

114TH CONGRESS
2D SESSION

S. 3448

To provide for the creation of the Missing Armed Forces Personnel Records Collection at the National Archives, to require the expeditious public transmission to the Archivist and public disclosure of Missing Armed Forces Personnel records, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2016

Ms. AYOTTE introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide for the creation of the Missing Armed Forces Personnel Records Collection at the National Archives, to require the expeditious public transmission to the Archivist and public disclosure of Missing Armed Forces Personnel records, 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 “Bring Our Heroes
5 Home Act of 2016”.

1 **SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSES.**

2 (a) FINDINGS AND DECLARATIONS.—Congress finds
3 and declares the following:

4 (1) A vast number of records relating to Miss-
5 ing Armed Forces Personnel have not been identi-
6 fied, located, or transferred to the National Archives
7 for review and declassification. Only in the rarest
8 cases is there any legitimate need for continued pro-
9 tection of records pertaining to Missing Armed
10 Forces Personnel who have been missing for dec-
11 ades.

12 (2) There has been insufficient priority placed
13 on identifying, locating, transferring, reviewing, or
14 declassifying records relating to Missing Armed
15 Forces Personnel.

16 (3) Mandates for declassification set forth in
17 multiple Executive orders have been broadly written,
18 loosely interpreted, and often ignored by Federal
19 Government officials in possession and control of
20 records related to Missing Armed Forces Personnel.

21 (4) No individual or entity has been tasked with
22 oversight of the identification, collection, review, and
23 declassification of records related to Missing Armed
24 Forces Personnel.

25 (5) The interest, desire, workforce, and funding
26 of Federal agencies to assemble, review, and declas-

1 sify records relating to Missing Armed Forces Per-
2 sonnel have been lacking.

3 (6) All records of the Federal Government re-
4 lating to Missing Armed Forces Personnel should be
5 preserved for historical and governmental purposes.

6 (7) All records of the Federal Government re-
7 lating Missing Armed Forces Personnel should carry
8 a presumption of immediate disclosure, and all such
9 records should be disclosed under this Act to enable
10 the fullest possible accounting for Missing Armed
11 Forces Personnel.

12 (8) Legislation is necessary to create an en-
13 forceable, independent, and accountable process for
14 the public disclosure of records relating to Missing
15 Armed Forces Personnel.

16 (9) Legislation is necessary because section 552
17 of title 5, United States Code (commonly known as
18 the Freedom of Information Act), as implemented by
19 the executive branch of the Federal Government, has
20 prevented the timely public disclosure of records re-
21 lating to Missing Armed Forces Personnel.

22 (b) PURPOSES.—The purposes of this Act are—

23 (1) to provide for the creation of the Missing
24 Armed Forces Personnel Records Collection at the
25 National Archives; and

1 (2) to require the expeditious public trans-
2 mission to the Archivist and public disclosure of
3 Missing Armed Forces Personnel records.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) ARCHIVIST.—The term “Archivist” means
7 Archivist of the United States.

8 (2) COLLECTION.—The term “Collection”
9 means the Missing Armed Forces Personnel Records
10 Collection established under section 4(a).

11 (3) EXECUTIVE AGENCY.—The term “Executive
12 agency”—

13 (A) means an agency, as defined in section
14 552(f) of title 5, United States Code; and

15 (B) includes any Executive department,
16 military department, Government corporation,
17 Government controlled corporation, or other es-
18 tablishment in the executive branch of the Fed-
19 eral Government, including the Executive Office
20 of the President, any branch of the Armed
21 Forces, and any independent regulatory agency.

22 (4) EXECUTIVE BRANCH MISSING ARMED
23 FORCES PERSONNEL RECORD.—The term “executive
24 branch Missing Armed Forces Personnel record”
25 means a Missing Armed Forces Personnel record of

1 an Executive agency, or information contained in
2 such a Missing Armed Forces Personnel record ob-
3 tained or developed solely within the executive
4 branch of the Federal Government.

5 (5) GOVERNMENT OFFICE.—The term “Govern-
6 ment office” means a department or agency within
7 the executive branch of the Federal Government, the
8 Library of Congress, and the National Archives.

9 (6) IDENTIFICATION AID.—The term “identi-
10 fication aid” means the standard form prepared
11 under section 5(d)(1)(A).

12 (7) MISSING ARMED FORCES PERSONNEL.—The
13 term “Missing Armed Forces Personnel” means one
14 or more “missing persons” as defined in section
15 1513 of title 10, United States Code.

16 (8) MISSING ARMED FORCES PERSONNEL
17 RECORD.—The term “Missing Armed Forces Per-
18 sonnel record” means a record that relates, directly
19 or indirectly, to the loss, fate, or status of Missing
20 Armed Forces Personnel that was created or made
21 available for use by, obtained by, or otherwise came
22 into the custody, possession, or control of—

23 (A) any Government office;

24 (B) any Presidential library; or

25 (C) any of the Armed Forces.

1 (9) NATIONAL ARCHIVES.—The term “National
2 Archives”—

3 (A) means the National Archives and
4 Records Administration; and

5 (B) includes—

6 (i) any component of the National Ar-
7 chives and Records Administration; and

8 (ii) a Presidential archival depository
9 established under section 2112 of title 44,
10 United States Code.

11 (10) OFFICIAL INVESTIGATION.—The term “of-
12 ficial investigation” means a review, briefing, or
13 hearing relating to Missing Armed Forces Personnel
14 conducted by a Presidential commission, committee
15 of Congress, or agency, regardless of whether it is
16 conducted independently, at the request of any Pres-
17 idential commission or committee of Congress, or at
18 the request of any official of the Federal Govern-
19 ment.

20 (11) ORIGINATING BODY.—The term “origi-
21 nating body” means the Government office that cre-
22 ated a record or particular information within a
23 record.

24 (12) PUBLIC INTEREST.—The term “public in-
25 terest” means the compelling interest in the prompt

1 public disclosure of Missing Armed Forces Personnel
2 records for historical and governmental purposes
3 and for the purpose of fully informing the people of
4 the United States, most importantly families of
5 Missing Armed Forces Personnel, about the fate of
6 the Missing Armed Forces Personnel and the proc-
7 ess by which the Federal Government has sought to
8 account for them.

9 (13) RECORD.—The term “record” includes a
10 book, paper, map, photograph, sound or video re-
11 cording, machine readable material, computerized,
12 digitized, or electronic information, regardless of the
13 medium on which it is stored, and other documen-
14 tary material, regardless of its physical form or
15 characteristics.

16 (14) REVIEW BOARD.—The term “Review
17 Board” means the Missing Armed Forces Personnel
18 Records Review Board established under section 7.

19 (15) THIRD AGENCY.—The term “third agen-
20 cy” means a Government office that originated a
21 Missing Armed Forces Personnel record that is in
22 the custody, possession, or control of another Gov-
23 ernment office whose review and authorization is re-
24 quired before a record can be designated for disclo-
25 sure.

1 **SEC. 4. MISSING ARMED FORCES PERSONNEL RECORDS**
2 **COLLECTION AT THE NATIONAL ARCHIVES.**

3 (a) ESTABLISHMENT OF COLLECTION.—Not later
4 than 60 days after the date of enactment of this Act, the
5 National Archives shall commence establishment of a col-
6 lection of records to be known as the Missing Armed
7 Forces Personnel Records Collection.

8 (b) REGULATIONS.—

9 (1) IN GENERAL.—Not later than 180 days
10 after the date of enactment of this Act, the Review
11 Board shall promulgate rules to establish guidelines
12 and processes for the maintenance of the Collection.

13 (2) REQUIREMENTS.—The rules required to be
14 promulgated under paragraph (1) shall include
15 guidelines and processes for—

16 (A) transmission of records for inclusion in
17 the Collection;

18 (B) disclosure of records contained in the
19 Collection;

20 (C) fees for copying of records contained in
21 the Collection; and

22 (D) availability and security of records
23 contained in the Collection.

1 **SEC. 5. REVIEW, IDENTIFICATION, TRANSMISSION TO THE**
2 **NATIONAL ARCHIVES, AND PUBLIC DISCLO-**
3 **SURE OF MISSING ARMED FORCES PER-**
4 **SONNEL RECORDS BY GOVERNMENT OF-**
5 **FICES.**

6 (a) IN GENERAL.—

7 (1) PREPARATION.—As soon as practicable
8 after the date of enactment of this Act, and suffi-
9 ciently in advance of the deadlines established under
10 this Act, each Government office shall—

11 (A) identify, locate, and organize any Miss-
12 ing Armed Forces Personnel records in the cus-
13 tody, possession, or control of the Government
14 office; and

15 (B) prepare for transmission to the Archi-
16 vist any Missing Armed Forces Personnel
17 records that have not previously been trans-
18 mitted to the Archivist by the Government of-
19 fice.

20 (2) CERTIFICATION.—Each Government office
21 shall submit to the Archivist, under penalty of per-
22 jury, a certification indicating—

23 (A) whether the Government office has
24 conducted a thorough search for all Missing
25 Armed Forces Personnel records in the custody,

1 possession, or control of the Government office;
2 and

3 (B) whether any Missing Armed Forces
4 Personnel record has been withheld by the of-
5 fice, other than in accordance with this Act.

6 (3) PRESERVATION.—No Missing Armed
7 Forces Personnel record shall be destroyed, altered,
8 or mutilated in any way.

9 (4) EFFECT OF PREVIOUS DISCLOSURE.—A
10 Missing Armed Forces Personnel record made avail-
11 able or disclosed to the public before the date of en-
12 actment of this Act may not be withheld, redacted,
13 postponed for public disclosure, or reclassified.

14 (5) NON-FEDERAL RECORDS.—Except for the
15 exclusion of names or identities in accordance with
16 section 6, a Missing Armed Forces Personnel record
17 created by an individual or entity that is not part of
18 the Federal Government may not be withheld, re-
19 dacted, postponed for public disclosure, or reclassi-
20 fied.

21 (6) WITHHELD RECORDS.—For any Missing
22 Armed Forces Personnel record that is withheld by
23 a Government office from the Archivist or the Re-
24 view Board, the head of the Government office shall
25 submit an unclassified report to the Review Board

1 and each appropriate committee of the Senate and
2 the House of Representatives explaining the decision
3 to withhold the record.

4 (b) CUSTODY OF MISSING ARMED FORCES PER-
5 SONNEL RECORDS PENDING REVIEW.—During the period
6 during which a Missing Armed Forces Personnel record
7 is being reviewed by a Government office and any review
8 activity by the Review Board relating to the Missing
9 Armed Forces Personnel record is pending, the Govern-
10 ment office shall retain custody of the Missing Armed
11 Forces Personnel record for purposes of preservation, se-
12 curity, and efficiency, unless—

13 (1) the Review Board requires the physical
14 transfer of the Missing Armed Forces Personnel
15 record for purposes of conducting an independent
16 and impartial review; or

17 (2) transfer is necessary for an administrative
18 hearing or other Review Board function.

19 (c) REVIEW.—

20 (1) IN GENERAL.—Not later than 180 days
21 after the date of enactment of this Act, each Gov-
22 ernment office shall, in accordance with the rules
23 promulgated under paragraph (2)—

24 (A) identify, locate, review, and organize
25 each Missing Armed Forces Personnel record in

1 the custody, possession, or control of the Gov-
2 ernment office for transmission to the Archivist
3 and disclosure to the public or, if needed, re-
4 view by the Review Board; and

5 (B) identify and review for public disclo-
6 sure each Missing Armed Services Personnel
7 record previously transferred to the National
8 Archives that remains classified in whole or in
9 part.

10 (2) REQUIREMENT.—The Review Board shall
11 promulgate rules for the disclosure of relevant
12 records by Government offices under paragraph (1).

13 (3) PRESIDENTIAL ARCHIVAL DEPOSITORIES.—
14 The Director of each Presidential archival depository
15 established under section 2112 of title 44, United
16 States Code, shall—

17 (A) have as a priority the expedited review
18 for public disclosure of Missing Armed Forces
19 Personnel records in the custody, possession, or
20 control of the depository; and

21 (B) make Missing Armed Forces Personnel
22 records available to the Review Board as re-
23 quired under this Act.

1 (4) NATIONAL ARCHIVES RECORDS.—Not later
2 than 60 days after the date of enactment of this
3 Act, the Archivist shall—

4 (A) locate and identify all Missing Armed
5 Forces Personnel records in the custody, pos-
6 session, or control of the National Archives that
7 remain classified, in whole or in part;

8 (B) notify a Government office if the Ar-
9 chivist locates and identifies a record of the
10 Government office under subparagraph (A); and

11 (C) make each Missing Armed Forces Per-
12 sonnel record located and identified under sub-
13 paragraph (A) available for review by the origi-
14 nating body.

15 (d) IDENTIFICATION AIDS.—

16 (1) PREPARATION.—

17 (A) IN GENERAL.—Not later than 45 days
18 after the date of enactment of this Act, the Ar-
19 chivist, in consultation with the appropriate
20 Government offices, shall prepare and make
21 available to all Government offices a standard
22 form for collecting information relating to each
23 Missing Armed Forces Personnel record subject
24 to review under this Act.

1 (B) COMPATIBILITY.—The Archivist shall
2 prepare and make available identification aids
3 in a manner that results in a uniform and com-
4 patible system of electronic records for use by
5 Government offices.

6 (2) USE.—Upon completion of an identification
7 aid, a Government office shall—

8 (A) attach a printed copy to the record to
9 which the identification aid relates;

10 (B) transmit to the Review Board a print-
11 ed copy of the identification aid; and

12 (C) attach a printed copy to each Missing
13 Armed Forces Personnel record described in the
14 identification aid when the Missing Armed
15 Forces Personnel record is transmitted to the
16 Archivist.

17 (3) RECORDS ALREADY PUBLIC.—A Missing
18 Armed Forces Personnel record that is in the cus-
19 tody, possession, or control of the National Archives
20 on the date of enactment of this Act, and that has
21 been publicly available in its entirety without redac-
22 tion—

23 (A) shall be made available in the Collec-
24 tion without any additional review by the Re-

1 view Board or another Government office under
2 this Act; and

3 (B) shall not be required to have an identi-
4 fication aid, unless required by the Archivist.

5 (e) TRANSMISSION TO THE NATIONAL ARCHIVES.—
6 Each Government office shall—

7 (1) not later than 180 days after the date of
8 enactment of this Act, transmit to the Archivist, and
9 make available to the public, all Missing Armed
10 Forces Personnel records in the custody, possession
11 or control of the Government office that may be
12 publicly disclosed under the standards under this
13 Act, including those that are publicly available on
14 the date of enactment of this Act, without any re-
15 daction, adjustment, or withholding; and

16 (2) transmit to the Archivist upon approval for
17 postponement by the Review Board or upon comple-
18 tion of other action authorized by this Act, all Miss-
19 ing Armed Forces Personnel records the public dis-
20 closure of which has been postponed, in whole or in
21 part, under the standards under this Act, to become
22 part of the protected Collection.

23 (f) CUSTODY OF POSTPONED MISSING ARMED SERV-
24 ICES PERSONNEL RECORDS.—A Missing Armed Forces
25 Personnel record the public disclosure of which has been

1 postponed under the standards under this Act shall, pend-
 2 ing transmission to the Archivist, be held for reasons of
 3 security and preservation by the originating body until
 4 such time as an information security program has been
 5 established at the National Archives.

6 (g) PERIODIC REVIEW OF POSTPONED MISSING
 7 ARMED SERVICES PERSONNEL RECORDS.—

8 (1) IN GENERAL.—All Missing Armed Forces
 9 Personnel records, or information within a Missing
 10 Armed Forces Personnel record, the public disclo-
 11 sure of which has been postponed under the stand-
 12 ards under this Act shall be reviewed periodically by
 13 the originating body and by the Archivist consistent
 14 with the recommendations of the Review Board
 15 under section 9(c)(3)(B).

16 (2) CONTENTS.—

17 (A) IN GENERAL.—A periodic review of a
 18 Missing Armed Forces Personnel record, or in-
 19 formation within a Missing Armed Forces Per-
 20 sonnel record, by the originating body shall ad-
 21 dress the public disclosure of the Missing
 22 Armed Forces Personnel record under the
 23 standards under this Act.

24 (B) CONTINUED POSTPONEMENT.—If an
 25 originating body conducting a periodic review of

1 a Missing Armed Forces Personnel record, or
2 information within a Missing Armed Forces
3 Personnel record, the public disclosure of which
4 has been postponed under the standards under
5 this Act determines that continued postpone-
6 ment is required, the originating body shall pro-
7 vide to the Archivist and publish in the Federal
8 Register an unclassified written description of
9 the reason for the continued postponement.

10 (C) SCOPE.—The periodic review of post-
11 poned Missing Armed Forces Personnel records,
12 or information within a Missing Armed Forces
13 Personnel record, shall serve the purpose stated
14 in section 2(b)(2), to provide expeditious public
15 disclosure of Missing Armed Forces Personnel
16 records, to the fullest extent possible, subject
17 only to the grounds for postponement of disclo-
18 sure under section 6.

19 (D) DISCLOSURE ABSENT CERTIFICATION
20 BY PRESIDENT.—Not later than 5 years after
21 the date of enactment of this Act, all Missing
22 Armed Forces Personnel records, and informa-
23 tion within a Missing Armed Forces Personnel
24 record, shall be publicly disclosed in full, and

1 available in the Collection, unless the President
2 submits to the Archivist a certification that—

3 (i) continued postponement is nec-
4 essary because of an identifiable harm to
5 the military defense, intelligence oper-
6 ations, or conduct of foreign relations; and

7 (ii) the identifiable harm is of such
8 gravity that it outweighs the public inter-
9 est in disclosure.

10 (h) FEES FOR COPYING.—An Executive agency—

11 (1) shall charge a fee for copying Missing
12 Armed Forces Personnel records; and

13 (2) may grant a waiver of such a fee in a man-
14 ner in accordance with the standards established by
15 the head of the Executive agency for purposes of
16 section 552(a)(4) of title 5, United States Code.

17 **SEC. 6. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**
18 **SURE OF RECORDS.**

19 Disclosure to the public of a Missing Armed Forces
20 Personnel record or particular information in a Missing
21 Armed Forces Personnel record may be postponed subject
22 to the limitations under this Act if there is clear and con-
23 vincing evidence that—

24 (1) the threat to the military defense, intel-
25 ligence operations, or conduct of foreign relations of

1 the United States posed by the public disclosure of
2 the Missing Armed Forces Personnel record or infor-
3 mation is of such gravity that it outweighs the pub-
4 lic interest, and such public disclosure would re-
5 veal—

6 (A) an intelligence agent whose identity re-
7 quires continued protection;

8 (B) an intelligence source or method—

9 (i) which is in use, or reasonably ex-
10 pected to be used, by the Federal Govern-
11 ment;

12 (ii) which has not been officially dis-
13 closed; and

14 (iii) the disclosure of which would
15 interfere with the conduct of intelligence
16 activities; or

17 (C) any other matter relating to the cur-
18 rent military defense, intelligence operations, or
19 conduct of foreign relations of the United
20 States, the disclosure of which would demon-
21 strably impair the national security of the
22 United States;

23 (2) the public disclosure of the Missing Armed
24 Forces Personnel record would reveal the name or
25 identity of a living person who provided confidential

1 information to the United States and would pose a
 2 substantial risk of harm to that person; or

3 (3) the public disclosure of the Missing Armed
 4 Forces Personnel record could reasonably be ex-
 5 pected to constitute an unwarranted invasion of per-
 6 sonal privacy, and that invasion of privacy is so sub-
 7 stantial that it outweighs the public interest.

8 **SEC. 7. ESTABLISHMENT AND POWERS OF THE MISSING**
 9 **ARMED FORCES PERSONNEL RECORDS RE-**
 10 **VIEW BOARD.**

11 (a) ESTABLISHMENT.—There is established as an
 12 independent establishment in the executive branch a board
 13 to be known as the Missing Armed Forces Personnel
 14 Records Review Board.

15 (b) MEMBERSHIP.—

16 (1) APPOINTMENTS.—The President shall ap-
 17 point, by and with the advice and consent of the
 18 Senate, 5 individuals to serve as a member of the
 19 Review Board to ensure and facilitate the review,
 20 transmission to the Archivist, and public disclosure
 21 of Missing Armed Forces Personnel records.

22 (2) QUALIFICATIONS.—The President shall ap-
 23 point individuals to serve as members of the Review
 24 Board—

25 (A) without regard to political affiliation;

1 (B) who are citizens of the United States
2 of integrity and impartiality;

3 (C) who have high national professional
4 reputation in their fields who are capable of ex-
5 ercising the independent and objective judgment
6 necessary to the fulfillment of their role in en-
7 suring and facilitating the identification, loca-
8 tion, review, transmission to the Archivist, and
9 public disclosure of Missing Armed Forces Per-
10 sonnel records;

11 (D) who possess an appreciation of the
12 value of Missing Armed Forces Personnel
13 records to scholars, the Federal Government,
14 and the public, particularly families of Missing
15 Armed Forces Personnel;

16 (E) not less than one professional histo-
17 rian; and

18 (F) not less than one attorney.

19 (3) DEADLINES.—

20 (A) IN GENERAL.—Not later than 30 days
21 after the date of enactment of this Act, the
22 President shall submit nominations for all
23 members of the Review Board.

24 (B) CONFIRMATION REJECTED.—If the
25 Senate votes not to confirm a nomination to

1 serve as a member of the Review Board, not
2 later than 90 days after the date of the vote the
3 President shall submit the nomination of an ad-
4 ditional individual to serve as a member of the
5 Review Board.

6 (4) CONSULTATION.—The President shall make
7 nominations to the Review Board after considering
8 individuals recommended by the American Historical
9 Association, the Organization of American Histo-
10 rians, the Society of American Archivists, the Amer-
11 ican Bar Association, veterans' organizations, and
12 organizations representing families of Missing
13 Armed Forces Personnel.

14 (c) SECURITY CLEARANCES.—The appropriate de-
15 partments, agencies, and elements of the executive branch
16 of the Federal Government shall cooperate to ensure that
17 an application by an individual nominated to be a member
18 of the Review Board, seeking security clearances necessary
19 to carry out the duties of the Review Board, is expedi-
20 tiously reviewed and granted or denied.

21 (d) CONFIRMATION.—

22 (1) HEARINGS.—Not later 30 days on which
23 the Senate is in session after the date on which not
24 less than 3 individuals have been nominated to serve
25 as members of the Review Board, the Committee on

1 Homeland Security and Governmental Affairs of the
2 Senate shall hold confirmation hearings on the nomi-
3 nations.

4 (2) COMMITTEE VOTE.—Not later than 14 days
5 on which the Senate is in session after the date on
6 which the Committee on Homeland Security and
7 Governmental Affairs holds a confirmation hearing
8 on the nomination of an individual to serve as a
9 member of the Review Board, the committee shall
10 vote on the nomination and report the results to the
11 full Senate immediately.

12 (3) SENATE VOTE.—Not later than 14 days on
13 which the Senate is in session after the date on
14 which the Committee on Homeland Security and
15 Governmental Affairs reports the results of a vote on
16 a nomination of an individual to serve as a member
17 of the Review Board, the Senate shall vote on the
18 confirmation of the nominee.

19 (e) VACANCY.—Not later than 60 days after the date
20 on which a vacancy on the Review Board occurs, the va-
21 cancy shall be filled in the same manner as specified for
22 original appointment.

23 (f) CHAIRPERSON.—The members of the Review
24 Board shall elect a member as Chairperson at the initial
25 meeting of the Review Board.

1 (g) REMOVAL OF REVIEW BOARD MEMBER.—

2 (1) IN GENERAL.—A member of the Review
3 Board shall not be removed from office, other
4 than—

5 (A) by impeachment by Congress; or

6 (B) by the action of the President for inef-
7 ficiency, neglect of duty, malfeasance in office,
8 physical disability, mental incapacity, or any
9 other condition that substantially impairs the
10 performance of the member's duties.

11 (2) JUDICIAL REVIEW.—

12 (A) IN GENERAL.—A member of the Re-
13 view Board removed from office may obtain ju-
14 dicial review of the removal in a civil action
15 commenced in the United States District Court
16 for the District of Columbia.

17 (B) RELIEF.—The member may be rein-
18 stated or granted other appropriate relief by
19 order of the court.

20 (h) COMPENSATION OF MEMBERS.—

21 (1) BASIC PAY.—A member of the Review
22 Board shall be compensated at a rate equal to the
23 daily equivalent of the annual rate of basic pay pre-
24 scribed for level IV of the Executive Schedule under
25 section 5315 of title 5, United States Code, for each

1 day (including travel time) during which the member
2 is engaged in the performance of the duties of the
3 Review Board.

4 (2) TRAVEL EXPENSES.—A member of the Re-
5 view Board shall be allowed reasonable travel ex-
6 penses, including per diem in lieu of subsistence, at
7 rates for employees of agencies under subchapter I
8 of chapter 57 of title 5, United States Code, while
9 away from the member's home or regular place of
10 business in the performance of services for the Re-
11 view Board.

12 (i) DUTIES OF THE REVIEW BOARD.—

13 (1) IN GENERAL.—The Review Board shall con-
14 sider and render a decision on a determination by a
15 Government office to seek to postpone the disclosure
16 of a Missing Armed Forces Personnel record, in
17 whole or in part.

18 (2) RECORDS.—In carrying out paragraph (1),
19 the Review Board shall consider and render a deci-
20 sion regarding—

21 (A) whether a record constitutes a Missing
22 Armed Forces Personnel record; and

23 (B) whether a Missing Armed Forces Per-
24 sonnel record, or particular information in a
25 Missing Armed Forces Personnel record, quali-

1 fies for postponement of disclosure under this
2 Act.

3 (j) POWERS.—The Review Board shall have the au-
4 thority to act in a manner prescribed under this Act, in-
5 cluding authority to—

6 (1) direct Government offices to create identi-
7 fication aids and organize Missing Armed Forces
8 Personnel records;

9 (2) direct Government offices to transmit to the
10 Archivist Missing Armed Forces Personnel records
11 as required under this Act, including segregable por-
12 tions of Missing Armed Forces Personnel records
13 and substitutes and summaries of Missing Armed
14 Forces Personnel records that can be publicly dis-
15 closed to the fullest extent;

16 (3) obtain access to Missing Armed Forces Per-
17 sonnel records that have been identified and orga-
18 nized by a Government office;

19 (4) direct a Government office to make avail-
20 able to the Review Board, and if necessary inves-
21 tigate the facts surrounding, additional information,
22 records, or testimony from individuals, which the
23 Review Board has reason to believe is required to
24 fulfill its functions and responsibilities under this
25 Act;

1 (5) hold such hearings, sit and act at such
2 times and places, take such testimony, receive such
3 evidence, and administer such oaths as the Review
4 Board considers advisable to carry out its respon-
5 sibilities under this Act;

6 (6) hold individuals in contempt for failure to
7 comply with directives and mandates issued by the
8 Review Board under this Act, which shall not in-
9 clude the authority to imprison or fine any indi-
10 vidual;

11 (7) require any Government office to account in
12 writing for the destruction of any records relating to
13 the loss, fate, or status of Missing Armed Forces
14 Personnel; and

15 (8) receive information from the public regard-
16 ing the identification and public disclosure of Miss-
17 ing Armed Forces Personnel records.

18 (k) WITNESS IMMUNITY.—The Review Board shall
19 be considered to be an agency of the United States for
20 purposes of section 6001 of title 18, United States Code.

21 (l) OVERSIGHT.—

22 (1) IN GENERAL.—The Committee on Home-
23 land Security and Governmental Affairs of the Sen-
24 ate and the Committee on Oversight and Govern-

1 ment Reform of the House of Representatives shall
2 have—

3 (A) continuing oversight jurisdiction with
4 respect to the official conduct of the Review
5 Board and the disposition of postponed records
6 after termination of the Review Board; and

7 (B) upon request, access to any records
8 held or created by the Review Board.

9 (2) DUTY OF REVIEW BOARD.—The Review
10 Board shall have the duty to cooperate with the ex-
11 ercise of oversight jurisdiction under paragraph (1).

12 (m) SUPPORT SERVICES.—The Administrator of the
13 General Services Administration shall provide administra-
14 tive services for the Review Board on a reimbursable basis.

15 (n) INTERPRETIVE REGULATIONS.—The Review
16 Board may issue interpretive regulations.

17 (o) TERMINATION AND WINDING UP.—

18 (1) IN GENERAL.—Two years after the date of
19 enactment of this Act, the Review Board shall, by
20 majority vote, determine whether all Government of-
21 fices have complied with the obligations, mandates,
22 and directives under this Act.

23 (2) TERMINATION DATE.—The Review Board
24 shall terminate on the date that is 4 years after the
25 date of enactment of this Act.

1 (3) REPORT.—Before the termination of the
 2 Review Board under paragraph (2), the Review
 3 Board shall submit to Congress reports, including a
 4 complete and accurate accounting of expenditures
 5 during its existence, and shall complete all other re-
 6 porting requirements under this Act.

7 (4) RECORDS.—Upon termination of the Re-
 8 view Board, the Review Board shall transfer all
 9 records of the Review Board to the Archivist for in-
 10 clusion in the Collection, and no record of the Re-
 11 view Board shall be destroyed.

12 **SEC. 8. MISSING ARMED FORCES PERSONNEL RECORDS**
 13 **REVIEW BOARD PERSONNEL.**

14 (a) EXECUTIVE DIRECTOR.—

15 (1) IN GENERAL.—Not later than 45 days after
 16 the initial meeting of the Review Board, the Review
 17 Board shall appoint an individual to the position of
 18 Executive Director.

19 (2) QUALIFICATIONS.—The individual ap-
 20 pointed as Executive Director of the Review
 21 Board—

22 (A) shall be a citizen of the United States
 23 of integrity and impartiality;

24 (B) shall be appointed without regard to
 25 political affiliation; and

1 (C) shall not have any conflict of interest
2 with the mission of the Review Board.

3 (3) SECURITY CLEARANCE.—

4 (A) LIMIT ON APPOINTMENT.—The Review
5 Board shall not appoint an individual as Execu-
6 tive Director until after the date on which the
7 individual qualifies for the necessary security
8 clearance.

9 (B) EXPEDITED PROVISION.—The appro-
10 priate departments, agencies, and elements of
11 the executive branch of the Federal Government
12 shall cooperate to ensure that an application by
13 an individual nominated to be Executive Direc-
14 tor, seeking security clearances necessary to
15 carry out the duties of the Executive Director,
16 is expeditiously reviewed and granted or denied.

17 (4) DUTIES.—The Executive Director shall—

18 (A) serve as principal liaison to Govern-
19 ment offices;

20 (B) be responsible for the administration
21 and coordination of the review of records by the
22 Review Board;

23 (C) be responsible for the administration
24 of all official activities conducted by the Review
25 Board; and

1 (D) not have the authority to decide or de-
2 termine whether any record should be disclosed
3 to the public or postponed for disclosure.

4 (5) REMOVAL.—The Executive Director may be
5 removed by a majority vote of the Review Board.

6 (b) STAFF.—

7 (1) IN GENERAL.—The Review Board may, in
8 accordance with the civil service laws, but without
9 regard to civil service law and regulation for com-
10 petitive service as defined in subchapter 1, chapter
11 33 of title 5, United States Code, appoint and termi-
12 nate additional employees as are necessary to enable
13 the Review Board and the Executive Director to per-
14 form their duties under this Act.

15 (2) QUALIFICATIONS.—An individual appointed
16 to a position as an employee of the Review Board—

17 (A) shall be a citizen of the United States
18 of integrity and impartiality; and

19 (B) shall not have had any previous in-
20 volvement with any official investigation or in-
21 quiry relating to the loss, fate, or status of
22 Missing Armed Forces Personnel.

23 (3) SECURITY CLEARANCE.—

24 (A) LIMIT ON APPOINTMENT.—The Review
25 Board shall not appoint an individual as an em-

1 ployee of the Review Board until after the date
2 on which the individual qualifies for the nec-
3 essary security clearance.

4 (B) EXPEDITED PROVISION.—The appro-
5 priate departments, agencies, and elements of
6 the executive branch of the Federal Government
7 shall cooperate to ensure that an application by
8 an individual who is a candidate for a position
9 with the Review Board, seeking security clear-
10 ances necessary to carry out the duties of the
11 position, is expeditiously reviewed and granted
12 or denied.

13 (c) COMPENSATION.—The Review Board shall fix the
14 compensation of the Executive Director and other employ-
15 ees of the Review Board without regard to chapter 51 and
16 subchapter III of chapter 53 of title 5, United States
17 Code, relating to classification of positions and General
18 Schedule pay rates, except that the rate of pay for the
19 Executive Director and other employees may not exceed
20 the rate payable for level V of the Executive Schedule
21 under section 5316 of title 5, United States Code.

22 (d) ADVISORY COMMITTEES.—

23 (1) IN GENERAL.—The Review Board may cre-
24 ate one or more advisory committees to assist in ful-

1 filling the responsibilities of the Review Board under
2 this Act.

3 (2) APPLICABILITY OF FACA.—Any advisory
4 committee created by the Review Board shall be sub-
5 ject to the Federal Advisory Committee Act (5
6 U.S.C. App.).

7 **SEC. 9. REVIEW OF RECORDS BY THE MISSING ARMED**
8 **FORCES PERSONNEL RECORDS REVIEW**
9 **BOARD.**

10 (a) CUSTODY OF RECORDS REVIEWED BY REVIEW
11 BOARD.—Pending the outcome of the review activity of
12 the Review Board, a Government office shall retain a
13 Missing Armed Forces Personnel record in the custody,
14 possession or control of the Government office for pur-
15 poses of preservation, security, and efficiency, unless—

16 (1) the Review Board requires the physical
17 transfer of records for reasons of conducting an
18 independent and impartial review; or

19 (2) such transfer is necessary for an adminis-
20 trative hearing or other official function of the Re-
21 view Board.

22 (b) STARTUP REQUIREMENTS.—The Review Board
23 shall—

24 (1) not later than 90 days after the date on
25 which all members are appointed, publish a schedule

1 for review of all Missing Armed Forces Personnel
2 records in the Federal Register; and

3 (2) not later than 180 days after the date of
4 enactment of this Act, begin reviewing of Missing
5 Armed Forces Personnel records under this Act.

6 (c) DETERMINATION OF THE REVIEW BOARD.—

7 (1) IN GENERAL.—The Review Board shall di-
8 rect that all records that relate, directly or indi-
9 rectly, to the loss, fate, or status of Missing Armed
10 Forces Personnel be transmitted to the Archivist
11 and disclosed to the public in the Collection in the
12 absence of clear and convincing evidence that—

13 (A) the record is not a Missing Armed
14 Forces Personnel record; or

15 (B) the Missing Armed Forces Personnel
16 record, or particular information within the
17 Missing Armed Forces Personnel record, quali-
18 fies for postponement of public disclosure under
19 this Act.

20 (2) POSTPONEMENT.—In approving postpone-
21 ment of public disclosure of a Missing Armed Forces
22 Personnel record, or information within a Missing
23 Armed Forces Personnel record, the Review Board
24 shall seek to—

1 (A) provide for the disclosure of segregable
2 parts, substitutes, or summaries of the Missing
3 Armed Forces Personnel record; and

4 (B) determine, in consultation with the
5 originating body and consistent with the stand-
6 ards for postponement under this Act, which of
7 the following alternative forms of disclosure
8 shall be made by the originating body:

9 (i) Any reasonably segregable par-
10 ticular information in a Missing Armed
11 Forces Personnel record.

12 (ii) A substitute record for that infor-
13 mation which is postponed.

14 (iii) A summary of a Missing Armed
15 Forces Personnel record.

16 (3) REPORTING.—With respect to a Missing
17 Armed Forces Personnel record, or information
18 within a Missing Armed Forces Personnel record,
19 the public disclosure of which is postponed under
20 this Act, or for which only substitutions or sum-
21 maries have been disclosed to the public, the Review
22 Board shall create and transmit to the Archivist a
23 report containing—

24 (A) a description of actions by the Review
25 Board, the originating body, or any Government

1 office (including a justification of any such ac-
2 tion to postpone disclosure of any record or
3 part of any record) and of any official pro-
4 ceedings conducted by the Review Board; and

5 (B) a statement, based on a review of the
6 proceedings and in conformity with the deci-
7 sions reflected therein, designating a rec-
8 ommended specified time at which, or a speci-
9 fied occurrence following which, the material
10 may be appropriately disclosed to the public
11 under this Act, which the Review Board shall
12 disclose to the public with notice thereof, rea-
13 sonably calculated to make interested members
14 of the public aware of the existence of the state-
15 ment.

16 (4) ACTIONS AFTER DETERMINATION.—

17 (A) IN GENERAL.—Not later than 14 days
18 after the date of a determination by the Review
19 Board that a Missing Armed Forces Personnel
20 record shall be publicly disclosed in the Collec-
21 tion or postponed for disclosure and held in the
22 protected Collection, the Review Board shall no-
23 tify the head of the originating body of the de-
24 termination and publish a copy of the deter-
25 mination in the Federal Register.

1 (B) OVERSIGHT NOTICE.—Simultaneous
2 with notice under subparagraph (A), the Review
3 Board shall provide notice of a determination
4 concerning the public disclosure or postpone-
5 ment of disclosure of a Missing Armed Forces
6 Personnel record, or information contained
7 within a Missing Armed Forces Personnel
8 record, which shall include a written unclassi-
9 fied justification for public disclosure or post-
10 ponement of disclosure, including an expla-
11 nation of the application of any standards in
12 section 6 to the President, the Committee on
13 Homeland Security and Governmental Affairs
14 of the Senate, and the Committee on Oversight
15 and Government Reform of the House of Rep-
16 resentatives

17 (5) REFERRAL AFTER TERMINATION.—A Miss-
18 ing Armed Forces Personnel record that is identi-
19 fied, located, or otherwise discovered after the date
20 on which the Review Board terminates shall be re-
21 ferred to the Committee on Armed Services of the
22 Senate and the Committee on Armed Services of the
23 House of Representatives for review, ongoing over-
24 sight and, as warranted, referral for possible en-
25 forcement action relating to a violation of this Act.

1 (d) NOTICE TO PUBLIC.—Every 30 days, beginning
2 on the date that is 60 days after the date on which the
3 Review Board first approves the postponement of disclo-
4 sure of a Missing Armed Forces Personnel record, the Re-
5 view Board shall publish in the Federal Register a notice
6 that summarizes the postponements approved by the Re-
7 view Board, including a description of the subject, origi-
8 nating body, length or other physical description, and each
9 ground for postponement that is relied upon.

10 (e) REPORTS BY THE REVIEW BOARD.—

11 (1) IN GENERAL.—Not later than 1 year after
12 the date of enactment of this Act, and every year
13 thereafter until the Review Board terminates, the
14 Review Board shall submit a report regarding the
15 activities of the Review Board to—

16 (A) the Committee on Oversight and Gov-
17 ernment Reform of the House of Representa-
18 tives;

19 (B) the Committee on Homeland Security
20 and Governmental Affairs of the Senate;

21 (C) the President;

22 (D) the Archivist; and

23 (E) the head of any Government office the
24 records of which have been the subject of Re-
25 view Board activity.

1 (2) CONTENTS.—Each report under paragraph
2 (1) shall include the following information:

3 (A) A financial report of the expenses for
4 all official activities and requirements of the
5 Review Board and its employees.

6 (B) The progress made on review, trans-
7 mission to the Archivist, and public disclosure
8 of Missing Armed Forces Personnel records.

9 (C) The estimated time and volume of
10 Missing Armed Forces Personnel records in-
11 volved in the completion of the duties of the Re-
12 view Board under this Act.

13 (D) Any special problems, including re-
14 quests and the level of cooperation of Govern-
15 ment offices, with regard to the ability of the
16 Review Board to carry out its duties under this
17 Act.

18 (E) A record of review activities, including
19 a record of postponement decisions by the Re-
20 view Board or other related actions authorized
21 under this Act, and a record of the volume of
22 records reviewed and postponed.

23 (F) Suggestions and requests to Congress
24 for additional legislative authority needs.

1 (G) An appendix containing copies of re-
 2 ports relating to postponed records submitted to
 3 the Archivist under subsection (c)(3) since the
 4 end of the period covered by the most recent re-
 5 port under paragraph (1).

6 (3) TERMINATION NOTICE.—Not later than 90
 7 days before the Review Board expects to complete
 8 the work of the Review Board under this Act, the
 9 Review Board shall provide written notice to Con-
 10 gress of the intent of the Review Board to terminate
 11 operations at a specified date.

12 **SEC. 10. DISCLOSURE OF OTHER MATERIALS AND ADDI-**
 13 **TIONAL STUDY.**

14 (a) MATERIALS UNDER SEAL OF COURT.—

15 (1) IN GENERAL.—The Review Board may re-
 16 quest the Attorney General to petition any court of
 17 the United States or of a foreign country to release
 18 any information relevant to the loss, fate, or status
 19 of Missing Armed Forces Personnel that is held
 20 under seal of the court.

21 (2) GRAND JURY INFORMATION.—

22 (A) IN GENERAL.—The Review Board may
 23 request the Attorney General to petition any
 24 court of the United States to release any infor-
 25 mation relevant to loss, fate, or status of Miss-

1 ing Armed Forces Personnel that is held under
2 the injunction of secrecy of a grand jury.

3 (B) TREATMENT.—A request for disclo-
4 sure of Missing Armed Forces Personnel mate-
5 rials under this Act shall be deemed to con-
6 stitute a showing of particularized need under
7 rule 6 of the Federal Rules of Criminal Proce-
8 dure.

9 (b) SENSE OF CONGRESS.—It is the sense of Con-
10 gress that—

11 (1) the Attorney General should assist the Re-
12 view Board in good faith to unseal any records that
13 the Review Board determines to be relevant and held
14 under seal by a court or under the injunction of se-
15 crecy of a grand jury;

16 (2) the Secretary of State should—

17 (A) contact the governments of the Rus-
18 sian Federation, the People's Republic of
19 China, and the Democratic People's Republic of
20 Korea to seek the disclosure of all records in
21 their respective custody, possession, or control
22 relevant to the loss, fate, or status of Missing
23 Armed Forces Personnel; and

24 (B) contact any other foreign government
25 that may hold information relevant to the loss,

1 fate, or status of Missing Armed Forces Per-
2 sonnel, and seek disclosure of such information;
3 and

4 (3) all agencies should cooperate in full with the
5 Review Board to seek the disclosure of all informa-
6 tion relevant to the loss, fate, or status of Missing
7 Armed Forces Personnel consistent with the public
8 interest.

9 **SEC. 11. RULES OF CONSTRUCTION.**

10 (a) PRECEDENCE OVER OTHER LAW.—When this
11 Act requires transmission of a record to the Archivist or
12 public disclosure, it shall take precedence over any other
13 law (except section 6103 of the Internal Revenue Code of
14 1986), judicial decision construing such law, or common
15 law doctrine that would otherwise prohibit such trans-
16 mission or disclosure, with the exception of deeds gov-
17 erning access to or transfer or release of gifts and dona-
18 tions of records to the United States Government.

19 (b) FREEDOM OF INFORMATION ACT.—Nothing in
20 this Act shall be construed to eliminate or limit any right
21 to file requests with any Executive agency or seek judicial
22 review of the decisions under section 552 of title 5, United
23 States Code.

24 (c) JUDICIAL REVIEW.—Nothing in this Act shall be
25 construed to preclude judicial review under chapter 7 of

1 title 5, United States Code, of final actions taken or re-
2 quired to be taken under this Act.

3 (d) EXISTING AUTHORITY.—Nothing in this Act re-
4 vokes or limits the existing authority of the President, any
5 Executive agency, the Senate, or the House of Representa-
6 tives, or any other entity of the Government to publicly
7 disclose records in its custody, possession, or control.

8 (e) RULES OF THE SENATE AND HOUSE OF REP-
9 RESENTATIVES.—To the extent that any provision of this
10 Act establishes a procedure to be followed in the Senate
11 or the House of Representatives, such provision is adopt-
12 ed—

13 (1) as an exercise of the rulemaking power of
14 the Senate and House of Representatives, respec-
15 tively, and is deemed to be part of the rules of each
16 House, respectively, but applicable only with respect
17 to the procedure to be followed in that House, and
18 it supersedes other rules only to the extent that it
19 is inconsistent with such rules; and

20 (2) with full recognition of the constitutional
21 right of either House to change the rules (so far as
22 they relate to the procedure of that House) at any
23 time, in the same manner, and to the same extent
24 as in the case of any other rule of that House.

1 **SEC. 12. TERMINATION OF EFFECT OF ACT.**

2 (a) PROVISIONS PERTAINING TO THE REVIEW
3 BOARD.—The provisions of this Act that pertain to the
4 appointment and operation of the Review Board shall
5 cease to be effective when the Review Board and the terms
6 of its members have terminated under section 7(o).

7 (b) OTHER PROVISIONS.—The remaining provisions
8 of this Act shall continue in effect until such time as the
9 Archivist certifies to the President and Congress that all
10 Missing Armed Forces Personnel records have been made
11 available to the public in accordance with this Act.

12 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) IN GENERAL.—There are authorized to be appro-
14 priated such sums as are necessary to carry out this Act,
15 to remain available until expended.

16 (b) INTERIM FUNDING.—Until such time as funds
17 are appropriated pursuant to subsection (a), the President
18 may use such sums as are available for discretionary use
19 to carry out this Act.

20 **SEC. 14. SEVERABILITY.**

21 If any provision of this Act, or the application thereof
22 to any person or circumstance, is held invalid, the remain-
23 der of this Act and the application of that provision to
24 other persons not similarly situated or to other cir-
25 cumstances shall not be affected by the invalidation.

