

109TH CONGRESS
2D SESSION

S. 2362

To establish the National Commission on Surveillance Activities and the
Rights of Americans.

IN THE SENATE OF THE UNITED STATES

MARCH 2, 2006

Mr. BYRD introduced the following bill; which was read twice and referred to
the Committee on the Judiciary

A BILL

To establish the National Commission on Surveillance
Activities and the Rights of Americans.

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 “Surveillance Activities
5 Commission Act of 2006”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “Commission” means the National
9 Commission on Surveillance Activities and the
10 Rights of Americans established under section 3;

1 (2) the term “electronic surveillance” has the
2 same meaning as in section 101 of the Foreign In-
3 telligence Surveillance Act of 1978 (50 U.S.C.
4 1801);

5 (3) the term “Foreign Intelligence Surveillance
6 Court” means the court established under section
7 103(a) of the Foreign Intelligence Surveillance Act
8 of 1978 (50 U.S.C. 1803(a));

9 (4) the terms “pen register” and “trap and
10 trace device” have the same meaning as in section
11 3127 of title 18, United States Code;

12 (5) The term “physical search” has the same
13 meaning as in section 301 of the Foreign Intel-
14 ligence Surveillance Act of 1978 (50 U.S.C. 1821);

15 (6) the term “surveillance” means any elec-
16 tronic surveillance, physical search, use of a pen reg-
17 ister or trap and trace device, order for the produc-
18 tion of any tangible item, or surveillance activity for
19 which a Federal or State government agent is re-
20 quired to obtain a warrant, before or after engaging
21 in the activity; and

22 (7) the term “warrantless surveillance pro-
23 gram” means a program of warrantless surveillance
24 conducted inside the United States by any Federal
25 or State agency.

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

2 There is established in the legislative branch the Na-
3 tional Commission on Surveillance Activities and the
4 Rights of Americans to conduct an investigation and to
5 study governmental operations with respect to warrantless
6 surveillance conducted inside the United States and intel-
7 ligence activities, and the extent, if any, to which illegal,
8 improper, or unethical activities were engaged in by any
9 Federal, State, or local government agency or any person
10 employed by a Federal, State, or local government.

11 **SEC. 4. PURPOSES.**

12 The purposes of the Commission are to—

13 (1) examine and report upon the facts, causes,
14 and use of executive authority relating to any
15 warrantless surveillance conducted inside the United
16 States that occurred after September 11, 2001, by
17 the National Security Agency or any other Federal
18 or State agency, and the extent to which any illegal,
19 improper, or unethical activities were engaged in by
20 any agency or by any person, acting either individ-
21 ually or in combination with others, in carrying out
22 any surveillance activities;

23 (2) examine the origin and operation of any
24 warrantless surveillance conducted inside the United
25 States, including the collection, processing, analysis,

1 dissemination, and retention of intelligence informa-
2 tion;

3 (3) report on any constitutional, statutory, and
4 regulatory basis for any warrantless surveillance pro-
5 gram, including all presidential orders and author-
6 izations, and all opinions, instructions, or guidance
7 concerning any warrantless surveillance program
8 provided by the Department of Justice, the Director
9 of Central Intelligence, the Director of National In-
10 telligence, the Director of the National Security
11 Agency, the Department of Defense, or any depart-
12 ment, office, or agency of the Federal Government,
13 and any of their subordinate offices or officials, ei-
14 ther in writing or verbally;

15 (4) examine any periodic reviews of any
16 warrantless surveillance program, including all re-
17 views conducted by the National Security Agency In-
18 spector General, the Department of Justice, or any
19 other Federal agency;

20 (5) gather any information regarding questions
21 raised by any judge of the Foreign Intelligence Sur-
22 veillance Court regarding any warrantless surveil-
23 lance program or the utilization of intelligence col-
24 lected under such program, and any response by the
25 Department of Justice to any such inquiries, includ-

1 ing any temporary cessation of such surveillance ac-
2 tivities;

3 (6) investigate any participation by, or use of
4 the facilities or personnel of, United States elec-
5 tronic communications providers in warrantless sur-
6 veillance conducted inside the United States, includ-
7 ing the origin of certifications or representations
8 provided to such providers concerning the legal au-
9 thority for their cooperation;

10 (7) ascertain, evaluate, and report on the evi-
11 dence developed by all relevant governmental agen-
12 cies regarding any facts or circumstances that may
13 have violated the separation of powers enumerated
14 in the Constitution of the United States, including—

15 (A) article I, sections 1 and 8 of the Con-
16 stitution of the United States; and

17 (B) article III, sections 1 and 2 of the
18 Constitution of the United States;

19 (8) ascertain and evaluate any potential viola-
20 tions, including violations of the first, fourth, and
21 fourteenth amendments to the Constitution of the
22 United States;

23 (9) investigate and report on any violation of
24 the Foreign Intelligence Surveillance Act (50 U.S.C.
25 1801 et seq.), or any other applicable law;

1 (10) examine the duty of the President to brief
2 all Members of Congress regarding warrantless sur-
3 veillance of United States citizens conducted inside
4 the United States;

5 (11) build upon the investigations of other enti-
6 ties, and avoid unnecessary duplication, by reviewing
7 the findings, conclusions, and recommendations of—

8 (A) any investigation by a Committee of
9 the Senate or the House of Representatives;
10 and

11 (B) other executive branch, congressional,
12 or independent commission investigations into
13 the warrantless surveillance conducted inside
14 the United States;

15 (12) make a full and complete accounting of the
16 circumstances surrounding warrantless surveillance
17 conducted inside the United States, including an as-
18 sessment of its effectiveness in protecting the United
19 States from terrorism;

20 (13) make a full and complete accounting of the
21 use of any appropriated funds by any Federal, State,
22 or local government agency or any person employed
23 by a Federal, State, or local government in carrying
24 out warrantless surveillance; and

1 (14) investigate and report to the President and
2 Congress on its findings, conclusions, and rec-
3 ommendations for corrective measures that should
4 be taken regarding any violations of any law dealing
5 with intelligence gathering, and to prevent future
6 violations.

7 **SEC. 5. COMPOSITION OF COMMISSION.**

8 (a) MEMBERS.—The Commission shall be composed
9 of 14 members, of whom—

10 (1) 1 member, who shall serve as Chairman of
11 the Commission, shall be appointed by the Majority
12 Leader of the Senate, in consultation with the Ma-
13 jority Leader of the House of Representatives;

14 (2) 1 member, who shall serve as Vice Chair-
15 man of the Commission, shall be appointed by the
16 Minority Leader of the Senate, in consultation with
17 the Minority Leader of the House of Representa-
18 tives;

19 (3) 1 member shall be appointed by the Chair-
20 man of the Committee on the Judiciary of the Sen-
21 ate;

22 (4) 1 member shall be appointed by the Rank-
23 ing Member of the Committee on the Judiciary of
24 the Senate;

1 (5) 1 member shall be appointed by the Chair-
2 man of the Select Committee on Intelligence of the
3 Senate;

4 (6) 1 member shall be appointed by the Vice
5 Chairman of the Select Committee on Intelligence of
6 the Senate;

7 (7) 1 member shall be appointed by the Chair-
8 man of the Committee on the Judiciary of the
9 House of Representatives;

10 (8) 1 member shall be appointed by the Rank-
11 ing Member of the Committee on the Judiciary of
12 the House of Representatives;

13 (9) 1 member shall be appointed by the Chair-
14 man of the Permanent Select Committee on Intel-
15 ligence of the House of Representatives;

16 (10) 1 member shall be appointed by the Rank-
17 ing Member of the Permanent Select Committee on
18 Intelligence of the House of Representatives;

19 (11) 1 member shall be appointed by the Chair-
20 man of the Committee on Appropriations of the Sen-
21 ate;

22 (12) 1 member shall be appointed by the Rank-
23 ing Member of the Committee on Appropriations of
24 the Senate;

1 (13) 1 member shall be appointed by the Chair-
2 man of the Committee on Appropriations of the
3 House of Representatives; and

4 (14) 1 member shall be appointed by the Rank-
5 ing Member of the Committee on Appropriations of
6 the House of Representatives.

7 (b) DATE OF APPOINTMENT.—All members of the
8 Commission shall be appointed not later than the date
9 that is 3 months after the date of enactment of this Act.

10 (c) QUALIFICATIONS; INITIAL MEETING.—

11 (1) NONGOVERNMENTAL APPOINTEES.—An in-
12 dividual appointed to the Commission may not be an
13 officer or employee of the Federal Government or
14 any State or local government.

15 (2) OTHER QUALIFICATIONS.—It is the sense of
16 Congress that individuals appointed to the Commis-
17 sion should be prominent United States citizens,
18 with national recognition and significant depth of ex-
19 perience in such professions as law, intelligence
20 gathering, and foreign affairs.

21 (3) INITIAL MEETING.—The Commission shall
22 meet and begin the operations of the Commission as
23 soon as practicable.

24 (d) QUORUM; VACANCIES.—After its initial meeting,
25 the Commission shall meet upon the call of the Chairman

1 or a majority of its members. Six members of the Commis-
2 sion shall constitute a quorum. Any vacancy in the Com-
3 mission shall not affect its powers, but shall be filled in
4 the same manner in which the original appointment was
5 made.

6 **SEC. 6. FUNCTIONS OF COMMISSION.**

7 The functions of the Commission are to—

8 (1) conduct an investigation that—

9 (A) investigates relevant facts and cir-
10 cumstances relating to all incidents of
11 warrantless surveillance conducted inside the
12 United States, including any relevant legisla-
13 tion, Executive order, regulation, plan, policy,
14 practice, or procedure; and

15 (B) may include relevant facts and cir-
16 cumstances relating to—

17 (i) intelligence agencies and intel-
18 ligence gathering;

19 (ii) the Authorization for Use of Mili-
20 tary Force, (Public Law 107–40; 50
21 U.S.C. 1541 note), as a justification for
22 warrantless surveillance conducted inside
23 the United States;

24 (iii) any use of appropriated funds in
25 carrying out warrantless surveillance con-

1 ducted inside the United States in con-
2 tradiction of Federal law;

3 (iv) the jurisdiction of the Foreign In-
4 telligence Surveillance Court, in issuing
5 warrants for the purpose of surveillance
6 conducted inside the United States;

7 (v) the role of congressional oversight
8 and resource allocation;

9 (vi) possible legislative initiatives that
10 could strengthen the use of lawful surveil-
11 lance conducted inside the United States in
12 effectively protecting national security,
13 while preserving constitutional checks and
14 balances and liberties; and

15 (vii) other areas of the public and pri-
16 vate sectors determined relevant by the
17 Commission for its inquiry; and

18 (2) submit to the President and Congress such
19 reports as are required by this Act containing such
20 findings, conclusions, and recommendations as the
21 Commission shall determine, including proposing or-
22 ganization, coordination, planning, management ar-
23 rangements, procedures, rules, and regulations.

24 **SEC. 7. POWERS OF COMMISSION.**

25 (a) IN GENERAL.—

1 (1) HEARINGS AND EVIDENCE.—The Commis-
 2 sion or, on the authority of the Commission, any
 3 subcommittee or member thereof, may, for the pur-
 4 pose of carrying out this Act—

5 (A) hold such hearings and sit and act at
 6 such times and places, take such testimony, re-
 7 ceive such evidence, administer such oaths; and

8 (B) subject to paragraph (2)(A), require,
 9 by subpoena or otherwise, the attendance and
 10 testimony of such witnesses and the production
 11 of such books, records, correspondence, memo-
 12 randa, papers, and documents, as the Commis-
 13 sion or such designated subcommittee or des-
 14 ignated member may determine advisable.

15 (2) SUBPOENAS.—

16 (A) ISSUANCE.—

17 (i) IN GENERAL.—A subpoena may be
 18 issued under this subsection only—

19 (I) by the agreement of the
 20 Chairman and the Vice Chairman; or

21 (II) by the affirmative vote of 8
 22 members of the Commission.

23 (ii) SIGNATURE.—Subject to clause
 24 (i), subpoenas issued under this subsection
 25 may be issued under the signature of the

1 Chairman or any member designated by a
2 majority of the Commission, and may be
3 served by any person designated by the
4 Chairman or by a member designated by a
5 majority of the Commission.

6 (B) ENFORCEMENT.—In the case of contu-
7 macy or failure to obey a subpoena issued the
8 United States district court for the judicial dis-
9 trict in which the subpoenaed person resides, is
10 served, or may be found, or where the subpoena
11 is returnable, may issue an order requiring such
12 person to appear at any designated place to tes-
13 tify or to produce documentary or other evi-
14 dence. Any failure to obey the order of the
15 court may be punished by the court as a con-
16 tempt of that court.

17 (b) CONTRACTING.—The Commission may, to such
18 extent and in such amounts as are provided in appropria-
19 tion Acts, enter into contracts to enable the Commission
20 to discharge its duties under this Act.

21 (c) INFORMATION FROM FEDERAL AGENCIES.—

22 (1) IN GENERAL.—The Commission is author-
23 ized to secure directly from any executive depart-
24 ment, bureau, agency, board, commission, office,
25 independent establishment, or instrumentality of the

1 Federal Government, information, suggestions, esti-
2 mates, and statistics for the purposes of this Act.
3 Each department, bureau, agency, board, commis-
4 sion, office, independent establishment, or instru-
5 mentality shall, to the extent authorized by law, fur-
6 nish such information, suggestions, estimates, and
7 statistics directly to the Commission, upon request
8 made by the Chairman, the Chairman of any sub-
9 committee created by a majority of the Commission,
10 or any member designated by a majority of the
11 Commission.

12 (2) RECEIPT, HANDLING, STORAGE, AND DIS-
13 SEMINATION.—Information shall only be received,
14 handled, stored, and disseminated by members of
15 the Commission and its staff consistent with all ap-
16 plicable statutes, regulations, and Executive orders.

17 (d) ASSISTANCE FROM FEDERAL AGENCIES.—

18 (1) GENERAL SERVICES ADMINISTRATION.—
19 The Administrator of General Services shall provide
20 to the Commission on a reimbursable basis adminis-
21 trative support and other services for the perform-
22 ance of the Commission's functions.

23 (2) OTHER DEPARTMENTS AND AGENCIES.—In
24 addition to the assistance prescribed in paragraph
25 (1), departments and agencies of the United States

1 may provide to the Commission such services, funds,
2 facilities, staff, and other support services as they
3 may determine advisable and as may be authorized
4 by law.

5 (e) POSTAL SERVICES.—The Commission may use
6 the United States mails in the same manner and under
7 the same conditions as departments and agencies of the
8 United States.

9 **SEC. 8. NONAPPLICABILITY OF FEDERAL ADVISORY COM-**
10 **MITTEE ACT.**

11 (a) IN GENERAL.—The Federal Advisory Committee
12 Act (5 U.S.C. App.) shall not apply to the Commission.

13 (b) PUBLIC MEETINGS AND RELEASE OF PUBLIC
14 VERSIONS OF REPORTS.—The Commission shall—

15 (1) hold public hearings and meetings to the ex-
16 tent appropriate; and

17 (2) release public versions of the reports re-
18 quired under subsections (a) and (b) of section 12.

19 (c) PUBLIC HEARINGS.—Any public hearings of the
20 Commission shall be conducted in a manner consistent
21 with the protection of information provided to or developed
22 for or by the Commission as required by any applicable
23 statute, regulation, or Executive order.

24 **SEC. 9. STAFF OF COMMISSION.**

25 (a) IN GENERAL.—

1 (1) APPOINTMENT AND COMPENSATION.—The
2 Chairman, in consultation with the Vice Chairman
3 and in accordance with rules agreed upon by the
4 Commission, may appoint and fix the compensation
5 of a staff director and such other personnel as may
6 be necessary to enable the Commission to carry out
7 its functions, without regard to the provisions of
8 title 5, United States Code, governing appointments
9 in the competitive service, and without regard to the
10 provisions of chapter 51 and subchapter III of chap-
11 ter 53 of such title relating to classification and
12 General Schedule pay rates, except that no rate of
13 pay fixed under this subsection may exceed the
14 equivalent of that payable for a position at level V
15 of the Executive Schedule under section 5316 of title
16 5, United States Code.

17 (2) PERSONNEL AS FEDERAL EMPLOYEES.—

18 (A) IN GENERAL.—The executive director
19 and any personnel of the Commission who are
20 employees shall be employees under section
21 2105 of title 5, United States Code, for pur-
22 poses of chapters 63, 81, 83, 84, 85, 87, 89,
23 89A, 89B, and 90 of that title.

1 (B) MEMBERS OF COMMISSION.—Subpara-
2 graph (A) shall not be construed to apply to
3 members of the Commission.

4 (b) DETAILEES.—Any Federal Government employee
5 may be detailed to the Commission without reimbursement
6 from the Commission, and such detailee shall retain the
7 rights, status, and privileges of his or her regular employ-
8 ment without interruption.

9 (c) CONSULTANT SERVICES.—The Commission is au-
10 thorized to procure the services of experts and consultants
11 in accordance with section 3109 of title 5, United States
12 Code, but at rates not to exceed the daily rate paid a per-
13 son occupying a position at level IV of the Executive
14 Schedule under section 5315 of title 5, United States
15 Code.

16 **SEC. 10. COMPENSATION AND TRAVEL EXPENSES.**

17 (a) COMPENSATION.—Each member of the Commis-
18 sion may be compensated at not to exceed the daily equiva-
19 lent of the annual rate of basic pay in effect for a position
20 at level IV of the Executive Schedule under section 5315
21 of title 5, United States Code, for each day during which
22 that member is engaged in the actual performance of the
23 duties of the Commission.

24 (b) TRAVEL EXPENSES.—While away from their
25 homes or regular places of business in the performance

1 of services for the Commission, members of the Commis-
2 sion shall be allowed travel expenses, including per diem
3 in lieu of subsistence, in the same manner as persons em-
4 ployed intermittently in the Government service are al-
5 lowed expenses under section 5703(b) of title 5, United
6 States Code.

7 **SEC. 11. SECURITY CLEARANCES FOR COMMISSION MEM-**
8 **BERS AND STAFF.**

9 The appropriate Federal departments or agencies
10 shall cooperate with the Commission in expeditiously pro-
11 viding to the Commission members and staff appropriate
12 security clearances to the extent possible under the rel-
13 evant procedures and requirements, except that no person
14 shall be provided with access to classified information
15 under this Act without the appropriate security clearances.

16 **SEC. 12. REPORTS OF COMMISSION; TERMINATION.**

17 (a) INTERIM REPORTS.—The Commission shall sub-
18 mit to the President and Congress interim reports con-
19 taining such findings, conclusions, and recommendations
20 for corrective measures as have been agreed to by a major-
21 ity of Commission members.

22 (b) FINAL REPORT.—Not later than 18 months after
23 the date of enactment of this Act, the Commission shall
24 submit to the President and Congress a final report con-
25 taining such findings, conclusions, and recommendations

1 for corrective measures as have been agreed to by a major-
 2 ity of Commission members.

3 (c) CLASSIFIED INFORMATION.—Each report sub-
 4 mitted under subsection (a) or (b) shall be in unclassified
 5 form, but may include a classified annex.

6 (d) TERMINATION.—

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

11 (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-
 12 MINATION.—The Commission may use the 60-day
 13 period referred to in paragraph (1) for the purpose
 14 of concluding its activities, including providing testi-
 15 mony to committees of Congress concerning its re-
 16 ports and disseminating the final report.

17 **SEC. 13. FUNDING.**

18 (a) AUTHORIZATION OF APPROPRIATIONS.—There
 19 are authorized to be appropriated such sums as are nec-
 20 essary to carry out this Act.

21 (b) DURATION OF AVAILABILITY.—Amounts made
 22 available to the Commission under subsection (a) shall re-
 23 main available until the termination of the Commission.

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