

111TH CONGRESS  
1ST SESSION

# H. R. 104

To establish a national commission on presidential war powers and civil liberties.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. CONYERS (for himself, Mr. NADLER of New York, Ms. JACKSON-LEE of Texas, Mr. COHEN, Mr. JOHNSON of Georgia, and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Select Committee on Intelligence (Permanent Select), the Judiciary, and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To establish a national commission on presidential war powers and civil liberties.

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. ESTABLISHMENT OF COMMISSION.**

4 There is established the National Commission on  
5 Presidential War Powers and Civil Liberties (hereinafter  
6 in this Act referred to as the “Commission”) to investigate  
7 the broad range of policies of the Administration of Presi-  
8 dent George W. Bush that were undertaken under claims

1 of unreviewable war powers, including detention by the  
2 United States Armed Forces and the intelligence commu-  
3 nity, the use by the United States Armed Forces or the  
4 intelligence community of enhanced interrogation tech-  
5 niques or interrogation techniques not authorized by the  
6 Uniform Code of Military Justice, “ghosting” or other  
7 policies intended to conceal the fact that an individual has  
8 been captured or detained, extraordinary rendition, do-  
9 mestic warrantless electronic surveillance, and other poli-  
10 cies that the Commission may determine to be relevant  
11 to its investigation (hereinafter in this Act referred to as  
12 “the activities”).

13 **SEC. 2. DUTIES.**

14 (a) IN GENERAL.—The Commission shall—

15 (1) investigate relevant facts, circumstances and  
16 law surrounding the activities; and

17 (2) report to the President and Congress the  
18 findings and conclusions of the Commission and any  
19 recommendations the Commission considers appro-  
20 priate.

21 (b) CONSIDERATION AND USE OF OTHER INVESTIGA-  
22 TIONS.—In carrying out its duties, the Commission shall  
23 consider and use, to the extent it deems appropriate, the  
24 investigations that have been conducted by other entities  
25 so as to avoid unnecessary duplication.

1 (c) PROTECTION OF NATIONAL SECURITY.—The  
2 Commission shall carry out its duties in a manner con-  
3 sistent with the need to protect national security.

4 **SEC. 3. COMPOSITION OF THE COMMISSION.**

5 (a) MEMBERS.—Subject to the requirements of sub-  
6 section (b), the Commission shall be composed of 9 mem-  
7 bers, of whom—

8 (1) 1 member shall be appointed by the Presi-  
9 dent of the United States;

10 (2) 2 members shall be appointed by the major-  
11 ity leader of the Senate;

12 (3) 2 members shall be appointed by the minor-  
13 ity leader of the Senate;

14 (4) 2 members shall be appointed by the major-  
15 ity leader of the House of Representatives; and

16 (5) 2 members shall be appointed by the minor-  
17 ity leader of the House of Representatives.

18 (b) QUALIFICATIONS.—

19 (1) POLITICAL PARTY AFFILIATION.—Not more  
20 than 5 members of the Commission shall be from  
21 the same political party.

22 (2) NONGOVERNMENTAL APPOINTEES.—No  
23 member of the Commission shall be an officer or em-  
24 ployee of the Federal Government or any State or  
25 local government.

1           (3) OTHER QUALIFICATIONS.—It is the sense of  
2 Congress that individuals appointed to the Commis-  
3 sion should be prominent United States citizens,  
4 with national recognition and significant depth of ex-  
5 perience in such professions as governmental service,  
6 law enforcement, the armed services, constitutional  
7 law, civil liberties, intelligence gathering, national se-  
8 curity, and foreign affairs.

9           (4) DEADLINE FOR APPOINTMENT.—All mem-  
10 bers of the Commission should be appointed within  
11 120 days after the date of enactment of this Act.

12           (5) INITIAL MEETING.—If, 60 days after the  
13 date of enactment of this Act, six or more members  
14 of the Commission have been appointed, those mem-  
15 bers who have been appointed may meet and, if nec-  
16 essary, select a temporary Chairperson and Vice  
17 Chairperson, who may begin the operations of the  
18 Commission, including the hiring of staff.

19           (6) QUORUM; VACANCIES.—After its initial  
20 meeting, the Commission shall meet upon the call of  
21 the Chairperson or a majority of its members. Five  
22 members of the Commission shall constitute a  
23 quorum. Any vacancy in the Commission shall not  
24 affect its powers, but shall be filled in the same

1 manner in which the original appointment was  
2 made.

3 (c) CHAIRPERSON; VICE CHAIRPERSON.—

4 (1) IN GENERAL.—Subject to the requirement  
5 of paragraph (2), the Chairperson shall be appointed  
6 by the President and the Vice Chairperson of the  
7 Commission shall be appointed by the Senate minor-  
8 ity leader.

9 (2) POLITICAL PARTY AFFILIATION.—The  
10 Chairperson and Vice Chairperson shall not be from  
11 the same political party.

12 **SEC. 4. POWERS OF THE COMMISSION.**

13 (a) HEARINGS AND EVIDENCE.—The Commission  
14 may, for purposes of carrying out this Act—

15 (1) hold hearings, sit and act at times and  
16 places, take testimony, receive evidence, and admin-  
17 ister oaths; and

18 (2) require, by subpoena or otherwise, the at-  
19 tendance and testimony of witnesses and the produc-  
20 tion of books, records, correspondence, memoranda,  
21 papers, and documents.

22 (b) SUBPOENAS.—

23 (1) ISSUANCE.—

24 (A) IN GENERAL.—The Commission may,  
25 by a majority vote, issue subpoenas requiring

1 the attendance and testimony of witnesses and  
2 the production of any evidence relating to any  
3 matter that the Commission is empowered to  
4 investigate under this section. The attendance  
5 of witnesses and the production of evidence may  
6 be required from any place within the United  
7 States at any designated place of hearing within  
8 the United States.

9 (B) SIGNATURE.—Subpoenas issued under  
10 this paragraph may be issued under the signa-  
11 ture of the Chair of the Commission, the chair  
12 of any subcommittee created by a majority of  
13 the Commission, or any member designated by  
14 a majority of the Commission and may be  
15 served by any person designated by such Chair,  
16 subcommittee chair, or member.

17 (2) ENFORCEMENT.—

18 (A) IN GENERAL.—If a person refuses to  
19 obey a subpoena issued under paragraph (1),  
20 the Commission may apply to a United States  
21 district court for an order requiring that person  
22 to appear before the Commission to give testi-  
23 mony, produce evidence, or both, relating to the  
24 matter under investigation. The application  
25 may be made within the judicial district where

1 the hearing is conducted or where that person  
2 is found, resides, or transacts business. Any  
3 failure to obey the order of the court may be  
4 punished by the court as civil contempt.

5 (B) JURISDICTION.—In the case of contu-  
6 macy or failure to obey a subpoena issued  
7 under paragraph (1), the United States district  
8 court for the judicial district in which the sub-  
9 poenaed person resides, is served, or may be  
10 found, or where the subpoena is returnable,  
11 may issue an order requiring such person to ap-  
12 pear at any designated place to testify or to  
13 produce documentary or other evidence. Any  
14 failure to obey the order of the court may be  
15 punished by the court as a contempt of that  
16 court.

17 (C) ADDITIONAL ENFORCEMENT.—In the  
18 case of the failure of a witness to comply with  
19 any subpoena or to testify when summoned  
20 under authority of paragraph (1), the Commis-  
21 sion, by majority vote, may certify a statement  
22 of fact attesting to such failure to the appro-  
23 priate United States attorney, who shall bring  
24 the matter before the grand jury for its action,  
25 under the same statutory authority and proce-

1           dures as if the United States attorney had re-  
2           ceived a certification under sections 102  
3           through 104 of the Revised Statutes of the  
4           United States (2 U.S.C. 192 through 194).

5           (c) CLOSED MEETINGS.—Notwithstanding any other  
6           provision of law which would require meetings of the Com-  
7           mission to be open to the public, any portion of a meeting  
8           of the Commission may be closed to the public if the Presi-  
9           dent determines that such portion is likely to disclose mat-  
10          ters that could endanger national security.

11          (d) CONTRACTING.—The Commission may, to such  
12          extent and in such amounts as are provided in appropria-  
13          tion Acts, enter into contracts to enable the Commission  
14          to discharge its duties under this Act.

15          (e) INFORMATION FROM FEDERAL AGENCIES.—The  
16          Commission may secure directly from any department,  
17          agency, or instrumentality of the United States any infor-  
18          mation related to any inquiry of the Commission con-  
19          ducted under this Act. Each such department, agency, or  
20          instrumentality shall, to the extent authorized by law, fur-  
21          nish such information directly to the Commission upon re-  
22          quest.

23          (f) ASSISTANCE FROM FEDERAL AGENCIES.—

24                  (1) GENERAL SERVICES ADMINISTRATION.—

25          The Administrator of General Services shall provide

1 to the Commission on a reimbursable basis adminis-  
2 trative support and other services for the perform-  
3 ance of the Commission's functions.

4 (2) OTHER DEPARTMENTS AND AGENCIES.—In  
5 addition to the assistance prescribed in paragraph  
6 (1), departments and agencies of the United States  
7 are authorized to provide to the Commission such  
8 services, funds, facilities, staff, and other support  
9 services as they may determine advisable and as may  
10 be authorized by law.

11 (g) POSTAL SERVICES.—The Commission may use  
12 the United States mails in the same manner and under  
13 the same conditions as departments and agencies of the  
14 United States.

15 (h) POWERS OF SUBCOMMITTEES, MEMBERS, AND  
16 AGENTS.—Any subcommittee, member, or agent of the  
17 Commission may, if authorized by the Commission, take  
18 any action which the Commission is authorized to take by  
19 this section.

20 **SEC. 5. STAFF OF THE COMMISSION.**

21 (a) DIRECTOR.—The Commission shall have a Direc-  
22 tor who shall be appointed by the Chairperson and the  
23 Vice Chairperson, acting jointly.

24 (b) STAFF.—The Chairperson, in consultation with  
25 the Vice Chairperson, may appoint additional personnel as

1 may be necessary to enable the Commission to carry out  
2 its functions.

3 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE  
4 LAWS.—The Director and staff of the Commission may  
5 be appointed without regard to the provisions of title 5,  
6 United States Code, governing appointments in the com-  
7 petitive service, and may be paid without regard to the  
8 provisions of chapter 51 and subchapter III of chapter 53  
9 of such title relating to classification and General Schedule  
10 pay rates, except that no rate of pay fixed under this sub-  
11 section may exceed the equivalent of that payable for a  
12 position at level V of the Executive Schedule under section  
13 5316 of title 5, United States Code. Any individual ap-  
14 pointed under subsection (a) or (b) shall be treated as an  
15 employee for purposes of chapters 63, 81, 83, 84, 85, 87,  
16 89, and 90 of that title.

17 (d) DETAILEES.—Any Federal Government employee  
18 may be detailed to the Commission without reimbursement  
19 from the Commission, and such detailee shall retain the  
20 rights, status, and privileges of his or her regular employ-  
21 ment without interruption.

22 (e) CONSULTANT SERVICES.—The Commission is au-  
23 thorized to procure the services of experts and consultants  
24 in accordance with section 3109 of title 5, United States  
25 Code, but at rates not to exceed the daily rate paid a per-

1 son occupying a position at level IV of the Executive  
2 Schedule under section 5315 of title 5, United States  
3 Code.

4 **SEC. 6. COMPENSATION AND TRAVEL EXPENSES.**

5 (a) COMPENSATION.—Each member of the Commis-  
6 sion may be compensated at a rate not to exceed the daily  
7 equivalent of the annual rate of basic pay in effect for  
8 a position at level IV of the Executive Schedule under sec-  
9 tion 5315 of title 5, United States Code, for each day dur-  
10 ing which that member is engaged in the actual perform-  
11 ance of the duties of the Commission.

12 (b) TRAVEL EXPENSES.—While away from their  
13 homes or regular places of business in the performance  
14 of services for the Commission, members of the Commis-  
15 sion shall be allowed travel expenses, including per diem  
16 in lieu of subsistence, in the same manner as persons em-  
17 ployed intermittently in the Government service are al-  
18 lowed expenses under section 5703(b) of title 5, United  
19 States Code.

20 **SEC. 7. SECURITY CLEARANCES FOR COMMISSION MEM-**  
21 **BERS AND STAFF.**

22 The appropriate executive departments and agencies  
23 shall cooperate with the Commission in expeditiously pro-  
24 viding to the Commission members and staff appropriate  
25 security clearances in a manner consistent with existing

1 procedures and requirements, except that no person shall  
2 be provided with access to classified information under  
3 this section who would not otherwise qualify for such secu-  
4 rity clearance.

5 **SEC. 8. REPORTS OF THE COMMISSION; TERMINATION.**

6 (a) INITIAL REPORT.—Not later than 1 year after  
7 the date of the first meeting of the Commission, the Com-  
8 mission shall submit to the President and Congress an ini-  
9 tial report containing such findings, conclusions, and rec-  
10 ommendations for corrective measures as have been  
11 agreed to by a majority of Commission members.

12 (b) FINAL REPORT.—Not later than 6 months after  
13 the submission of the initial report of the Commission, the  
14 Commission shall submit to the President and Congress  
15 a final report containing such findings, conclusions, and  
16 recommendations for corrective measures as have been  
17 agreed to by a majority of Commission members.

18 (c) TERMINATION.—

19 (1) IN GENERAL.—The Commission, and all the  
20 authorities of this Act, shall terminate 60 days after  
21 the date on which the final report is submitted  
22 under subsection (b).

23 (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-  
24 MINATION.—The Commission may use the 60-day  
25 period referred to in paragraph (1) for the purpose

1 of concluding its activities, including providing testi-  
2 mony to committees of Congress concerning its re-  
3 ports and disseminating the second report.

4 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated to the Com-  
6 mission to carry out this Act \$3,000,000, to remain avail-  
7 able until expended or the Commission is terminated.

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