

107TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. EDWARDS (for himself and Mr. SCHUMER) introduced the following bill;
which was read twice and referred to the Committee on _____

A BILL

To establish a commission to evaluate investigative and surveillance technologies to meet law enforcement and national security needs in the manner that best preserves the personal dignity, liberty, and privacy of individuals within the United States.

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 “Security and Liberty
5 Preservation Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The terrorist attacks of September 11,
9 2001, and the continuing threat of further attacks,

1 are an assault on the safety and security of all
2 Americans.

3 (2) The threat of further acts of terrorism has
4 necessitated an expansion of the authority of govern-
5 ment to conduct surveillance and collect data.

6 (3) While recognizing the need for additional
7 security measures, Americans remain deeply com-
8 mitted to the individual dignity, liberty, and privacy
9 rooted in United States history and protected by the
10 Constitution of the United States.

11 (4) Different investigative technologies and
12 methods can achieve the same security goals in ways
13 that have substantially different impacts on indi-
14 vidual rights.

15 (5) The government should conduct investiga-
16 tions and surveillance in a manner that fully ad-
17 dresses law enforcement and national security needs
18 in the manner that best preserves the personal dig-
19 nity, liberty, and privacy of individuals within the
20 United States.

21 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

22 (a) ESTABLISHMENT.—There is established the Com-
23 mission on Enhancing Security and Preserving Freedom
24 (in this Act referred to as the “Commission”).

25 (b) MEMBERSHIP.—

1 (1) COMPOSITION.—The Commission shall be
2 composed of 17 members of whom—

3 (A) five shall be representatives of the
4 Federal Government, including—

5 (i) the Attorney General, or the Attor-
6 ney General's designee;

7 (ii) the Secretary of the Treasury, or
8 the Secretary's designee;

9 (iii) the Secretary of Commerce, or
10 the Secretary's designee;

11 (iv) the Director of Central Intel-
12 ligence, or the Director's designee; and

13 (v) the Director of Homeland Secu-
14 rity, or the Director's designee;

15 (B) four shall be appointed by the Majority
16 Leader of the Senate;

17 (C) two shall be appointed by the Minority
18 Leader of the Senate;

19 (D) four shall be appointed by the Speaker
20 of the House of Representatives; and

21 (E) two shall be appointed by the Minority
22 Leader of the House of Representatives.

23 (2) LIMITATION ON DESIGNEES.—An individual
24 may not be designated for membership on the Com-
25 mission under paragraph (1)(A) unless the indi-

1 vidual holds a position in the United States Govern-
2 ment by appointment of the President, by and with
3 the advice and consent of the Senate.

4 (3) APPOINTMENTS BY CONGRESSIONAL LEAD-
5 ERSHIP.—

6 (A) REQUIREMENTS.—Of the individuals
7 appointed under subparagraphs (B) through
8 (E) of paragraph (1)—

9 (i) at least one shall be an officer or
10 employee of a State law enforcement agen-
11 cy; and

12 (ii) at least one shall be an officer or
13 employee of a local law enforcement agen-
14 cy.

15 (B) LIMITATION.—No individual may be
16 appointed under subparagraphs (B) through
17 (E) of paragraph (1) if the individual is an of-
18 ficer or employee of the Federal Government or
19 an active member of the uniformed services.

20 (C) SENSE OF CONGRESS.—It is the sense
21 of Congress that in making appointments to the
22 Commission under subparagraphs (B) through
23 (E) of paragraph (1) the Members of Congress
24 referred to in such subparagraphs should seek
25 to appoint individuals with varying viewpoints

1 on and areas of expertise in the matters to be
2 covered by the Commission, including individ-
3 uals from the technology industry, non-profit
4 entities, and academia.

5 (c) PERIOD OF APPOINTMENT; VACANCIES.—Mem-
6 bers of the Commission shall be appointed for the life of
7 the Commission. Any vacancy in the Commission shall not
8 affect its powers, but shall be filled in the same manner
9 as the original appointment.

10 (d) SECURITY CLEARANCES.—

11 (1) IN GENERAL.—Each individual appointed to
12 the Commission under subparagraphs (B) through
13 (E) of subsection (d)(1) shall possess a security
14 clearance appropriate for the work of the Commis-
15 sion under this Act.

16 (2) FAILURE TO SECURE CLEARANCE.—

17 (A) INITIAL APPOINTMENTS.—If an indi-
18 vidual initially appointed under subparagraphs
19 (B) through (E) of subsection (d)(1) without a
20 security clearance does not secure a security
21 clearance by the commencement of the work of
22 the Commission, the appointment shall be
23 deemed vacant.

24 (B) APPOINTMENTS TO VACANCIES.—If an
25 individual appointed to a vacancy in a position

1 under subparagraphs (B) through (E) of sub-
2 section (d)(1) without a security clearance does
3 not does not secure a security clearance within
4 a reasonable period (as determined by the Com-
5 mission), the appointment shall be deemed va-
6 cant.

7 (3) PROCESSING OF CLEARANCES.—The Attor-
8 ney General shall seek to ensure the timely proc-
9 essing of any applications for security clearances for
10 purposes of this subsection.

11 (e) CHAIRMAN.—The Commission shall select a
12 Chairman from among its members.

13 (f) INITIAL MEETING.—Not later than 30 days after
14 the date on which nine members of the Commission have
15 been appointed, the Commission shall hold its first meet-
16 ing.

17 (g) MEETINGS.—The Commission shall meet at the
18 call of the Chairman.

19 (h) QUORUM.—A majority of the members of the
20 Commission shall constitute a quorum, but a lesser num-
21 ber of members may hold hearings.

22 **SEC. 4. DUTIES OF COMMISSION.**

23 (a) INVESTIGATION.—The Commission shall conduct
24 a thorough investigation of the following:

1 (1) Standards for using, selecting, and oper-
2 ating investigative and surveillance technologies to
3 meet law enforcement and national security needs in
4 the manner that best preserves the personal dignity,
5 liberty, and privacy of individuals within the United
6 States.

7 (2) The advisability of establishing within the
8 Government one or more entities or procedures to
9 ensure that the Government uses investigative and
10 surveillance technologies to meet law enforcement
11 and national security needs in the manner that best
12 preserves the personal dignity, liberty, and privacy
13 of individuals within the United States.

14 (b) REPORT.—

15 (1) IN GENERAL.—Not later than 18 months
16 years after the date of the initial meeting of the
17 Commission, the Commission shall submit to the
18 President and Congress a report which shall contain
19 a detailed statement of the findings and conclusions
20 of the Commission, together with its recommenda-
21 tions for such legislation and administrative actions
22 as it considers appropriate.

23 (2) FORM OF REPORT.—The report under para-
24 graph (1) shall be submitted in unclassified form,
25 but may include a classified annex.

1 (c) INVESTIGATIVE AND SURVEILLANCE TECH-
2 NOLOGIES DEFINED.—In this section, the term “inves-
3 tigative and surveillance technologies” means technologies
4 that may be used by the Federal Government, and by
5 State and local governments, to monitor and collect infor-
6 mation about individuals in the absence of reasonable,
7 articulable suspicion of criminal activity, including—

- 8 (1) Internet surveillance technologies;
- 9 (2) data mining technologies;
- 10 (3) surveillance camera technologies;
- 11 (4) x-ray body scan technologies;
- 12 (5) biometric technologies; and
- 13 (6) other technologies identified by the Commis-
14 sion for purposes of this Act.

15 **SEC. 5. POWERS OF COMMISSION.**

16 (a) HEARINGS.—

17 (1) IN GENERAL.—The Commission or, at its
18 direction, any subcommittee or member of the Com-
19 mission, may, for the purpose of carrying out this
20 Act—

21 (A) hold such hearings, sit and act at such
22 times and places, take such testimony, receive
23 such evidence, administer such oaths; and

24 (B) require, by subpoena or otherwise, the
25 attendance and testimony of such witnesses and

1 the production of such books, records, cor-
2 respondence, memoranda, papers, documents,
3 tapes, and materials,
4 as the Commission or such subcommittee or member
5 considers advisable.

6 (2) PUBLIC MEETINGS.—To the maximum ex-
7 tent practicable, the meetings of the Commission
8 shall be open to the public.

9 (3) CLOSED MEETINGS.—

10 (A) IN GENERAL.—Meetings of the Com-
11 mission may be closed to the public under sec-
12 tion 10(d) of the Federal Advisory Committee
13 Act (5 U.S.C. App.) or other applicable law.

14 (B) ADDITIONAL AUTHORITY.—In addition
15 to the authority under subparagraph (A), para-
16 graphs (1) and (3) of section 10(a) of the Fed-
17 eral Advisory Committee Act shall not apply to
18 any portion of a Commission meeting if the
19 President determines that such portion or por-
20 tions of that meeting is likely to disclose mat-
21 ters that could endanger national security. If
22 the President makes such determination, the re-
23 quirements relating to a determination under
24 section 10(d) of that Act shall apply.

1 (4) PUBLIC SUMMARY OF CLOSED PRO-
2 CEEDINGS.—Whenever practicable, the Commission
3 shall maintain and make available for public inspec-
4 tion an unclassified summary of any classified infor-
5 mation considered by the Commission and of any
6 classified meeting or proceeding conducted by the
7 Commission.

8 (b) ISSUANCE AND ENFORCEMENT OF SUB-
9 POENAS.—

10 (1) ISSUANCE.—Subpoenas issued under sub-
11 section (a) shall bear the signature of the Chairman
12 of the Commission and shall be served by any person
13 or class of persons designated by the Chairman for
14 that purpose.

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

1 (c) WITNESS ALLOWANCES AND FEES.—Section
2 1821 of title 28, United States Code, shall apply to wit-
3 nesses requested or subpoenaed to appear at any hearing
4 of the Commission. The per diem and mileage allowances
5 for witnesses shall be paid from funds available to pay the
6 expenses of the Commission.

7 (d) PROCEDURES.—The Commission may adopt pro-
8 cedures for the work of the Commission under this Act.
9 Any portion of such procedures relating to the treatment
10 of confidential or classified information shall not go into
11 effect until jointly approved by the Attorney General and
12 the Director of Central Intelligence.

13 (e) INFORMATION FROM FEDERAL AGENCIES.—The
14 Commission may secure directly from any Federal depart-
15 ment or agency such information as the Commission con-
16 siderers necessary to carry out this Act. Upon request of
17 the Chairman of the Commission, the head of such depart-
18 ment or agency shall furnish such information to the Com-
19 mission.

20 (f) POSTAL SERVICES.—The Commission may use
21 the United States mails in the same manner and under
22 the same conditions as other departments and agencies of
23 the Federal Government.

24 (g) GIFTS.—The Commission may accept, use, and
25 dispose of gifts or donations of services or property.

1 **SEC. 6. COMMISSION PERSONNEL MATTERS.**

2 (a) COMPENSATION OF MEMBERS.—Members of the
3 Commission shall serve without compensation for their
4 service as member of the Commission. All members of the
5 Commission who are officers or employees of the United
6 States shall serve without compensation in addition to that
7 received for their services as officers or employees of the
8 United States.

9 (b) TRAVEL EXPENSES.—The members of the Com-
10 mission shall be allowed travel expenses, including per
11 diem in lieu of subsistence, at rates authorized for employ-
12 ees of agencies under subchapter I of chapter 57 of title
13 5, United States Code, while away from their homes or
14 regular places of business in the performance of services
15 for the Commission.

16 (c) STAFF.—

17 (1) IN GENERAL.—The Chairman of the Com-
18 mission may, without regard to the civil service laws
19 and regulations, appoint and terminate an executive
20 director and such other additional personnel as may
21 be necessary to enable the Commission to perform
22 its duties. The employment of an executive director
23 shall be subject to confirmation by the Commission.

24 (2) COMPENSATION.—The Chairman of the
25 Commission may fix the compensation of the execu-
26 tive director and other personnel without regard to

1 chapter 51 and subchapter III of chapter 53 of title
2 5, United States Code, relating to classification of
3 positions and General Schedule pay rates, except
4 that the rate of pay for the executive director and
5 other personnel may not exceed the rate payable for
6 level V of the Executive Schedule under section 5316
7 of such title.

8 (3) SECURITY CLEARANCES.—The executive di-
9 rector and any other personnel of the Commission
10 shall possess security clearances appropriate for the
11 work of the Commission.

12 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any
13 Federal Government employee may be detailed to the
14 Commission without reimbursement, and such detail shall
15 be without interruption or loss of civil service status or
16 privilege.

17 (e) PROCUREMENT OF TEMPORARY AND INTERMIT-
18 TENT SERVICES.—The Chairman of the Commission may
19 procure temporary and intermittent services under section
20 3109(b) of title 5, United States Code, at rates for individ-
21 uals which do not exceed the daily equivalent of the annual
22 rate of basic pay prescribed for level V of the Executive
23 Schedule under section 5316 of such title.

1 **SEC. 7. TERMINATION OF COMMISSION.**

2 The Commission shall terminate 60 days after the
3 date on which the Commission submits its report under
4 section 4(b).

5 **SEC. 8. FUNDING.**

6 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
7 are authorized to be appropriated for each of fiscal years
8 2003, 2004, and 2005 such sums as may be necessary
9 for the Commission to carry out this Act in such fiscal
10 year.

11 (b) **TRANSFER OF FUNDS.**—If no funds are appro-
12 priated to the Commission by the end of the session of
13 Congress ending in a fiscal year specified in subsection
14 (a), the Secretary of Commerce shall, from amounts ap-
15 propriated or otherwise available to the Secretary for such
16 fiscal year, transfer to the Commission an amount nec-
17 essary to permit the Commission to carry out this Act in
18 such fiscal year.

19 (c) **AVAILABILITY.**—Any amounts appropriated to
20 the Commission under subsection (a), or transferred to the
21 Commission under subsection (b), shall remain available,
22 without fiscal year limitation, until expended.