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1st Session
S. 12

To combat international terrorism, and for other purposes.

IN THE SENATE OF THE UNITED STATES

January 24, 2005

Mr. BIDEN (for himself, Mr. REID, Mr. BINGAMAN, Ms. MIKULSKI, Mr. DURBIN, Ms. STABENOW, MR. ROCKEFELLER, Mr. LAUTENBERG, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To combat international terrorism, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 224. NATIONAL COMMISSION TO REVIEW POLICY REGARDING THE TREATMENT OF DETAINEES.

- (a) ESTABLISHMENT OF COMMISSION- There is established the National Commission To Review Policy Regarding the Treatment of Detainees.
- (b) PURPOSES- The purposes of the Commission are as follows:
- (1) To examine and report upon the role of policymakers in the development of intelligence related to the treatment of individuals detained during Operation Iraqi Freedom or Operation Enduring Freedom.
 - (2) To examine and report on the impact of the abuse of prisoners by the United States personnel on the security of the Armed Forces of the United States.
 - (3) To build upon the reviews of the policies of the United States related to the treatment of individuals detained by the United States, including such reviews conducted by the executive branch, Congress, or other entities.
- (c) COMPOSITION OF THE COMMISSION-
- (1) MEMBERS- The Commission shall be composed of 15 members, of whom--
 - (A) 3 members shall be appointed by the majority leader of the Senate;
 - (B) 3 members shall be appointed by the Speaker of the House of Representatives;
 - (C) 3 members shall be appointed by the minority leader of the Senate;

(D) 3 members shall be appointed by the minority leader of the House of Representatives;

(E) 1 member shall be appointed by the Judge Advocate General of the Army;

(F) 1 member shall be appointed by the Judge Advocate General of the Navy; and

(G) 1 member shall be appointed by the Judge Advocate General of the Air Force.

(2) CHAIRPERSON; VICE CHAIRPERSON-

(A) IN GENERAL- Subject to subparagraph (B), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(B) POLITICAL PARTY AFFILIATION- The Chairperson and Vice Chairperson may not be from the same political party.

(3) INITIAL MEETING- Once 9 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(4) QUORUM; VACANCIES- After its initial meeting, the Commission shall meet upon the call of the Chairperson or a majority of its members. Eight members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(5) SENSE OF CONGRESS ON QUALIFICATIONS OF COMMISSION MEMBERS- It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in the fields of intelligence, law enforcement, or foreign affairs, or experience serving the United States Government, including service in the Armed Forces.

(d) FUNCTIONS OF THE COMMISSION- The functions of the Commission are--

(1) to conduct an investigation that--

(A) investigates the development of policy relating to individuals detained during Operation Iraqi Freedom or Operation Enduring Freedom;

(B) determines whether the United States policy related to the treatment of detained individuals has adversely affected the security of the members of the Armed Forces of the United States;

(C) determines whether and to what extent the incidences of abuse of detained individuals has affected the standing of the United States in the world;

(D) determines whether and to what extent leaders of the United States Armed Forces were given the opportunity to comment on and influence policy relating to treatment of detained individuals; and

(E) determines whether and to what extent policy relating to the treatment of individuals detained during Operation Iraqi Freedom or Operation Enduring Freedom differed from the policies and practices regarding detainees established by the Armed Forces prior to such operations; and

(2) to submit to the President and Congress such report as is required by this section containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

(e) POWERS OF THE COMMISSION-

(1) IN GENERAL-

(A) HEARINGS AND EVIDENCE- The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this section--

(i) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(ii) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, cables, electronic messages, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(B) SUBPOENAS-

(i) ISSUANCE- Subpoenas issued under subparagraph (A)(ii) may be issued under the signature of the Chairperson of the Commission, the Vice Chairperson of the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the Chairperson, subcommittee chairperson, or member.

(ii) ENFORCEMENT-

(I) IN GENERAL- In the case of contumacy or failure to obey a subpoena issued under subparagraph (A)(ii), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(II) ADDITIONAL ENFORCEMENT- In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(2) CLOSED MEETINGS-

(A) IN GENERAL- Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(B) ADDITIONAL AUTHORITY- In addition to the authority under subparagraph (A), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(3) CONTRACTING- The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this section.

(4) INFORMATION FROM FEDERAL AGENCIES- The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this section. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(5) ASSISTANCE FROM FEDERAL AGENCIES-

(A) GENERAL SERVICES ADMINISTRATION- The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(B) OTHER DEPARTMENTS AND AGENCIES- In addition to the assistance prescribed in subparagraph (A), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(6) GIFTS- The Commission may accept, use, and dispose of gifts or donations of services or property.

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

(f) STAFF OF THE COMMISSION-

(1) APPOINTMENT AND COMPENSATION- The Chairperson and Vice Chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and

subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES-

(A) IN GENERAL- The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION- Subparagraph (A) shall not be construed to apply to a member of the Commission.

(3) DETAILEES- Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(4) CONSULTANT SERVICES- The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(g) COMPENSATION AND TRAVEL EXPENSES-

(1) COMPENSATION- Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES- While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(h) SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF- The appropriate departments and agencies of the Government shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

(i) REPORT OF THE COMMISSION- Not later than 9 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress a report containing such findings, conclusions, and recommendations as have been agreed to by a majority of Commission members.

(j) TERMINATION-

(1) TERMINATION- The Commission, and all the authorities of this section, shall terminate 60 days after the date on which the report is submitted under subsection (i).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION- The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

(k) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Commission to carry out this section \$5,000,000, to remain available until expended.