of Commerce, or
15 the Secretary’s designee;

16 (iv) the Director of Central Intel-
17 ligence, or the Director’s designee; and

18 (v) the Director of Homeland Secu-
19 rity, or the Director’s designee;

20 (B) four shall be appointed by the Majority
21 Leader of the Senate;

22 (C) two shall be appointed by the Minority
23 Leader of the Senate;

24 (D) four shall be appointed by the Speaker
25 of the House of Representatives; and

1 (E) two shall be appointed by the Minority
2 Leader of the House of Representatives.

3 (2) LIMITATION ON DESIGNEES.—An individual
4 may not be designated for membership on the Com-
5 mission under paragraph (1)(A) unless the indi-
6 vidual holds a position in the United States Govern-
7 ment by appointment of the President, by and with
8 the advice and consent of the Senate.

9 (3) APPOINTMENTS BY CONGRESSIONAL LEAD-
10 ERSHIP.—

11 (A) REQUIREMENTS.—Of the individuals
12 appointed under subparagraphs (B) through
13 (E) of paragraph (1)—

14 (i) at least one shall be an officer or
15 employee of a State law enforcement agen-
16 cy; and

17 (ii) at least one shall be an officer or
18 employee of a local law enforcement agen-
19 cy.

20 (B) LIMITATION.—No individual may be
21 appointed under subparagraphs (B) through
22 (E) of paragraph (1) if the individual is an offi-
23 cer or employee of the Federal Government or
24 an active member of the uniformed services.

1 (C) SENSE OF CONGRESS.—It is the sense
2 of Congress that in making appointments to the
3 Commission under subparagraphs (B) through
4 (E) of paragraph (1) the Members of Congress
5 referred to in such subparagraphs should seek
6 to appoint individuals with varying viewpoints
7 on and areas of expertise in the matters to be
8 covered by the Commission, including individ-
9 uals from the technology industry, non-profit
10 entities, and academia.

11 (c) PERIOD OF APPOINTMENT; VACANCIES.—Mem-
12 bers of the Commission shall be appointed for the life of
13 the Commission. Any vacancy in the Commission shall not
14 affect its powers, but shall be filled in the same manner
15 as the original appointment.

16 (d) SECURITY CLEARANCES.—

17 (1) IN GENERAL.—Each individual appointed to
18 the Commission under subparagraphs (B) through
19 (E) of subsection (d)(1) shall possess a security
20 clearance appropriate for the work of the Commis-
21 sion under this Act.

22 (2) FAILURE TO SECURE CLEARANCE.—

23 (A) INITIAL APPOINTMENTS.—If an indi-
24 vidual initially appointed under subparagraphs
25 (B) through (E) of subsection (d)(1) without a

1 security clearance does not secure a security
2 clearance by the commencement of the work of
3 the Commission, the appointment shall be
4 deemed vacant.

5 (B) APPOINTMENTS TO VACANCIES.—If an
6 individual appointed to a vacancy in a position
7 under subparagraphs (B) through (E) of sub-
8 section (d)(1) without a security clearance does
9 not secure a security clearance within a reason-
10 able period (as determined by the Commission),
11 the appointment shall be deemed vacant.

12 (3) PROCESSING OF CLEARANCES.—The Attor-
13 ney General shall seek to ensure the timely proc-
14 essing of any applications for security clearances for
15 purposes of this subsection.

16 (e) CHAIRMAN.—The Commission shall select a
17 Chairman from among its members.

18 (f) INITIAL MEETING.—Not later than 30 days after
19 the date on which nine members of the Commission have
20 been appointed, the Commission shall hold its first meet-
21 ing.

22 (g) MEETINGS.—The Commission shall meet at the
23 call of the Chairman.

1 (h) QUORUM.—A majority of the members of the
2 Commission shall constitute a quorum, but a lesser num-
3 ber of members may hold hearings.

4 **SEC. 4. DUTIES OF COMMISSION.**

5 (a) INVESTIGATION.—The Commission shall conduct
6 a thorough investigation of the following:

7 (1) Standards for using, selecting, and oper-
8 ating investigative and surveillance technologies to
9 meet law enforcement and national security needs in
10 the manner that best preserves the personal dignity,
11 liberty, and privacy of individuals within the United
12 States.

13 (2) The advisability of establishing within the
14 Government one or more entities or procedures to
15 ensure that the Government uses investigative and
16 surveillance technologies to meet law enforcement
17 and national security needs in the manner that best
18 preserves the personal dignity, liberty, and privacy
19 of individuals within the United States.

20 (b) REPORT.—

21 (1) IN GENERAL.—Not later than 18 months
22 after the date of the initial meeting of the Commis-
23 sion, the Commission shall submit to the President
24 and Congress a report which shall contain a detailed
25 statement of the findings and conclusions of the

1 Commission, together with its recommendations for
2 such legislation and administrative actions as it con-
3 siders appropriate.

4 (2) FORM OF REPORT.—The report under para-
5 graph (1) shall be submitted in unclassified form,
6 but may include a classified annex.

7 (c) INVESTIGATIVE AND SURVEILLANCE TECH-
8 NOLOGIES DEFINED.—In this section, the term “inves-
9 tigative and surveillance technologies” means technologies
10 that may be used by the Federal Government, and by
11 State and local governments, to monitor and collect infor-
12 mation about individuals in the absence of reasonable,
13 articulable suspicion of criminal activity, including—

- 14 (1) Internet surveillance technologies;
- 15 (2) data mining technologies;
- 16 (3) surveillance camera technologies;
- 17 (4) x-ray body scan technologies;
- 18 (5) biometric technologies; and
- 19 (6) other technologies identified by the Commis-
20 sion for purposes of this Act.

21 **SEC. 5. POWERS OF COMMISSION.**

22 (a) HEARINGS.—

23 (1) IN GENERAL.—The Commission or, at its
24 direction, any subcommittee or member of the Com-

1 mission, may, for the purpose of carrying out this
2 Act—

3 (A) hold such hearings, sit and act at such
4 times and places, take such testimony, receive
5 such evidence, administer such oaths; and

6 (B) require, by subpoena or otherwise, the
7 attendance and testimony of such witnesses and
8 the production of such books, records, cor-
9 respondence, memoranda, papers, documents,
10 tapes, and materials,

11 as the Commission or such subcommittee or member
12 considers advisable.

13 (2) PUBLIC MEETINGS.—To the maximum ex-
14 tent practicable, the meetings of the Commission
15 shall be open to the public.

16 (3) CLOSED MEETINGS.—

17 (A) IN GENERAL.—Meetings of the Com-
18 mission may be closed to the public under sec-
19 tion 10(d) of the Federal Advisory Committee
20 Act (5 U.S.C. App.) or other applicable law.

21 (B) ADDITIONAL AUTHORITY.—In addition
22 to the authority under subparagraph (A), para-
23 graphs (1) and (3) of section 10(a) of the Fed-
24 eral Advisory Committee Act shall not apply to
25 any portion of a Commission meeting if the

1 President determines that such portion or por-
2 tions of that meeting is likely to disclose mat-
3 ters that could endanger national security. If
4 the President makes such determination, the re-
5 quirements relating to a determination under
6 section 10(d) of that Act shall apply.

7 (4) PUBLIC SUMMARY OF CLOSED PRO-
8 CEEDINGS.—Whenever practicable, the Commission
9 shall maintain and make available for public inspec-
10 tion an unclassified summary of any classified infor-
11 mation considered by the Commission and of any
12 classified meeting or proceeding conducted by the
13 Commission.

14 (b) ISSUANCE AND ENFORCEMENT OF SUB-
15 POENAS.—

16 (1) ISSUANCE.—Subpoenas issued under sub-
17 section (a) shall bear the signature of the Chairman
18 of the Commission and shall be served by any person
19 or class of persons designated by the Chairman for
20 that purpose.

21 (2) ENFORCEMENT.—In the case of contumacy
22 or failure to obey a subpoena issued under sub-
23 section (a), the United States district court for the
24 judicial district in which the subpoenaed person re-
25 sides, is served, or may be found may issue an order

1 requiring such person to appear at any designated
2 place to testify or to produce documentary or other
3 evidence. Any failure to obey the order of the court
4 may be punished by the court as a contempt of
5 court.

6 (c) WITNESS ALLOWANCES AND FEES.—Section
7 1821 of title 28, United States Code, shall apply to wit-
8 nesses requested or subpoenaed to appear at any hearing
9 of the Commission. The per diem and mileage allowances
10 for witnesses shall be paid from funds available to pay the
11 expenses of the Commission.

12 (d) PROCEDURES.—The Commission may adopt pro-
13 cedures for the work of the Commission under this Act.
14 Any portion of such procedures relating to the treatment
15 of confidential or classified information shall not go into
16 effect until jointly approved by the Attorney General and
17 the Director of Central Intelligence.

18 (e) INFORMATION FROM FEDERAL AGENCIES.—The
19 Commission may secure directly from any Federal depart-
20 ment or agency such information as the Commission con-
21 siders necessary to carry out this Act. Upon request of
22 the Chairman of the Commission, the head of such depart-
23 ment or agency shall furnish such information to the Com-
24 mission.

1 (f) **POSTAL SERVICES.**—The Commission may use
2 the United States mails in the same manner and under
3 the same conditions as other departments and agencies of
4 the Federal Government.

5 (g) **GIFTS.**—The Commission may accept, use, and
6 dispose of gifts or donations of services or property.

7 **SEC. 6. COMMISSION PERSONNEL MATTERS.**

8 (a) **COMPENSATION OF MEMBERS.**—Members of the
9 Commission shall serve without compensation for their
10 service as members of the Commission. All members of
11 the Commission who are officers or employees of the
12 United States shall serve without compensation in addi-
13 tion to that received for their services as officers or em-
14 ployees of the United States.

15 (b) **TRAVEL EXPENSES.**—The members of the Com-
16 mission shall be allowed travel expenses, including per
17 diem in lieu of subsistence, at rates authorized for employ-
18 ees of agencies under subchapter I of chapter 57 of title
19 5, United States Code, while away from their homes or
20 regular places of business in the performance of services
21 for the Commission.

22 (c) **STAFF.**—

23 (1) **IN GENERAL.**—The Chairman of the Com-
24 mission may, without regard to the civil service laws
25 and regulations, appoint and terminate an executive

1 director and such other additional personnel as may
2 be necessary to enable the Commission to perform
3 its duties. The employment of an executive director
4 shall be subject to confirmation by the Commission.

5 (2) COMPENSATION.—The Chairman of the
6 Commission may fix the compensation of the execu-
7 tive director and other personnel without regard to
8 chapter 51 and subchapter III of chapter 53 of title
9 5, United States Code, relating to classification of
10 positions and General Schedule pay rates, except
11 that the rate of pay for the executive director and
12 other personnel may not exceed the rate payable for
13 level V of the Executive Schedule under section 5316
14 of such title.

15 (3) SECURITY CLEARANCES.—The executive di-
16 rector and any other personnel of the Commission
17 shall possess security clearances appropriate for the
18 work of the Commission.

19 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any
20 Federal Government employee may be detailed to the
21 Commission without reimbursement, and such detail shall
22 be without interruption or loss of civil service status or
23 privilege.

24 (e) PROCUREMENT OF TEMPORARY AND INTERMIT-
25 TENT SERVICES.—The Chairman of the Commission may

1 procure temporary and intermittent services under section
2 3109(b) of title 5, United States Code, at rates for individ-
3 uals which do not exceed the daily equivalent of the annual
4 rate of basic pay prescribed for level V of the Executive
5 Schedule under section 5316 of such title.

6 **SEC. 7. TERMINATION OF COMMISSION.**

7 The Commission shall terminate 60 days after the
8 date on which the Commission submits its report under
9 section 4(b).

10 **SEC. 8. FUNDING.**

11 (a) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated for each of fiscal years
13 2003, 2004, and 2005 such sums as may be necessary
14 for the Commission to carry out this Act in such fiscal
15 year.

16 (b) TRANSFER OF FUNDS.—If no funds are appro-
17 priated to the Commission by the end of the session of
18 Congress ending in a fiscal year specified in subsection
19 (a), the Secretary of Commerce shall, from amounts ap-
20 propriated or otherwise available to the Secretary for such
21 fiscal year, transfer to the Commission an amount nec-
22 essary to permit the Commission to carry out this Act in
23 such fiscal year.

24 (c) AVAILABILITY.—Any amounts appropriated to
25 the Commission under subsection (a), or transferred to the

- 1 Commission under subsection (b), shall remain available,
- 2 without fiscal year limitation, until expended.

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