

111TH CONGRESS
1ST SESSION

H. R. 1248

To establish the National Commission on the Anthrax Attacks Upon the United States to examine and report upon the facts and causes relating to the anthrax letter attacks of September and October 2001, and investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent and respond to acts of bioterrorism.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2009

Mr. HOLT (for himself, Mr. NADLER of New York, and Mr. CUMMINGS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish the National Commission on the Anthrax Attacks Upon the United States to examine and report upon the facts and causes relating to the anthrax letter attacks of September and October 2001, and investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent and respond to acts of bioterrorism.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Anthrax Attacks Inves-
3 tigation Act”.

4 **SEC. 2. ESTABLISHMENT OF COMMISSION.**

5 There is established a commission to be known as the
6 “National Commission on the Anthrax Attacks Upon the
7 United States” (in this Act referred to as the “Commis-
8 sion”).

9 **SEC. 3. PURPOSES.**

10 The purposes of the Commission are to—

11 (1) examine and report upon the facts and
12 causes relating to the anthrax letter attacks of Sep-
13 tember and October 2001;

14 (2) ascertain, evaluate, and report on the evi-
15 dence developed by all relevant governmental agen-
16 cies regarding the facts and circumstances sur-
17 rounding the attacks;

18 (3) determine whether all credible leads and in-
19 formation regarding the potential perpetrator of the
20 attacks were pursued with due diligence by Federal
21 investigators;

22 (4) ascertain the full range of individuals who
23 could have had access to the type of anthrax used
24 in the attacks, and determine the full extent to
25 which all such individuals were thoroughly inves-
26 tigated for any potential involvement in the attacks;

1 (5) make a full and complete accounting of the
2 circumstances surrounding the attacks, and the ex-
3 tent of the Federal Governments' preparedness for,
4 and immediate response to, the attacks; and

5 (6) investigate and report to the President and
6 Congress on its findings, conclusions, and rec-
7 ommendations for corrective measures that can be
8 taken to prevent and respond to acts of bioterrorism.

9 **SEC. 4. MEMBERSHIP.**

10 (a) **NUMBER AND APPOINTMENT.**—The Commission
11 shall be composed of 11 members appointed as follows:

12 (1) 1 member appointed by the President.

13 (2) 1 member appointed by the majority leader
14 of the Senate, in consultation with the minority lead-
15 er of the Senate, who shall serve as chairman of the
16 Commission.

17 (3) 1 member appointed by the Speaker of the
18 House of Representatives, in consultation with the
19 minority leader of the House, who shall serve as vice
20 chairman of the Commission.

21 (4) 2 members appointed by the majority leader
22 of the Senate.

23 (5) 2 members appointed by the majority leader
24 of the House of Representatives.

1 (6) 2 members appointed by the minority leader
2 of the Senate.

3 (7) 2 members appointed by the minority leader
4 of the House of Representatives.

5 (b) QUALIFICATIONS.—

6 (1) POLITICAL PARTY AFFILIATION.—Not more
7 than 6 members appointed to the Commission shall
8 be from the same political party.

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

13 (3) OTHER QUALIFICATIONS.—It is the sense of
14 Congress that individuals appointed to the Commis-
15 sion should be prominent United States citizens with
16 national recognition and significant depth of experi-
17 ence in professions such as governmental service,
18 law enforcement, law, public health, public adminis-
19 tration, science and technology, intelligence gath-
20 ering, commerce, transportation, and foreign affairs.

21 (4) DEADLINE FOR APPOINTMENT.—All mem-
22 bers of the Commission shall be appointed no later
23 than 60 days of the enactment of this Act.

1 (c) SUBCOMMITTEES.—The Chairman may establish
2 subcommittees for the purpose of carrying out the duties
3 of the Commission.

4 (d) MEETINGS.—

5 (1) INITIAL MEETING.—The Commission shall
6 meet and begin the operations of the Commission as
7 soon as practicable following the appointment of the
8 11 members.

9 (2) SUBSEQUENT MEETINGS.—The Commission
10 shall meet upon the call of the chairman or a major-
11 ity of its members. All such meetings shall be open
12 to the public unless classified information or internal
13 personnel matters involving the Commission are to
14 be discussed, in which case such meetings shall be
15 closed to the public.

16 (e) QUORUM.—Six members of the Commission shall
17 constitute a quorum.

18 (f) VACANCIES.—Any vacancy in the Commission
19 shall not affect its powers, but shall be filled in the same
20 manner in which the original appointment was made.

21 **SEC. 5. DUTIES OF COMMISSION.**

22 (a) IN GENERAL.—The duties of the Commission are
23 to—

24 (1) conduct an investigation relating to the an-
25 thrax letter attacks of September and October 2001

1 that investigates relevant facts and circumstances
2 surrounding the attacks, including any relevant leg-
3 islation, Executive order, regulation, plan, policy,
4 practice, or procedure;

5 (2) ascertain, evaluate, and report on the evi-
6 dence developed by all relevant governmental agen-
7 cies regarding the facts and circumstances sur-
8 rounding the attacks;

9 (3) determine whether all credible leads and in-
10 formation regarding the potential perpetrator of the
11 attacks were pursued with due diligence by Federal
12 investigators;

13 (4) ascertain the full range of individuals who
14 could have had access to the type of anthrax used
15 in the attacks and determine the full extent to which
16 all such individuals were thoroughly investigated for
17 any potential involvement in the attacks;

18 (5) make a full and complete accounting of the
19 circumstances surrounding the attacks, and the ex-
20 tent of the Federal Governments' preparedness for,
21 and immediate response to, the attacks;

22 (6) identify, review, and evaluate the lessons
23 learned from the attacks regarding the structure, co-
24 ordination, management policies, and procedures of
25 the Federal Government, and, if appropriate, State

1 and local governments and nongovernmental entities,
2 relative to detecting, preventing, and responding to
3 bioterrorism attacks;

4 (7) submit to the President and Congress re-
5 ports in accordance with section 10; and

6 (8) bring to the attention of the Attorney Gen-
7 eral and Congress any evidence of potential viola-
8 tions of Federal law or regulations uncovered by the
9 Commission during the course of its investigation.

10 (b) INVESTIGATIONS AND REPORTS.—The investiga-
11 tion and report authorized under subsection (a) may in-
12 clude relevant facts and circumstances relating to—

13 (1) intelligence and law enforcement agencies;

14 (2) diplomacy;

15 (3) the delivery, processing, and handling of
16 mail, parcels, or packages within the United States
17 or its territories by either government or commercial
18 entities world-wide;

19 (4) the ability of individuals or terrorist organi-
20 zations to acquire the scientific knowledge and
21 means to manufacture and deliver chemical, biologi-
22 cal, or radiological weapons via mail, parcels, or
23 packages;

24 (5) the physical and personnel security meas-
25 ures and procedures employed by government, non-

1 profit, and private sector laboratories or other enti-
2 ties using, storing or shipping agents on the Centers
3 for Disease Control’s Select Agents and Toxins List;

4 (6) the role of Congressional oversight and re-
5 source allocation; and

6 (7) other areas of the public and private sectors
7 determined relevant by the Commission for its in-
8 quiry.

9 **SEC. 6. POWERS OF COMMISSION.**

10 (a) IN GENERAL.—The Commission or, on the au-
11 thority of the Commission, any subcommittee or member
12 thereof, shall, for the purpose of carrying out its duties—

13 (1) hold hearings and sit and act at such times
14 and places as the Commission considers appropriate,
15 take testimony, receive evidence, and administer
16 oaths; and

17 (2) in accordance with subsection (b), require,
18 by subpoena or otherwise, the attendance and testi-
19 mony of witnesses and the production of books,
20 records, correspondence, memoranda, papers, and
21 documents, as the Commission or designated sub-
22 committee or member may determine advisable.

23 (b) SUBPOENAS.—

24 (1) ISSUANCE.—A subpoena may be issued by
25 the Commission only—

1 (A) by the agreement of the chairman and
2 the vice chairman; or

3 (B) by the affirmative vote of a majority of
4 members of the Commission.

5 (2) SIGNATURE.—Subject to paragraph (1),
6 subpoenas issued under this subsection may be
7 issued under the signature of the chairman or any
8 member designated by a majority of the Commis-
9 sion, and may be served by any person designated
10 by the chairman or by a member designated by a
11 majority of the Commission.

12 (3) SERVICE OF SUBPOENAS.—The subpoenas
13 of the Commission shall be served in the manner
14 provided for subpoenas issued by a United States
15 district court under the Federal Rules of Civil Pro-
16 cedure for the United States district courts.

17 (4) SERVICE OF PROCESS.—All process of any
18 court to which an application is made under para-
19 graph (3) may be served in the judicial district in
20 which the person required to be served resides or
21 may be found.

22 (5) ENFORCEMENT.—

23 (A) IN GENERAL.—In the case of contu-
24 macy or failure to obey a subpoena issued
25 under this subsection, the United States district

1 court for the judicial district in which the sub-
2 poenaed person resides, is served, or may be
3 found, or where the subpoena is returnable,
4 may issue an order requiring such person to ap-
5 pear at any designated place to testify or to
6 produce documentary or other evidence. Any
7 failure to obey the order of the court may be
8 punished by the court as civil contempt.

9 (B) ADDITIONAL ENFORCEMENT.—In the
10 case of any failure of any witness to comply
11 with any subpoena or to testify when sum-
12 moned under authority of this section, the Com-
13 mission may, by majority vote, certify a state-
14 ment of fact constituting such failure to the ap-
15 propriate United States attorney, who shall
16 bring the matter before the grand jury for its
17 action, under the same authority and proce-
18 dures as if the United States attorney had re-
19 ceived a certification under section 104 of the
20 Revised Statutes of the United States (2 U.S.C.
21 194).

22 (c) PUBLIC REPORTS; HEARINGS.—

23 (1) REQUIRING PUBLIC ACCESS.—The Commis-
24 sion shall hold public hearings and meetings and re-

1 lease public versions of the reports submitted in ac-
2 cordance with section 10.

3 (2) PROTECTION OF INFORMATION.—Any pub-
4 lic hearings of the Commission shall be conducted in
5 a manner consistent with the protection of informa-
6 tion provided to or developed for or by the Commis-
7 sion as required by any applicable statute, regula-
8 tion, or Executive order.

9 (d) CONTRACT AUTHORITY.—The Commission may
10 contract with and compensate government and private
11 agencies or persons for services without regard to section
12 3709 of the Revised Statutes (41 U.S.C. 5).

13 (e) INFORMATION FROM FEDERAL AGENCIES.—

14 (1) IN GENERAL.—The Commission is author-
15 ized to secure directly from any executive depart-
16 ment, bureau, agency, board, commission, office,
17 independent establishment, or instrumentality of the
18 Government, information, suggestions, estimates,
19 and statistics for the purposes of this Act.

20 (2) DECLASSIFICATION REQUESTS.—Each de-
21 partment, bureau, agency, board, commission, office,
22 independent establishment, or instrumentality
23 shall—

1 (A) review on an expedited basis any re-
2 quests for declassification of classified material
3 made by the Commission; and

4 (B) declassify and supply to the Commis-
5 sion such information as the Commission re-
6 quests consistent with applicable requirements
7 to protect sources and methods.

8 (f) ASSISTANCE FROM FEDERAL AGENCIES.—

9 (1) GENERAL SERVICES ADMINISTRATION.—

10 The Administrator of General Services shall provide
11 to the Commission on a reimbursable basis adminis-
12 trative support and other services for the perform-
13 ance of the Commission's functions.

14 (2) OTHER DEPARTMENTS AND AGENCIES.—In
15 addition to the assistance prescribed in paragraph
16 (1), departments and agencies of the United States
17 at the request of the Commission shall provide such
18 services, funds, facilities, staff, and other support
19 services as may be authorized by law.

20 (g) GIFTS.—The Commission may accept, use, and
21 dispose of gifts, bequests, devises of services or property,
22 both real and personal, or donations of services or prop-
23 erty, for the purpose of aiding or facilitating the work of
24 the Commission.

1 (h) 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 United States.

5 (i) NONAPPLICABILITY OF FEDERAL ADVISORY COM-
6 MITTEE ACT.—The Federal Advisory Committee Act (5
7 U.S.C. App.) shall not apply to the Commission.

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

10 The appropriate Federal agencies or departments
11 shall cooperate with the Commission to provide the Com-
12 mission members appropriate security clearances pursuant
13 to existing procedures and requirements.

14 **SEC. 8. COMPENSATION AND TRAVEL EXPENSES.**

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

22 (b) TRAVEL EXPENSES.—While away from their
23 homes or regular places of business in the performance
24 of services for the Commission, members of the Commis-
25 sion shall receive travel expenses, including per diem in

1 lieu of subsistence, in the same manner as persons em-
2 ployed intermittently in the Government service are al-
3 lowed expenses under section 5703(b) of title 5, United
4 States Code.

5 **SEC. 9. STAFF OF COMMISSION.**

6 (a) APPOINTMENT AND COMPENSATION.—Subject to
7 the rules of the Commission, the chairman, in consultation
8 with the vice chairman, may appoint and fix the com-
9 pensation of a executive director and such other personnel
10 as may be necessary to enable the Commission to carry
11 out its functions, without regard to the provisions of title
12 5, United States Code, governing appointments in the
13 competitive service, and without regard to the provisions
14 of chapter 51 and subchapter III of chapter 53 of such
15 title relating to classification and General Schedule pay
16 rates, except that no rate of pay fixed under this sub-
17 section may exceed the equivalent of that payable for a
18 position at level V of the Executive Schedule under section
19 5316 of title 5, United States Code.

20 (b) DETAILEES.—Any Federal Government employee
21 may be detailed to the Commission without reimbursement
22 from the Commission, and shall retain the rights, status,
23 and privileges of his or her regular employment without
24 interruption.

1 (c) CONSULTANT SERVICES.—The Commission may
2 procure the services of experts and consultants in accord-
3 ance with section 3109(b) of title 5, United States Code,
4 but at rates not to exceed the daily rate paid under level
5 IV of the Executive Schedule under section 5315 of title
6 5, United States Code.

7 (d) NATIONAL ACADEMY OF SCIENCES STAFF REC-
8 OMMENDATIONS.—The chairman and vice chairman of the
9 Commission shall seek the recommendations of the Na-
10 tional Academy of Sciences regarding the desired quali-
11 fications of scientific staff to be hired directly or on a con-
12 sultant basis by the Commission.

13 (e) PROHIBITING CONFLICTS OF INTEREST.—No in-
14 dividual who participated in the criminal investigation into
15 the anthrax letter attacks may be detailed to, or may pro-
16 vide any paid or unpaid services to, the Commission.

17 **SEC. 10. REPORTS OF THE COMMISSION.**

18 (a) FINAL REPORT.—Not later than 18 months after
19 the date of the enactment of this Act, the Commission
20 shall transmit a final report containing such findings, con-
21 clusions, and recommendations for corrective measures as
22 have been agreed to by a majority of the Commission, in-
23 cluding proposing organization, coordination, planning
24 and management arrangements, procedures, rules, and

1 regulations. The final report shall be unclassified but may
2 include a classified annex, if necessary.

3 (b) INTERIM REPORTS.—The Commission may sub-
4 mit to the President and Congress interim reports con-
5 taining findings, conclusions, and recommendations for
6 corrective measures as have been agreed to by a majority
7 of the Commission members.

8 (c) DISSENTING VIEWS.—Both the interim and final
9 reports shall contain the dissenting views of any commis-
10 sion member who wishes to have his or her views pub-
11 lished.

12 **SEC. 11. TERMINATION.**

13 The Commission shall terminate 60 days after sub-
14 mitting its final report under section 10(a).

15 **SEC. 12. FUNDING.**

16 There are authorized to be appropriated such sums
17 as are necessary for the operation of the Commission.

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