

109TH CONGRESS
2^D SESSION

H. R. 5000

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 with respect to the Privacy and Civil Liberties Oversight Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2006

Mr. SHAYS (for himself, Mrs. MALONEY, Mr. UDALL of New Mexico, Mr. CASE, Mr. OWENS, Mr. STARK, and Mr. THOMPSON of Mississippi) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committees on the Budget, Judiciary, Homeland Security, and Select Intelligence (Permanent Select), 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 amend the Intelligence Reform and Terrorism Prevention Act of 2004 with respect to the Privacy and Civil Liberties Oversight Board, and for other purposes.

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 “9/11 Commission Civil
5 Liberties Board Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) On July 22, 2004 the National Commission
4 on Terrorist Attacks Upon the United States (also
5 known as the 9/11 Commission) issued a report that
6 included 41 specific recommendations to help pre-
7 vent future terrorist attacks, including details of a
8 global strategy and government reorganization nec-
9 essary to implement that strategy.

10 (2) One of the recommendations focused on the
11 protections of civil liberties. Specifically the following
12 recommendation was made: “At this time of in-
13 creased and consolidated government authority,
14 there should be a board within the executive branch
15 to oversee adherence to the guidelines we rec-
16 ommend and the commitment the government makes
17 to defend our civil liberties.”.

18 (3) The report also states that “the choice be-
19 tween security and liberty is a false choice, as noth-
20 ing is more likely to endanger America’s liberties
21 than the success of a terrorist attack at home. Our
22 History has shown that the insecurity threatens lib-
23 erty at home. Yet if our liberties are curtailed, we
24 lose the values that we are struggling to defend.”.

25 (4) On December 17, 2004, Public Law 108–
26 458, the National Intelligence Reform Act, was

1 signed into law. This law created a civil liberties
2 board that does not have the authority necessary to
3 protect civil liberties.

4 (5) The establishment and adequate funding of
5 a Privacy and Civil Liberties Oversight Board was
6 a crucial recommendation made by the 9/11 Com-
7 mission.

8 (6) In its Final Report on 9/11 Commission
9 Recommendations, the Commission noted “very little
10 urgency” and “insufficient” funding as it relates to
11 the establishment of the Privacy and Civil Liberties
12 Oversight Board.

13 (7) While the President’s budget submission for
14 fiscal year 2006 included \$750,000 for the Privacy
15 and Civil Liberties Oversight Board, the President’s
16 budget submission for fiscal year 2007 does not con-
17 tain a funding line for the Board.

18 **SEC. 3. MAKING THE PRIVACY AND CIVIL LIBERTIES OVER-**
19 **SIGHT BOARD INDEPENDENT.**

20 Section 1061(b) of the Intelligence Reform and Ter-
21 rorism Prevention Act of 2004 is amended by striking
22 “within the Executive Office of the President” and insert-
23 ing “as an independent agency within the Executive
24 branch”.

1 **SEC. 4. REQUIRING ALL MEMBERS OF THE PRIVACY AND**
2 **CIVIL LIBERTIES OVERSIGHT BOARD BE CON-**
3 **FIRMED BY THE SENATE.**

4 Subsection (e) of section 1061 of the Intelligence Re-
5 form and Terrorism Prevention Act of 2004 is amended
6 to read as follows:

7 “(e) MEMBERSHIP.—

8 “(1) MEMBERS.—The Board shall be composed
9 of a full-time chairman and 4 additional members,
10 who shall be appointed by the President, by and
11 with the advice and consent of the Senate.

12 “(2) QUALIFICATIONS.—Members of the Board
13 shall be selected solely on the basis of their profes-
14 sional qualifications, achievements, public stature,
15 expertise in civil liberties and privacy, and relevant
16 experience, and without regard to political affiliation,
17 but in no event shall more than 3 members of the
18 Board be members of the same political party. The
19 President shall, before appointing an individual who
20 is not a member of the same political party as the
21 President consult with the leadership of that party,
22 if any, in the Senate and House of Representatives.

23 “(3) INCOMPATIBLE OFFICE.—An individual
24 appointed to the Board may not, while serving on
25 the Board, be an elected official, officer, or employee

1 of the Federal Government, other than in the capac-
2 ity as a member of the Board.

3 “(4) TERM.—Each member of the Board shall
4 serve a term of six years, except that—

5 “(A) a member appointed to a term of of-
6 fice after the commencement of such term may
7 serve under such appointment only for the re-
8 mainder of such term;

9 “(B) upon the expiration of the term of of-
10 fice of a member, the member shall continue to
11 serve until the member’s successor has been ap-
12 pointed and qualified, except that no member
13 may serve under this subparagraph—

14 “(i) for more than 60 days when Con-
15 gress is in session unless a nomination to
16 fill the vacancy shall have been submitted
17 to the Senate; or

18 “(ii) after the adjournment sine die of
19 the session of the Senate in which such
20 nomination is submitted; and

21 “(C) the members initially appointed under
22 this subsection shall serve terms of two, three,
23 four, five, and six years, respectively, from the
24 effective date of this Act, with the term of each
25 such member to be designated by the President.

1 “(5) QUORUM AND MEETINGS.—The Board
2 shall meet upon the call of the chairman or a major-
3 ity of its members. Three members of the Board
4 shall constitute a quorum.”.

5 **SEC. 5. SUBPOENA POWER FOR THE PRIVACY AND CIVIL**
6 **LIBERTIES OVERSIGHT BOARD.**

7 Section 1061(d) of the Intelligence Reform and Ter-
8 rorism Prevention Act of 2004 is amended—

9 (1) so that subparagraph (D) of paragraph (1)
10 reads as follows:

11 “(D) require, by subpoena issued at the di-
12 rection of a majority of the members of the
13 Board, persons (other than departments, agen-
14 cies, and elements of the executive branch) to
15 produce any relevant information, documents,
16 reports, answers, records, accounts, papers, and
17 other documentary or testimonial evidence.”;
18 and

19 (2) so that paragraph (2) reads as follows:

20 “(2) ENFORCEMENT OF SUBPOENA.—In the
21 case of contumacy or failure to obey a subpoena
22 issued under paragraph (1)(D), the United States
23 district court for the judicial district in which the
24 subpoenaed person resides, is served, or may be

1 found may issue an order requiring such person to
2 produce the evidence required by such subpoena.”.

3 **SEC. 6. REPORTING REQUIREMENTS.**

4 (a) DUTIES OF BOARD.—Paragraph (4) of section
5 1061(c) of the Intelligence Reform and Terrorism Preven-
6 tion Act of 2004 is amended to read as follows:

7 “(4) REPORTS.—

8 “(A) RECEIPT, REVIEW, AND SUBMIS-
9 SION.—

10 “(i) IN GENERAL.—The Board shall—

11 “(I) receive and review reports
12 from privacy officers and civil liberties
13 officers described in section 212; and

14 “(II) periodically submit, not less
15 than semiannually, reports to the ap-
16 propriate committees of Congress, in-
17 cluding the Committees on the Judici-
18 ary of the Senate and the House of
19 Representatives, the Committee on
20 Homeland Security and Governmental
21 Affairs of the Senate, the Committee
22 on Government Reform of the House
23 of Representatives, the Select Com-
24 mittee on Intelligence of the Senate,
25 and the Permanent Select Committee

1 on Intelligence of the House of Rep-
2 resentatives, and to the President.

3 Such reports shall be in unclassified form
4 to the greatest extent possible, with a clas-
5 sified annex where necessary.

6 “(ii) CONTENTS.—Not less than 2 re-
7 ports the Board submits each year under
8 clause (i)(II) shall include—

9 “(I) a description of the major
10 activities of the Board during the pre-
11 ceding period;

12 “(II) information on the findings,
13 conclusions, and recommendations of
14 the Board resulting from its advice
15 and oversight functions under sub-
16 section (c);

17 “(III) the minority views on any
18 findings, conclusions, and rec-
19 ommendations of the Board resulting
20 from its advice and oversight func-
21 tions under subsection (c); and

22 “(IV) each proposal reviewed by
23 the Board under subsection (c)(1)
24 that the Board advised against imple-

1 menting, but that notwithstanding
2 such advice, was implemented.

3 “(B) INFORMING THE PUBLIC.—The
4 Board shall—

5 “(i) make its reports, including its re-
6 ports to Congress, available to the public
7 to the greatest extent that is consistent
8 with the protection of classified informa-
9 tion and applicable law; and

10 “(ii) hold public hearings and other-
11 wise inform the public of its activities, as
12 appropriate and in a manner consistent
13 with the protection of classified informa-
14 tion and applicable law.”.

15 (b) PRIVACY AND CIVIL LIBERTIES OFFICERS.—Sec-
16 tion 1062 of the Intelligence Reform and Terrorism Pre-
17 vention Act of 2004 is amended to read as follows:

18 **“SEC. 1062. PRIVACY AND CIVIL LIBERTIES OFFICERS.**

19 “(a) DESIGNATION AND FUNCTIONS.—The Attorney
20 General, the Secretary of Defense, the Secretary of State,
21 the Secretary of the Treasury, the Secretary of Health and
22 Human Services, the Secretary of Homeland Security, the
23 National Intelligence Director, the Director of the Central
24 Intelligence Agency, any other entity within the intel-
25 ligence community (as defined in section 3 of the National

1 Security Act of 1947 (50 U.S.C. 401a)), and the head of
2 any other department, agency, or element of the executive
3 branch designated by the Privacy and Civil Liberties Over-
4 sight Board to be appropriate for coverage under this sec-
5 tion shall designate not less than 1 senior officer to—

6 “(1) assist the head of such department, agen-
7 cy, or element and other officials of such depart-
8 ment, agency, or element in appropriately consid-
9 ering privacy and civil liberties concerns when such
10 officials are proposing, developing, or implementing
11 laws, regulations, policies, procedures, or guidelines
12 related to efforts to protect the Nation against ter-
13 rorism;

14 “(2) periodically investigate and review depart-
15 ment, agency, or element actions, policies, proce-
16 dures, guidelines, and related laws and their imple-
17 mentation to ensure that such department, agency,
18 or element is adequately considering privacy and
19 civil liberties in its actions;

20 “(3) ensure that such department, agency, or
21 element has adequate procedures to receive, inves-
22 tigate, respond to, and redress complaints from indi-
23 viduals who allege such department, agency, or ele-
24 ment has violated their privacy or civil liberties; and

1 “(4) in providing advice on proposals to retain
2 or enhance a particular governmental power the offi-
3 cer shall consider whether such department, agency,
4 or element has established—

5 “(A) that the power actually enhances se-
6 curity and the need for the power is balanced
7 with the need to protect privacy and civil lib-
8 erties;

9 “(B) that there is adequate supervision of
10 the use by such department, agency, or element
11 of the power to ensure protection of privacy and
12 civil liberties; and

13 “(C) that there are adequate guidelines
14 and oversight to properly confine its use.

15 “(b) EXCEPTION TO DESIGNATION AUTHORITY.—

16 “(1) PRIVACY OFFICERS.—In any department,
17 agency, or element referred to in subsection (a) or
18 designated by the Board, which has a statutorily
19 created privacy officer, such officer shall perform the
20 functions specified in subsection (a) with respect to
21 privacy.

22 “(2) CIVIL LIBERTIES OFFICERS.—In any de-
23 partment, agency, or element referred to in sub-
24 section (a) or designated by the Board, which has a
25 statutorily created civil liberties officer, such officer

1 shall perform the functions specified in subsection
2 (a) with respect to civil liberties.

3 “(c) SUPERVISION AND COORDINATION.—Each pri-
4 vacy officer or civil liberties officer described in subsection
5 (a) or (b) shall—

6 “(1) report directly to the head of the depart-
7 ment, agency, or element concerned; and

8 “(2) coordinate their activities with the Inspec-
9 tor General of such department, agency, or element
10 to avoid duplication of effort.

11 “(d) AGENCY COOPERATION.—The head of each de-
12 partment, agency, or element shall ensure that each pri-
13 vacy officer and civil liberties officer—

14 “(1) has the information, material, and re-
15 sources necessary to fulfill the functions of such offi-
16 cer;

17 “(2) is advised of proposed policy changes;

18 “(3) is consulted by decisionmakers; and

19 “(4) is given access to material and personnel
20 the officer determines to be necessary to carry out
21 the functions of such officer.

22 “(e) REPRISAL FOR MAKING COMPLAINT.—No ac-
23 tion constituting a reprisal, or threat of reprisal, for mak-
24 ing a complaint or for disclosing information to a privacy
25 officer or civil liberties officer described in subsection (a)

1 or (b), or to the Privacy and Civil Liberties Oversight
2 Board, that indicates a possible violation of privacy protec-
3 tions or civil liberties in the administration of the pro-
4 grams and operations of the Federal Government relating
5 to efforts to protect the Nation from terrorism shall be
6 taken by any Federal employee in a position to take such
7 action, unless the complaint was made or the information
8 was disclosed with the knowledge that it was false or with
9 willful disregard for its truth or falsity.

10 “(f) PERIODIC REPORTS.—

11 “(1) IN GENERAL.—The privacy officers and
12 civil liberties officers of each department, agency, or
13 element referred to or described in subsection (a) or
14 (b) shall periodically, but not less than quarterly,
15 submit a report on the activities of such officers—

16 “(A)(i) to the appropriate committees of
17 Congress, including the Committees on the Ju-
18 diciary of the Senate and the House of Rep-
19 resentatives, the Committee on Homeland Secu-
20 rity and Governmental Affairs of the Senate,
21 the Committee on Government Reform of the
22 House of Representatives, the Select Committee
23 on Intelligence of the Senate, and the Perma-
24 nent Select Committee on Intelligence of the
25 House of Representatives;

1 “(ii) to the head of such department, agen-
2 cy, or element; and

3 “(iii) to the Privacy and Civil Liberties
4 Oversight Board; and

5 “(B) which shall be in unclassified form to
6 the greatest extent possible, with a classified
7 annex where necessary.

8 “(2) CONTENTS.—Each report submitted under
9 paragraph (1) shall include information on the dis-
10 charge of each of the functions of the officer con-
11 cerned, including—

12 “(A) information on the number and types
13 of reviews undertaken;

14 “(B) the type of advice provided and the
15 response given to such advice;

16 “(C) the number and nature of the com-
17 plaints received by the department, agency, or
18 element concerned for alleged violations; and

19 “(D) a summary of the disposition of such
20 complaints, the reviews and inquiries conducted,
21 and the impact of the activities of such officer.

22 “(g) INFORMING THE PUBLIC.—Each privacy officer
23 and civil liberties officer shall—

24 “(1) make the reports of such officer, including
25 reports to Congress, available to the public to the

1 greatest extent that is consistent with the protection
2 of classified information and applicable law; and

3 “(2) otherwise inform the public of the activi-
4 ties of such officer, as appropriate and in a manner
5 consistent with the protection of classified informa-
6 tion and applicable law.

7 “(h) SAVINGS CLAUSE.—Nothing in this section shall
8 be construed to limit or otherwise supplant any other au-
9 thorities or responsibilities provided by law to privacy offi-
10 cers or civil liberties officers.

11 “(i) PROTECTIONS FOR HUMAN RESEARCH SUB-
12 JECTS.—The Secretary of Homeland Security shall ensure
13 that the Department of Homeland Security complies with
14 the protections for human research subjects, as described
15 in part 46 of title 45, Code of Federal Regulations, or
16 in equivalent regulations as promulgated by such Sec-
17 retary, with respect to research that is conducted or sup-
18 ported by such Department.”.

19 **SEC. 7. INCLUSION IN PRESIDENT’S BUDGET SUBMISSION**
20 **TO CONGRESS.**

21 Section 1105(a) of title 31, United States Code, is
22 amended by adding at the end the following new para-
23 graph:

1 “(36) a separate statement of the amount of
2 appropriations requested for the Privacy and Civil
3 Liberties Oversight Board.”.

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