

103D CONGRESS
1ST SESSION

H. R. 2245

To establish a Permanent Performance Review Commission.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1993

Mr. FRANKS of New Jersey introduced the following bill; which was referred jointly to the Committees on Government Operations and Rules

A BILL

To establish a Permanent Performance Review Commission.

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 “Permanent Perform-
5 ance Review Act of 1993”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 The Congress finds that—

8 (1) the central purpose of our democratic gov-
9 ernment is to effectuate the will of a free people;
10 that, in its pursuit of that purpose, the Congress’
11 principal purpose is to enact laws which properly
12 embody that will and which ensure that agencies

1 charged with the execution of those laws are vested
2 with such authority and endowed with such re-
3 sources as may be requisite therefor and useful
4 thereto; that the corresponding principal function of
5 the executive is to pursue the implementation of
6 those laws through the exercise of the authority so
7 accorded to it; and that beyond the duties peculiar
8 to each, these two branches of government bear as
9 well a joint and ongoing responsibility for ensuring
10 that the implementation of public policy is conducted
11 effectively and efficiently, that the executive's exer-
12 cise of its authority advances the aims and respects
13 the restrictions incorporated in the law under which
14 the authority was conferred, that both the regulation
15 of private behavior and the expenditure of public
16 moneys continue to be justified by actual benefits
17 flowing therefrom, that the unintended harms or in-
18 equities arising from the operation of laws enacted
19 and implemented in good faith are promptly uncov-
20 ered and remedied, and that government maintains
21 in its conduct of the affairs of the people the high
22 standards which it is morally and legally obligated to
23 observe as their steward and trustee.

24 (2) The Congress finds that, to meet the re-
25 sponsibilities of government hereinabove declared, it

1 is necessary and appropriate that the performance of
2 government be reviewed and evaluated, and that the
3 scope of the review and evaluation should extend as
4 broadly as is practicable to the various organiza-
5 tional, program and budgetary elements of all public
6 service activities directly or indirectly funded in
7 whole or in part by the government. The Congress
8 finds in addition that the review and evaluation of
9 executive branch performance ought properly to be
10 undertaken jointly by the Congress and the executive
11 and with the assistance, where appropriate, of par-
12 ties outside of the national government; that the
13 Congress' participation in the review and evaluation
14 process can be most effectively conducted by a bipar-
15 tisan commission which shall, for each review and
16 evaluation of a particular agency, draw upon mem-
17 bers having substantial knowledge for the missions
18 and objectives of that agency; and that the commis-
19 sion should have available for its use and exercise all
20 resources and powers appropriate to the duties with
21 which it is charged. Furthermore, the Congress finds
22 that such a commission would also be the most suit-
23 able instrument through which to conduct the review
24 and evaluation of agency operations.

1 **SEC. 3. DEFINITIONS.**

2 For purposes of this Act:

3 (1) AGENCY.—The term “agency” means a cabinet-level department listed in section 101 of title 5, United States Code, or any executive agency, as defined in section 105 of such title 5, whose budget exceeded \$1,000,000,000 in fiscal year 1993.

8 (2) AGENCY SELF-STUDY.—The term “agency self-study” means the initial collection, analysis, and report of performance data developed by each agency at the direction of the Commission. An agency self-study is the basis for the subsequent analysis and recommendations embodied in the Commission’s performance review.

15 (3) COMMISSION.—The term “Commission” means the Permanent Performance Review Commission established by section 4.

18 (4) IMPLEMENTATION BILL.—The term “implementation bill” means a bill introduced pursuant to a recommendation from a committee that receives a performance review from the Commission and holds hearings regarding the performance review.

23 (5) PERFORMANCE GOAL.—The term “performance goal” means a target level of performance expressed as a tangible, measurable objective against which actual achievement shall be compared, includ-

1 ing a goal expressed as a quantitative standard,
2 value, or rate.

3 (6) PERFORMANCE INDICATOR.—The term
4 “performance indicator” refers to a particular value
5 or characteristic used to measure, in either a qual-
6 itative or quantitative form, the results of a program
7 activity and how they compare to the program’s in-
8 tended results or performance goals.

9 (7) PERFORMANCE REVIEW.—The term “per-
10 formance review” refers to the Commission’s de-
11 scription and analysis of an agency’s programs
12 based on the programs’ performance goals and rel-
13 evant performance indicators, accompanied by a line-
14 by-line set of legislative recommendations developed
15 by the Commission, reviewed by the appropriate
16 Congressional committees, and then, if approved,
17 submitted in bill form by the chairpersons of the ap-
18 propriate Congressional committees.

19 (8) PROGRAM ACTIVITY.—The term “program
20 activity” means a specific activity or project as listed
21 in the program and financing schedules of the an-
22 nual budget of the United States Government.

23 **SEC. 4. ESTABLISHMENT OF COMMISSION.**

24 There is established a commission to be known as the
25 “Permanent Performance Review Commission”.

1 **SEC. 5. FUNCTIONS OF COMMISSION.**

2 (a) IN GENERAL.—The Commission shall—

3 (1) establish and manage a schedule of agency
4 self-studies to be conducted by the agencies of the
5 United States over a fixed period of time;6 (2) hold hearings as part of an overall assess-
7 ment and transformation of the data presented in an
8 agency's self-study into a performance review to be
9 developed by the Commission;10 (3) submit the performance review and legisla-
11 tive recommendations to the President and the Con-
12 gress; and13 (4) make the performance review and legislative
14 recommendations available to the public.15 (b) SPECIFIC DUTIES.—In carrying out its functions
16 under subsection (a), the Commission shall—17 (1) ensure that each agency is reviewed at least
18 once every 10 years;19 (2) by vote of the majority of the Commission
20 on or before February 5 of each year, establish a
21 schedule of the agencies that will be reviewed and
22 the order of review for the next 2 years;23 (3) notify, in writing, each agency listed on the
24 schedule of its responsibility for conducting an agen-
25 cy self-study and the dates on which it must submit

1 progress reports and the final agency self-study re-
2 port;

3 (4) hold hearings on the agency self-study re-
4 port submitted by each agency;

5 (5) consult the chairpersons and the ranking
6 minority members of the appropriate congressional
7 committees regarding the agency self-study report
8 submitted by each agency; and

9 (6) submit a performance review and legislative
10 recommendations to the President and the Congress
11 not more than 21 months after receiving an agency
12 self-study report from an agency.

13 **SEC. 6. MEMBERSHIP OF COMMISSION.**

14 (a) NUMBER AND METHOD OF APPOINTMENT.—The
15 Commission shall be composed of 28 members, of which
16 23 will be voting members and 5 will be nonvoting, ex
17 officio members. The members shall be appointed as fol-
18 lows:

19 (1) VOTING MEMBERS.—All appointments of
20 voting members of the Commission shall be made
21 jointly by the majority and minority leaders of the
22 Senate and the Speaker and minority leader of the
23 House of Representatives from individuals rec-
24 ommended as follows:

1 (A) RECOMMENDATIONS BY PRESIDENT.—
2 15 voting members shall be appointed from
3 among individuals recommended by the Presi-
4 dent. In making the recommendations, the
5 President shall ensure that not more than 8
6 members are affiliated with the same political
7 party.

8 (B) RECOMMENDATIONS BY CONGRESS.—8
9 additional voting members shall be appointed,
10 with 2 members each appointed from individ-
11 uals recommended by each of the following:

- 12 (i) Majority leader of the Senate.
- 13 (ii) Minority leader of the Senate.
- 14 (iii) Speaker of the House.
- 15 (iv) Minority leader of the House.

16 (2) NONVOTING, EX OFFICIO MEMBERS.—The
17 nonvoting, ex officio members of the Commission are
18 the following:

19 (A) Director of the Office of Management
20 and Budget.

21 (B) Majority leader of the Senate.

22 (C) Minority leader of the Senate.

23 (D) Speaker of the House.

24 (E) Minority leader of the House.

25 (b) QUALIFICATIONS OF VOTING MEMBERS.—

(A) at least 1 shall be a person with explicit, in-depth experience in reforming large organizational systems;

13 (B) at least 1 shall be a person who both
14 has business experience and has held a high-
15 level position within an agency; and

16 (C) at least 1 shall be an individual who
17 has an extensive research background concern-
18 ing organizational reform, either in theoretical
19 work or in analysis of real world events.

20 (c) TERMS.—

21 (1) IN GENERAL.—Each member of the Com-
22 mission shall be appointed for a term of 2 years, ex-
23 cept as provided in paragraphs (2) and (3).

12 (d) PAY.—

1 (e) CHAIRPERSON.—The President shall designate 1
2 member of the Commission to be the chairperson of the
3 Commission.

4 (f) APPOINTMENT DEADLINE.—All initial appointees
5 shall be appointed under this section within 60 days after
6 the date of the enactment of this Act.

7 **SEC. 7. DIRECTOR AND STAFF OF COMMISSION.**

8 (a) DIRECTOR.—The Commission shall appoint a Di-
9 rector. The Director shall be paid at a rate not to exceed
10 the rate of basic pay payable for level IV of the Executive
11 Schedule under section 5315 of title 5, United States
12 Code.

13 (b) STAFF.—

14 (1) APPOINTMENT.—The Director, with the ap-
15 proval of the Commission, may appoint and fix the
16 pay of additional personnel.

17 (2) ASSIGNMENT.—Upon request of the Direc-
18 tor, the head of any agency may assign any of the
19 personnel of the agency to the Commission to assist
20 in carrying out the Commission's review of the agen-
21 cy. Any employee of the Federal Government may be
22 assigned under this paragraph without reimburse-
23 ment to the assigning agency and without interrup-
24 tion or loss of civil service status or privilege.

1 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE
2 LAWS.—The staff of the Commission may be appointed
3 without regard to the provisions of title 5, United States
4 Code, governing appointments in the competitive service
5 and may be paid without regard to the provisions of chap-
6 ter 51 and subchapter III of chapter 53 of title 5, United
7 States Code, relating to classification and General Sched-
8 ule pay rates, except that an individual so appointed may
9 not receive pay in excess of 120 percent of the minimum
10 rate of basic pay payable for GS-15 of the General Sched-
11 ule.

12 (d) EXPERTS AND CONSULTANTS.—With the ap-
13 proval of the Commission, the Director may procure by
14 contract, to the extent funds are available, the temporary
15 or intermittent services of experts or consultants pursuant
16 to section 3109 of title 5, United States Code.

17 **SEC. 8. POWERS OF COMMISSION.**

18 (a) HEARINGS AND SESSIONS.—To carry out this
19 Act, the Commission may hold hearings, sit and act at
20 times and places, take testimony, and receive evidence as
21 the Commission considers appropriate. The Commission
22 may also administer oaths or affirmations to witnesses ap-
23 pearing before it.

24 (b) POWERS OF MEMBERS AND AGENTS.—Any mem-
25 ber or agent of the Commission may, if authorized by the

1 Commission, take any action that the Commission is au-
2 thorized to take.

3 (c) OBTAINING OFFICIAL DATA.—The Commission
4 may secure additional information necessary for it to carry
5 out this Act from the head of any agency. Upon request
6 of the chairperson of the Commission, the head of an
7 agency shall furnish the requested information within 30
8 days after the request or within the time specified by the
9 chairperson of the Commission.

10 (d) MAI LS.—The Commission may use the United
11 States mails in the same manner and under the same con-
12 ditions as other agencies.

13 (e) AUTHORITY TO ENTER INTO CONTRACTS.—The
14 Commission may lease space to the extent that funds are
15 available.

16 **SEC. 9. DUTIES OF AGENCIES SUBJECT TO PERFORMANCE**

17 **REVIEW.**

18 (a) IN GENERAL.—An agency notified by the Com-
19 mission that it is on the performance review schedule
20 shall—

21 (1) conduct an agency self-study beginning 90
22 days before the agency self-study report is due and
23 write an agency self-study report meeting the cri-
24 teria established in subsection (c);

3 (3) submit a 2d progress report to the Commis-
4 sion 30 days before the agency self-study report is
5 due; and

6 (4) submit the agency self-study report to the
7 Commission on the date scheduled by the Commis-
8 sion.

9 (b) PROGRESS REPORTS.—Each progress report shall
10 present in detail the full range of programs being reviewed
11 and the status of each review.

12 (c) AGENCY SELF-STUDY REPORT.—Each agency
13 self-study report shall include the following:

14 (1) MISSION STATEMENT.—A comprehensive
15 mission statement covering the functions and oper-
16 ations of the agency and all its subdivisions.

22 (3) STATUTORY REFERENCES.—A citation to
23 the statute that establishes or authorizes the estab-
24 lishment of each program, a statement of the objec-
25 tives of the program as prescribed by statute or ad-

1 ministrative order, and for each of the objectives, a
2 detailed statement of the way in which each program
3 activity contributes to the attainment or furtherance
4 of the objectives.

5 (4) BUDGETS.—A review of the budgets for
6 each program for each of the preceding 5 years.

7 (5) PERSONNEL LEVELS.—A statement of the
8 personnel levels associated with each program for
9 the previous fiscal year, the preceding 4 fiscal years,
10 and the 10th and 15th fiscal years preceding the
11 most recent fiscal year.

12 (6) PRIORITY OF PROGRAMS.—A comparative
13 assessment that establishes a priority order for each
14 program in the overall institutional mission of the
15 agency.

16 (7) PERFORMANCE GOALS.—A statement of the
17 specific performance goals that are used to define
18 the levels of performance achieved by the particular
19 activities of each program. When possible the goals
20 shall be measured in quantifiable forms and applica-
21 ble across program activities.

22 (8) PERFORMANCE LEVEL.—A comparison of
23 each performance goal with the actual level of per-
24 formance measured using a performance indicator.

1 (9) CUSTOMER SATISFACTION.—An analysis of
2 how effectively each program met the expectations
3 and needs of its customers, with special attention to
4 the handling of complaints and suggestions for im-
5 provements as well as an explicit discussion of the
6 sources for such an analysis.

14 (11) VERIFICATION AND VALIDATION.—An ex-
15 plicit review of the means used by each agency to
16 verify and validate all of the above measured values,
17 as well as a description of the current annual evalua-
18 tions in place used to update and reformulate pro-
19 gram goals and operations.

20 (12) COST EFFECTIVENESS.—An assessment of
21 the cost effectiveness of each program activity, in-
22 cluding, when possible, a quantifiable cost-benefit
23 analysis.

24 (13) PAPERWORK AND PROCEDURAL REQUIRE-
25 MENTS.—A review of the paperwork and procedural

1 requirements of each program and the costs associated
2 with the requirements.

3 (14) CONTRACTS AND PROCUREMENT.—A review of each program's contracts and procurement
4 histories.

5 (15) FEDERAL GRANTS TO STATE AND LOCAL
6 GOVERNMENTS.—A review of Federal grants to
7 State or local governments in any program over the
8 preceding 5 years, and an analysis of the explicit criteria
9 for awarding the grants, with the goal of identifying any criteria that are performance based.

10 (16) FINANCIAL AND INFORMATION SYSTEMS.—A review and analysis of the agencywide financial and information systems and the extent to
11 which the introduction of new, more efficient forms of financial- and information-systems management could contribute significantly to better service.

12 (17) EMPLOYEE INVOLVEMENT.—A review of the effect of current managerial practices intended
13 to involve employees more effectively in assessing and reformulating the goals and procedures of each
14 program activity.

15 (18) TRAINING.—A survey of all training programs for managers and other employees, and an
16 analysis of their effectiveness.

10 (A) actions the agency would take if the
11 funds available were fixed at—

21 (iii) an amount equal to the same
22 amount of funds available during the fiscal
23 year ending on the preceding September
24 30;

1 (iv) an amount equal to 105 percent
2 of the amount of funds available during
3 the fiscal year ending on the preceding
4 September 30; or

5 (v) an amount equal to 110 percent of
6 the amount of funds available during the
7 fiscal year ending on the preceding Sep-
8 tember 30; and

9 (B) an assessment of the effect that taking
10 each action could be expected to have on—

11 (i) the mission and operations of the
12 agency as a whole;

16 (iii) the health, safety, and welfare of
17 the citizens of the country.

18 SEC. 10. PERFORMANCE REVIEW BY COMMISSION.

19 (a) EVALUATION OF DATA BY COMMISSION.—The
20 performance review shall include an evaluation of the data
21 contained in an agency self-study report and presented at
22 the hearings held by the Commission, including an assess-
23 ment of—

24 (1) the effectiveness of the agency in performing
25 the responsibilities assigned by law;

12 (5) the conduct of internal functions, such as
13 planning, information and records management, and
14 overall resource controls; and

20 (b) DEVELOPMENT OF RECOMMENDATIONS.—In de-
21 veloping the recommendations required by section 5(b)(6)
22 regarding an agency, the Commission shall consider—

23 (1) the extent to which the statutory mandates
24 of each program are currently being served;

25 (2) the adequacy of the agency's performance;

4 (4) whether specific regulations governing the
5 management of any program can be rewritten.

6 (c) REPORTING THE PERFORMANCE REVIEW.—The
7 Commission will deliver its performance review to the
8 Speaker of the House of Representatives not later than
9 21 months after receiving an agency self-study report from
10 an agency.

11 SEC. 11. CONGRESSIONAL ACTION ON PERFORMANCE RE- 12 VIEW.

13 (a) PROCEDURES IN HOUSE OF REPRESENTA-
14 TIVES.—

23 (2) PUBLIC HEARINGS ON PERFORMANCE RE-
24 VIEWS.—During the 30-legislative-day period after
25 the referral of a performance review to a committee

1 under paragraph (1), the committee shall hold public
2 hearings for the purpose of receiving comments on
3 the performance review and the recommendations.
4 After the hearings, the chairperson of the committee
5 shall submit to the House an implementation bill
6 with an accompanying report that comments on all
7 the recommendations made by the Commission and
8 sets forth the reasons why certain recommendations
9 are not legislatively addressed.

10 (3) DISCHARGE OF COMMITTEE.—If a commit-
11 tee receiving an implementation bill under paragraph
12 (1) has not reported the bill by the end of the 15
13 calendar days after the date on which the bill was
14 introduced, the committee shall be discharged from
15 further consideration of the bill and the bill shall be
16 placed on the appropriate calendar of the House.

17 (4) FLOOR CONSIDERATION.—

18 (A) MOTION TO PROCEED TO CONSIDER-
19 ATION.—On or after the 4th day after the date
20 on which the committee reports an implementa-
21 tion bill or is discharged under paragraph (3),
22 any Member of the House may announce to the
23 House the Member's intention to move to pro-
24 ceed to the consideration of the implementation
25 bill. The following day, it shall be in order for

the Member to move to proceed to the consideration of the bill, even if a previous motion is disagreed to. The motion shall be highly privileged and shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to consideration of the bill is agreed to, the House shall immediately proceed to consideration of the bill without an intervening motion, order, or other business, and the bill shall remain the unfinished business of the House until disposed of.

15 (B) POINTS OF ORDER.—All points of
16 order against an implementation bill and
17 against consideration of the bill shall be consid-
18 ered to be waived.

19 (C) DEBATE.—Debate on an implementa-
20 tion bill, and on all debatable motions and ap-
21 peals in connection with the bill, shall be limited
22 to not more than 10 hours, which shall be di-
23 vided equally between the chairperson and the
24 ranking minority member of the committee that
25 considered the bill or their designees. A motion

1 further to limit debate shall be in order and
2 shall not be debatable. The following shall not
3 be in order:

- 4 (i) An amendment to the bill.
- 5 (ii) A motion to postpone.
- 6 (iii) A motion to proceed to the con-
7 sideration of other business.
- 8 (iv) A motion to recommit the bill.
- 9 (v) A motion to reconsider the vote by
10 which the bill is agreed to or disagreed to.

11 (D) FINAL PASSAGE.—Immediately follow-
12 ing the conclusion of the debate on an imple-
13 mentation bill and a single quorum call at the
14 conclusion of the debate, if requested in accord-
15 ance with the rules of the House, the vote on
16 final passage of the implementation bill shall
17 occur.

18 (E) APPEALS FROM CHAIR.—Appeals from
19 the decisions of the Chair relating to the appli-
20 cation of the rules of the House to the proce-
21 dure relating to an implementation bill shall be
22 decided without debate.

23 (5) CONSIDERATION OF SENATE BILL.—If the
24 House receives an implementation bill regarding an
25 agency from the Senate before it passes its own im-

1 plementation bill regarding the same agency, then
2 the following procedures apply:

3 (A) REFERRAL.—The implementation bill
4 from the Senate shall not be referred to a com-
5 mittee.

6 (B) FLOOR CONSIDERATION.—The proce-
7 dure in the House shall be the same as if no
8 implementation bill had been received from the
9 Senate, except that the vote on final passage
10 shall be on the implementation bill received
11 from the Senate.

12 (C) FINAL DISPOSITION.—Upon disposi-
13 tion of the implementation bill received from
14 the Senate, it shall no longer be in order to con-
15 sider the implementation bill that originated in
16 the House.

17 (b) EXERCISE OF RULEMAKING POWER.—This sec-
18 tion is promulgated—

19 (1) as an exercise of the rulemaking power of
20 the House of Representatives, and as such, it is
21 deemed a part of the rules of the House, except that
22 this section supersedes other rules of the House only
23 to the extent that it is inconsistent with such other
24 rules; and

5 SEC. 12. DURATION OF COMMISSION.

6 Section 14(a)(2)(B) of the Federal Advisory Commit-
7 tee Act (5 U.S.C. App.), relating to the termination of
8 advisory committees, shall not apply to the Commission.

9 SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

10 There is authorized to be appropriated to the Com-
11 mission to carry out its duties under this Act \$1,000,000
12 for each fiscal year.

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