

Calendar No. 31

112TH CONGRESS
1ST SESSION

S. 627

To establish the Commission on Freedom of Information Act Processing
Delays.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2011

Mr. LEAHY (for himself, Mr. CORNYN, Mr. WHITEHOUSE, and Mr. TESTER)
introduced the following bill; which was read twice and referred to the
Committee on the Judiciary

APRIL 8, 2011

Reported by Mr. LEAHY, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To establish the Commission on Freedom of Information
Act Processing Delays.

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. COMMISSION ON FREEDOM OF INFORMATION**
4 **ACT PROCESSING DELAYS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Faster FOIA Act of 2011”.

1 (b) ESTABLISHMENT.—There is established the Com-
2 mission on Freedom of Information Act Processing Delays
3 (in this Act referred to as the “Commission” for the pur-
4 pose of conducting a study relating to methods to help
5 reduce delays in processing requests submitted to Federal
6 agencies under section 552 of title 5, United States Code
7 (commonly referred to as the “Freedom of Information
8 Act”).

9 (c) MEMBERSHIP.—

10 (1) IN GENERAL.—The Commission shall be
11 composed of ~~16~~ 12 members of whom—

12 (A) ~~2~~ 2 shall be appointed by the chairman
13 of the Committee on the Judiciary of the Sen-
14 ate;

15 (B) ~~2~~ 2 shall be appointed by the ranking
16 member of the Committee on the Judiciary of
17 the Senate;

18 (C) ~~2~~ 2 shall be appointed by the chairman
19 of the Committee on Government Reform of the
20 House of Representatives;

21 (D) ~~2~~ 2 shall be appointed by the ranking
22 member of the Committee on Government Re-
23 form of the House of Representatives;

24 (E) 1 shall be appointed by the Attorney
25 General of the United States;

1 (F) 1 shall be appointed by the Director of
2 the Office of Management and Budget;

3 (G) 1 shall be appointed by the Archivist
4 of the United States; and

5 (H) 1 shall be appointed by the Comp-
6 troller General of the United States.

7 (2) QUALIFICATIONS OF CONGRESSIONAL AP-
8 POUNTEES.—Of the ~~3~~ 2 appointees under each of
9 subparagraphs (A), (B), (C), and (D) of paragraph
10 (1) at least ~~2~~ 1 shall have experience ~~in academic re-~~
11 ~~search~~ *as a FOIA requestor*, or in the fields of library
12 science, information management, or public access to
13 Government information.

14 (3) TIMELINESS OF APPOINTMENTS.—Appoint-
15 ments to the Commission shall be made as expedi-
16 tiously as possible, but not later than 60 days after
17 the date of enactment of this Act.

18 (d) STUDY.—The Commission shall conduct a study
19 to—

20 (1) identify methods that—

21 (A) will help reduce delays in the proc-
22 essing of requests submitted to Federal agen-
23 cies under section 552 of title 5, United States
24 Code; and

1 (B) ensure the efficient and equitable ad-
2 ministration of that section throughout the
3 Federal Government;

4 (2) examine whether the system for charging
5 fees and granting waivers of fees under section 552
6 of title 5, United States Code, needs to be reformed
7 in order to reduce delays in processing requests; and

8 (3) examine and determine—

9 (A) why the Federal Government's use of
10 the exemptions under section 552(b) of title 5,
11 United States Code, increased during fiscal
12 year 2009;

13 (B) the reasons for any increase, including
14 whether the increase was warranted and wheth-
15 er the increase contributed to FOIA processing
16 delays;

17 (C) what efforts were made by Federal
18 agencies to comply with President Obama's
19 January 21, 2009 Presidential Memorandum on
20 Freedom of Information Act Requests and
21 whether those efforts were successful; ~~and~~

22 (D) ~~make~~ *any* recommendations on how
23 the use of exemptions under section 552(b) of
24 title 5, United States Code, may be limited;
25 *and*

1 (E)(i) *whether any disparities in proc-*
2 *essing, processing times, and completeness of re-*
3 *sponses to FOIA requestors have occurred based*
4 *upon political considerations, ideological view-*
5 *points, the identity of the requestors, affiliation*
6 *with the media, or affiliation with advocacy*
7 *groups;*

8 (ii) *if any disparities have occurred, why*
9 *such disparities have occurred; and*

10 (iii) *the extent to which political appointees*
11 *have been involved in the FOIA process.*

12 (e) REPORT.—Not later than 1 year after the date
13 of enactment of this Act, the Commission shall submit a
14 report to Congress and the President containing the re-
15 sults of the study under this section, which shall include—

16 (1) a description of the methods identified by
17 the study;

18 (2) the conclusions and recommendations of the
19 Commission regarding—

20 (A) each method identified; and

21 (B) the charging of fees and granting of
22 waivers of fees; and

23 (3) recommendations for legislative or adminis-
24 trative actions to implement the conclusions of the
25 Commission.

1 ~~(f) STAFF AND ADMINISTRATIVE SUPPORT SERV-~~
 2 ~~ICES.—The Archivist of the United States shall provide~~
 3 ~~to the Commission such staff and administrative support~~
 4 ~~services, including research assistance at the request of~~
 5 ~~the Commission, as necessary for the Commission to per-~~
 6 ~~form its functions efficiently and in accordance with this~~
 7 ~~section.~~

8 *(f) STAFF AND ADMINISTRATIVE SUPPORT SERV-*
 9 *ICES.—*

10 *(1) IN GENERAL.—The Archivist of the United*
 11 *States shall provide to the Commission such staff and*
 12 *administrative support services, including research*
 13 *assistance at the request of the Commission, as nec-*
 14 *essary for the Commission to perform its functions ef-*
 15 *ficiently and in accordance with this section.*

16 *(2) PAYMENT OF EXPENSES.—*

17 *(A) STAFF SALARIES.—The Archivist of the*
 18 *United States shall pay staff expenses relating to*
 19 *salaries under this subsection from available ap-*
 20 *propriations in the applicable account for sala-*
 21 *ries of the National Archives and Records Ad-*
 22 *ministration.*

23 *(B) ADMINISTRATIVE SUPPORT SERVICES.—*
 24 *Except as provided under subparagraph (A), the*
 25 *Archivist of the United States shall pay staff and*

1 *administrative expenses under this subsection*
2 *from available appropriations in the operating*
3 *expenses account of the National Archives and*
4 *Records Administration.*

5 (3) *APPROPRIATIONS REQUESTS.*—*Expenses paid*
6 *under this subsection shall not form the basis for ad-*
7 *ditional appropriations requests from the National*
8 *Archives and Records Administration in the future.*

9 (g) *INFORMATION.*—To the extent permitted by law,
10 the heads of executive agencies, the Government Account-
11 ability Office, and the Congressional Research Service
12 shall provide to the Commission such information as the
13 Commission may require to carry out its functions.

14 (h) *COMPENSATION OF MEMBERS.*—Members of the
15 Commission shall serve without compensation for services
16 performed for the Commission.

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

24 (i) *TRAVEL EXPENSES.*—

1 (1) *IN GENERAL.*—*The members of the Commis-*
2 *sion shall be allowed travel expenses, including per*
3 *diem in lieu of subsistence, at rates authorized for*
4 *employees of agencies under subchapter I of chapter*
5 *57 of title 5, United States Code, while away from*
6 *their homes or regular places of business in the per-*
7 *formance of services for the Commission.*

8 (2) *PAYMENT OF EXPENSES.*—*The Administrator*
9 *of General Services shall pay travel expenses under*
10 *this subsection from available appropriations in the*
11 *operating expenses account of the General Services*
12 *Administration.*

13 (3) *APPROPRIATIONS REQUESTS.*—*Expenses paid*
14 *under this subsection shall not form the basis for ad-*
15 *ditional appropriations requests from the National*
16 *Archives and Records Administration in the future.*

17 (j) *TRANSPARENCY.*—All meetings of the Commis-
18 sion shall be open to the public, except that a meeting,
19 or any portion of it, may be closed to the public if it con-
20 cerns matters or information described in chapter 552b(c)
21 of title 5, United States Code. Interested persons shall be
22 permitted to appear at open meetings and present oral or
23 written statements on the subject matter of the meeting.
24 The Commission may administer oaths or affirmations to
25 any person appearing before the Commission.

1 (k) TERMINATION.—The Commission shall terminate
2 30 days after the submission of the report under sub-
3 section (e).

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