

114TH CONGRESS
2D SESSION

H. R. 4651

To establish in the legislative branch the National Commission on Security and Technology Challenges.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 29, 2016

Mr. McCAUL (for himself, Mr. LANGEVIN, Mr. MEEHAN, Ms. DELBENE, Mr. BISHOP of Michigan, Mr. TED LIEU of California, Mr. HURD of Texas, Miss RICE of New York, Mr. FARENTHOLD, Mr. SWALWELL of California, Mr. DONOVAN, Mr. MCNERNEY, Mrs. COMSTOCK, Mrs. MIMI WALTERS of California, Mr. COSTELLO of Pennsylvania, and Mr. REICHERT) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on 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

A BILL

To establish in the legislative branch the National Commission on Security and Technology Challenges.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Digital Security Commission Act of 2016”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Establishment of the National Commission on Security and Technology Challenges.
- Sec. 4. Composition of Commission.
- Sec. 5. Reports to Congress.
- Sec. 6. Powers of Commission.
- Sec. 7. Nonapplicability of Federal Advisory Committee Act.
- Sec. 8. Staff.
- Sec. 9. Meeting and hearings.
- Sec. 10. Termination.
- Sec. 11. Funding.

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) Today, more than ever before, digital secu-
 6 rity and communications technology, national secu-
 7 rity, public safety, and counterterrorism are inex-
 8 tricably linked; indeed, digital security and commu-
 9 nications technology plays a critically important role
 10 in efforts to keep the United States and its citizens
 11 safe.

12 (2) Technological innovation and development is
 13 critical to the United States economy and the com-
 14 petitiveness of United States businesses in the global
 15 marketplace.

16 (3) Technology companies represent some of
 17 the largest employers in the United States and con-
 18 tribute significantly to the gross domestic product of
 19 the United States.

1 (4) The digital security and communications
2 technology that the people of the United States use
3 every day to protect communications and data, in-
4 cluding encryption, is essential to the present and
5 future of the United States.

6 (5) Digital security and communications tech-
7 nology helps to protect critical infrastructure, finan-
8 cial and banking systems, health records, online se-
9 curity, commercial transactions, proprietary enter-
10 prise and governmental information, and privacy and
11 civil liberties.

12 (6) The same technology that benefits the peo-
13 ple of the United States in so many ways also pre-
14 sents new challenges; in the wrong hands, digital se-
15 curity and communications technology can be used
16 to facilitate crime and terrorism and is used by mali-
17 cious actors, including drug traffickers, child preda-
18 tors, and cybercriminals, to carry out criminal activi-
19 ties.

20 (7) Terrorist and criminal organizations use
21 digital security and communications technology to
22 evade law enforcement and national security entities
23 when plotting attacks and recruiting supporters in
24 the United States and abroad, and law enforcement
25 and national security authorities have indicated that

1 the use of this technology presents unique challenges
2 to their ability to protect the public.

3 (8) Rapidly evolving technological advancements
4 drive the modern economy in many ways, but can
5 also create challenges for the law enforcement and
6 national security communities.

7 (9) Ensuring that analysts, law enforcement of-
8 ficers, and policymakers fully understand the dy-
9 namic digital landscape will become increasingly im-
10 portant in the coming decades.

11 (10) The United States currently faces the dif-
12 ficult question of how best to take advantage of the
13 security and privacy benefits digital security and
14 communications technology provides, while at the
15 same time ensuring that the dangers posed by the
16 use of digital security and communications tech-
17 nology by terrorists and criminals is mitigated; in-
18 deed, the challenge is to reconcile equally important
19 security interests.

20 (11) Despite years of dialogue between the
21 technology sector, law enforcement, national security
22 professionals, and others, no clear path forward has
23 been developed that would benefit each of the critical
24 security interests simultaneously; rather, there seems
25 to be a consensus among stakeholders, lawmakers,

1 and experts that the question of reconciling com-
2 peting security interests is one without an easy or
3 obvious answer.

4 (12) Leading experts and practitioners from the
5 technology sector, cryptography, law enforcement,
6 intelligence, the privacy and civil liberties commu-
7 nity, global commerce and economics, and the na-
8 tional security community must be brought together
9 to examine these issues in a systematic, holistic way
10 and determine the implications for national security,
11 public safety, data security, privacy, innovation, and
12 American competitiveness in the global marketplace.

13 (13) It is important to approach these issues
14 with recognition that the communications market-
15 place is increasingly global and marked by competi-
16 tion from foreign firms and the growing prominence
17 of international technical standards.

18 (14) With respect to competing security inter-
19 ests, it is incumbent upon the United States to be
20 forward-thinking and to assess how it can and
21 should adapt to the emerging challenges of the dig-
22 ital world.

1 **SEC. 3. ESTABLISHMENT OF THE NATIONAL COMMISSION**
2 **ON SECURITY AND TECHNOLOGY CHAL-**
3 **LENGES.**

4 (a) IN GENERAL.—There is established in the legisla-
5 tive branch a commission to be known as the “National
6 Commission on Security and Technology Challenges” (in
7 this Act referred to as the “Commission”).

8 (b) PURPOSES.—The purposes of the Commission are
9 the following:

10 (1) To bring together leading experts and prac-
11 titioners from the technology sector, cryptography,
12 law enforcement, intelligence, the privacy and civil
13 liberties community, global commerce and econom-
14 ics, and the national security community to examine
15 the intersection of security and digital security and
16 communications technology in a systematic, holistic
17 way, and determine the implications for national se-
18 curity, public safety, data security, privacy, innova-
19 tion, and American competitiveness in the global
20 marketplace.

21 (2) To submit to Congress a report, which shall
22 include, at a minimum, each of the following:

23 (A) An assessment of the issue of multiple
24 security interests in the digital world, including
25 public safety, privacy, national security, and

1 communications and data protection, both now
2 and throughout the next 10 years.

3 (B) A qualitative and quantitative assess-
4 ment of—

5 (i) the economic and commercial value
6 of cryptography and digital security and
7 communications technology to the economy
8 of the United States;

9 (ii) the benefits of cryptography and
10 digital security and communications tech-
11 nology to national security and crime pre-
12 vention;

13 (iii) the role of cryptography and dig-
14 ital security and communications tech-
15 nology in protecting the privacy and civil
16 liberties of the people of the United States;

17 (iv) the effects of the use of cryptog-
18 raphy and other digital security and com-
19 munications technology on Federal, State,
20 and local criminal investigations and
21 counterterrorism enterprises;

22 (v) the costs of weakening cryptog-
23 raphy and digital security and communica-
24 tions technology standards; and

(vi) international laws, standards, and practices regarding legal access to communications and data protected by cryptography and digital security and communications technology, and the potential effect the development of disparate, and potentially conflicting, laws, standards, and practices might have.

(C) Recommendations for policy and practice, including, if the Commission determines appropriate, recommendations for legislative changes, regarding—

(i) methods to be used to allow the United States Government and civil society to take advantage of the benefits of digital security and communications technology while at the same time ensuring that the danger posed by the abuse of digital security and communications technology by terrorists and criminals is sufficiently mitigated;

(ii) the tools, training, and resources that could be used by law enforcement and national security agencies to adapt to the new realities of the digital landscape;

1 (iii) approaches to cooperation be-
2 tween the Government and the private sec-
3 tor to make it difficult for terrorists to use
4 digital security and communications tech-
5 nology to mobilize, facilitate, and
6 operationalize attacks;

7 (iv) any revisions to the law applicable
8 to wiretaps and warrants for digital data
9 content necessary to better correspond
10 with present and future innovations in
11 communications and data security, while
12 preserving privacy and market competitive-
13 ness;

14 (v) proposed changes to the proce-
15 dures for obtaining and executing warrants
16 to make such procedures more efficient
17 and cost-effective for the Government,
18 technology companies, and telecommuni-
19 cations and broadband service providers;
20 and

21 (vi) any steps the United States could
22 take to lead the development of inter-
23 national standards for requesting and ob-
24 taining digital evidence for criminal inves-
25 tigation and prosecutions from a foreign,

1 sovereign State, including reforming the
2 mutual legal assistance treaty process,
3 while protecting civil liberties and due
4 process.

5 **SEC. 4. COMPOSITION OF COMMISSION.**

6 (a) MEMBERS.—The Commission shall be composed
7 of 16 members, as follows:

8 (1) Eight members who shall be appointed by
9 the Speaker of the House and the Senate majority
10 leader, one from each of the fields specified in sub-
11 section (b). One such member shall serve as the
12 chairman of the Commission.

13 (2) Eight members who shall be appointed by
14 the minority leader in the House and the minority
15 leader in the Senate, one from each of the fields
16 specified in subsection (b). One such member shall
17 serve as the vice chairman of the Commission.

18 (3) One additional individual who shall be ap-
19 pointed by the President and who shall serve in an
20 ex officio capacity as a nonvoting member.

21 (b) QUALIFICATIONS.—In accordance with subsection
22 (a), individuals appointed to the Commission shall be
23 United States citizens with significant knowledge and pri-
24 mary experience relevant to the mission of the Commission
25 in one of the following fields:

- 1 (1) Cryptography.
- 2 (2) Global commerce and economics.
- 3 (3) Federal law enforcement.
- 4 (4) State and local law enforcement.
- 5 (5) Consumer-facing technology sector.
- 6 (6) Enterprise technology sector.
- 7 (7) The intelligence community (as such term is
- 8 defined in section 3(4) of the National Security Act
- 9 of 1947 (50 U.S.C. 3003(4))).

10 (8) The privacy and civil liberties community.

11 (c) DEADLINE FOR APPOINTMENT.—All members of

12 the Commission, with the exception of those serving in an

13 ex officio capacity, shall be appointed by not later than

14 30 days after the date of the enactment of this Act.

15 (d) VACANCIES.—Any vacancy in the Commission

16 shall not affect its powers, but shall be filled in the same

17 manner in which the original appointment was made.

18 (e) COMPENSATION.—While away from their homes

19 or regular places of business in the performance of services

20 for the Commission, members of the Commission shall be

21 allowed travel expenses, including per diem in lieu of sub-

22 sistence, in the same manner as persons employed inter-

23 mittently in the Government service are allowed expenses

24 under section 5703 of title 5, United States Code.

25 (f) MEETINGS; RULES OF PROCEDURE; QUORUM.—

1 (1) MEETINGS.—The Commission shall hold its
2 initial meeting and begin the operations of the Com-
3 mission by not later than 60 days after the date of
4 the enactment of this Act. After such initial meeting,
5 the Commission shall meet upon the call of the
6 chairman or a majority of its members.

7 (2) QUORUM.—A simple majority of members
8 of the Commission shall constitute a quorum.

9 (3) VOTING.—No proxy voting shall be allowed
10 on behalf of a member of the Commission.

11 (4) RULES OF PROCEDURE.—The Commission
12 may establish rules for the conduct of the Commis-
13 sion's business, if such rules are not inconsistent
14 with this Act or other applicable laws.

15 (5) NOTICE.—The chairman of the Commission
16 shall provide 5 business days advance notice for any
17 meeting or hearing of the Commission.

18 (g) SECURITY CLEARANCES.—The appropriate Fed-
19 eral agencies or departments shall cooperate with the
20 Commission in expeditiously providing appropriate secu-
21 rity clearances to Commission members, as may be re-
22 quested, to the extent possible pursuant to existing proce-
23 dures and requirements, except that no person shall be
24 provided with access to classified information without the
25 appropriate security clearances.

1 **SEC. 5. REPORTS TO CONGRESS.**

2 (a) INTERIM REPORTS.—Not later than six months
3 after its initial meeting, the Commission shall submit to
4 the Speaker of the House of Representatives, the Senate
5 majority leader, the House of Representatives minority
6 leader, the Senate minority leader, the Committee on
7 Homeland Security of the House of Representatives, the
8 Committee on Homeland Security and Governmental Af-
9 fairs of the Senate, the Committee on the Judiciary of the
10 House of Representatives, the Committee on the Judiciary
11 of the Senate, the Permanent Select Committee on Intel-
12 ligence of the House of Representatives, the Select Com-
13 mittee on Intelligence of the Senate, the Committee on
14 Energy and Commerce of the House of Representatives,
15 and the Committee on Commerce, Science, and Transpor-
16 tation of the Senate a report outlining the activities of the
17 Commission to date, a plan of action moving forward, and
18 any initial findings, that have been agreed to by at least
19 12 of the 16 voting members. Thereafter, the Commission
20 may submit to the congressional entities named above any
21 additional interim reports that have been agreed to by at
22 least 12 of the 16 members of the Commission.

23 (b) FINAL REPORT.—Not later than 12 months after
24 the date of the initial meeting of the Commission, the
25 Commission shall submit to the congressional entities list-
26 ed in subsection (a) a final report containing such find-

1 ings, conclusions, and recommendations as have been
 2 agreed to by at least 12 of the 16 voting members of the
 3 Commission.

4 (c) DISSENTING VIEWS.—The Rules of Procedure es-
 5 tablished in section 4(f)(4) of this Act shall include proce-
 6 dures by which any minority of commissioners may issue
 7 dissenting views, including dissenting findings and rec-
 8 ommendations.

9 (d) FORM.—Reports required under this paragraph
 10 shall be submitted in unclassified form but may include
 11 a classified annex.

12 **SEC. 6. POWERS OF COMMISSION.**

13 (a) HEARINGS AND INFORMATION.—The Commission
 14 may, for the purpose of carrying out this Act—

15 (1) hold such hearings and sit and act at such
 16 times and places, take such testimony, receive such
 17 information, and administer such oaths as the Com-
 18 mission or such designated subcommittee or des-
 19 ignated member may determine advisable; and

20 (2) subject to paragraph (1), require, by sub-
 21 poena or otherwise, the attendance and testimony of
 22 such witnesses and the production of such books,
 23 records, correspondence, memoranda, papers, and
 24 documents, as the Commission or such designated

1 subcommittee or designated member may determine
2 advisable.

3 (b) SUBPOENAS.—

4 (1) ISSUANCE.—

5 (A) IN GENERAL.—A subpoena for infor-
6 mation that is materially relevant to the duties
7 of the Commission may be issued under this
8 subsection only by the affirmative vote of at
9 least 12 of the 16 voting members of the Com-
10 mission.

11 (B) SIGNATURE.—Subject to subparagraph
12 (A), subpoenas issued under this subsection
13 may be issued under the signature of the chair-
14 man, and may be served by any person des-
15 ignated by the chairman or by a member des-
16 ignated by a majority of the Commission.

17 (2) ENFORCEMENT.—In the case of contumacy
18 or failure to obey a subpoena issued under para-
19 graph (1), the United States district court for the
20 judicial district in which the subpoenaed person re-
21 sides, is served, or may be found, or where the sub-
22 poena is returnable, may issue an order requiring
23 such person to appear at any designated place to
24 testify or to produce documentary or other evidence.

1 Any failure to obey the order of the court may be
2 punished by the court as contempt of that court.

3 (c) CONTRACTING.—The Commission may, to such
4 extent and in such amounts as are provided in appropria-
5 tion Acts, enter into contracts to enable the Commission
6 to discharge its duties under this Act.

7 (d) INFORMATION FROM FEDERAL AGENCIES.—The
8 Commission is authorized to secure directly from any exec-
9 utive department, bureau, agency, board, commission, of-
10 fice, independent establishment, or instrumentality of the
11 Government, information, suggestions, estimates, and sta-
12 tistics for the purposes of this Act. The head of each such
13 department, bureau, agency, board, commission, office,
14 independent establishment, or instrumentality shall, to the
15 extent authorized by law, furnish such information, sug-
16 gestions, estimates, and statistics directly to the Commis-
17 sion, upon request made by the chairman and vice chair-
18 man, the chairman of any subcommittee created by a ma-
19 jority of the Commission, or any member designated by
20 a majority of the Commission.

21 (e) RECEIPT, HANDLING, AND STORAGE OF INFOR-
22 MATION.—Sensitive or proprietary information shall only
23 be received, handled, and stored by members of the Com-
24 mission and its staff consistent with all applicable stat-
25 utes, regulations, and Executive orders.

1 (f) DISSEMINATION OF INFORMATION.—Information
2 obtained by members and staff of the Commission may
3 not be revealed or disseminated outside of the Commission
4 absent approval from a majority of the members of the
5 Commission. In addition, any dissemination of information
6 must be consistent with all applicable statutes, regula-
7 tions, and Executive orders.

8 (g) ASSISTANCE FROM FEDERAL AGENCIES.—

9 (1) GENERAL SERVICES ADMINISTRATION.—

10 Upon request by the executive director of the Com-
11 mission, the Administrator of General Services shall
12 provide to the Commission on a reimbursable basis
13 administrative support and other services for the
14 performance of the Commission's functions under
15 this Act.

16 (2) OTHER DEPARTMENTS AND AGENCIES.—In
17 addition to the assistance prescribed in paragraph
18 (1), the heads of Federal departments and agencies
19 may provide to the Commission such services, funds,
20 facilities, staff, and other support services as such
21 heads may determine advisable and as may be au-
22 thorized by law.

23 (h) POSTAL SERVICES.—The Commission may use
24 the United States mail in the same manner and under the

1 same conditions as departments and agencies of the
2 United States.

3 **SEC. 7. NONAPPLICABILITY OF FEDERAL ADVISORY COM-**
4 **MITTEE ACT.**

5 The Federal Advisory Committee Act (5 U.S.C. App.)
6 shall not apply to the Commission.

7 **SEC. 8. STAFF.**

8 (a) APPOINTMENT.—The chairman and vice chair-
9 man shall jointly appoint and fix the compensation of an
10 executive director and of and such other personnel as may
11 be necessary to enable the Commission to carry out its
12 functions under this Act.

13 (b) SECURITY CLEARANCES.—The appropriate Fed-
14 eral agencies or departments shall cooperate with the
15 Commission in expeditiously providing appropriate secu-
16 rity clearances to Commission staff, as may be requested,
17 to the extent possible pursuant to existing procedures and
18 requirements, except that no person shall be provided with
19 access to classified information without the appropriate se-
20 curity clearances.

21 (c) DETAILEES.—Any Federal Government employee
22 may be detailed to the Commission on a reimbursable
23 basis, and such detailee shall retain without interruption
24 the rights, status, and privileges of his or her regular em-
25 ployment.

1 (d) EXPERT AND CONSULTANT SERVICES.—The
2 Commission is authorized to procure the services of ex-
3 perts and consultants in accordance with section 3109 of
4 title 5, United States Code, but at rates not to exceed the
5 daily rate paid a person occupying a position level IV of
6 the Executive Schedule under section 5315 of title 5,
7 United States Code.

8 (e) VOLUNTEER SERVICES.—Notwithstanding sec-
9 tion 1342 of title 31, United States Code, the Commission
10 may accept and use voluntary and uncompensated services
11 as the Commission determines necessary.

12 **SEC. 9. MEETING AND HEARINGS.**

13 (a) 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 section 5.

19 (b) 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 devel-
22 oped for or by the Commission, as required by any applica-
23 ble statute, regulation, or Executive order.

24 (c) PRIVATE HEARINGS.—Any private hearings of
25 the Commission shall be conducted in a manner consistent

1 with the protection of information provided to, or devel-
2 oped for or by the Commission, as required by any applica-
3 ble statute, regulation, or Executive order. To the extent
4 practicable, the Commission shall release summaries of
5 any official private hearings.

6 **SEC. 10. TERMINATION.**

7 (a) IN GENERAL.—The Commission, and all the au-
8 thorities of this Act, shall terminate on the date that is
9 60 days after the date on which the final report is sub-
10 mitted under section 5(b).

11 (b) ADMINISTRATIVE ACTIVITIES BEFORE TERMI-
12 NATION.—The Commission may use the 60-day period re-
13 ferred to in subsection (a) for the purpose of concluding
14 its activities, including providing testimony to committees
15 of Congress concerning its reports and disseminating the
16 final report under section 5(b).

17 **SEC. 11. FUNDING.**

18 (a) AUTHORIZATION OF APPROPRIATION.—No addi-
19 tional funds are authorized to be appropriated to carry
20 out this Act.

21 (b) DURATION OF AVAILABILITY.—Amounts made
22 available to the Commission under subsection (a) are au-
23 thorized to remain available until the termination of the
24 Commission in accordance with section 10.

1 (c) REMAINING FUNDS.—Any funds remaining upon
2 termination of the Commission under section 10 shall be
3 returned to the general fund of the Treasury for the pur-
4 pose of deficit reduction.

○