

112TH CONGRESS
2D SESSION

H. R. 4291

To establish the United States Commission on an Open Society with Security.

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 2012

Ms. NORTON introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Homeland Security, 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 establish the United States Commission on an Open Society with Security.

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 “United States Commis-
5 sion on an Open Society with Security Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) an open society which affords free access to
9 public facilities and spaces and which protects the

1 right to engage in open discussion is an essential
2 premise of American governmental institutions and
3 democratic values;

4 (2) the United States is currently facing a chal-
5 lenge to the safety and security of the public, public
6 employees, and public facilities and spaces that is
7 unique in the history of this Nation;

8 (3) to meet this challenge without eroding or
9 harming any of the basic tenets of the Republic and
10 of our democracy, this Nation needs to assemble the
11 best thinking available; and

12 (4) a commission of experts from a broad base
13 of disciplines and backgrounds is necessary to exam-
14 ine all the factors that should be considered in se-
15 curing public safety from terrorist attacks while
16 maintaining the highest level of free and open access
17 to the public.

18 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

19 (a) **ESTABLISHMENT.**—There is established a com-
20 mission to be known as the “United States Commission
21 on an Open Society with Security” (in this Act referred
22 to as the “Commission”).

23 (b) **COMPOSITION.**—The Commission shall be com-
24 posed of 21 members appointed in accordance with sub-
25 section (d)(1) from among individuals representing such

1 fields or groups as the following: architecture, technology,
2 civil libertarians, humanists, members of the Armed
3 Forces, Federal Government employees, city planners,
4 business leaders, lawyers, artists, public building security,
5 engineers, philosophers, historians, sociologists, and psy-
6 chologists. The President shall designate one of those
7 members to be the Chairperson of the Commission.

8 (c) TERMS; QUORUM; MEETINGS; VACANCIES.—

9 Members shall be appointed for the life of the Commission.
10 Nine members of the Commission shall constitute a
11 quorum, but a lesser number may hold hearings. After its
12 initial meeting, the Commission shall meet at the call of
13 the Chairperson of the Commission or a majority of its
14 members. Any vacancy in the Commission shall not affect
15 its powers and shall be filled in the same manner as the
16 original appointment.

17 (d) APPOINTMENTS; INITIAL MEETING.—

18 (1) APPOINTMENTS.—Appointments to the
19 Commission shall be made as follows:

20 (A) Nine members appointed by the Presi-
21 dent.

22 (B) Three members appointed by the
23 Speaker of the House of Representatives.

24 (C) Three members appointed by the mi-
25 nority leader of the House of Representatives.

1 (D) Three members appointed by the ma-
2 jority leader of the Senate.

3 (E) Three members appointed by the mi-
4 nority leader of the Senate.

5 (2) INITIAL MEETING.—If, after 90 days fol-
6 lowing the date of enactment of this Act, 9 or more
7 members of the Commission have been appointed,
8 the members who have been appointed may meet,
9 and the Chairperson shall have the authority to
10 begin the operations of the Commission, including
11 the hiring of staff.

12 **SEC. 4. FUNCTIONS OF COMMISSION.**

13 (a) IN GENERAL.—The Commission shall study and
14 make findings and recommendations relating to the ques-
15 tion of how the Government of the United States may pro-
16 vide, in a balanced manner, for both security in and public
17 access to Federal buildings and other Federal property
18 and sites.

19 (b) MATTERS TO BE EXAMINED.—In carrying out
20 this Act, the Commission shall specifically examine mat-
21 ters that relate to the security of, and open access to, pub-
22 lic facilities and spaces, including—

23 (1) Federal, other governmental, and private se-
24 curity practices and proposals, building design, pub-

1 lic space management, counterterrorism needs, and
2 refurbishment of existing Federal facilities;

3 (2) the effect of access to public facilities and
4 spaces on—

5 (A) maintenance of security and safety;

6 (B) free speech, the right to petition the
7 Government, and other constitutional rights
8 and civil liberties;

9 (C) economies of affected jurisdictions or
10 parts thereof;

11 (D) physical changes and architectural aes-
12 thetics of affected areas;

13 (E) traffic and congestion; and

14 (F) job performance of employees within
15 the affected facilities;

16 (3) current and potential uses of technology to
17 augment or replace traditional modes of security;

18 (4) practices of and comparisons with other en-
19 tities and nations; and

20 (5) current and potential analytical methods of
21 assessing the risks posed by the various forms of
22 terrorism, balanced against the specific needs and
23 values of open access.

24 (c) COORDINATION OF ACTIVITIES.—The Commis-
25 sion shall take appropriate measures to avoid unnecessary

1 duplication of efforts previously or currently being under-
2 taken by any other person or entity.

3 **SEC. 5. POWERS OF COMMISSION.**

4 (a) IN GENERAL.—The Commission or, on the au-
5 thorization of the Commission, any member or agent of
6 the Commission may hold such hearings, sit and act at
7 such times and places, take such testimony, and receive
8 such evidence as the Commission considers appropriate to
9 carry out this Act.

10 (b) OBTAINING OFFICIAL INFORMATION.—The Com-
11 mission may secure directly from any department, agency,
12 or other entity of the United States information necessary
13 to enable it to carry out this Act. Upon request of the
14 Chairperson of the Commission, the head of such govern-
15 mental entity shall furnish, to the extent authorized by
16 law, such information to the Commission.

17 (c) SECURITY.—

18 (1) SECURITY CLEARANCES.—The members
19 and staff of the Commission shall hold, as a condi-
20 tion of appointment to or employment with the Com-
21 mission, appropriate security clearances for access to
22 the classified briefing, records, and materials to be
23 reviewed by the Commission or its staff and shall
24 follow the guidance and practices on security under
25 applicable Executive orders and agency directives.

1 (2) CONDITIONS TO GRANTING ACCESS.—The
2 head of an agency shall require, as a condition of
3 granting access to a member of the Commission or
4 a member of the staff of the Commission to classi-
5 fied records or materials of the agency under this
6 Act, require the member to—

7 (A) execute an agreement regarding the se-
8 curity of such records or materials that is ap-
9 proved by the head of the agency; and

10 (B) hold an appropriate security clearance
11 granted or recognized under the standard pro-
12 cedures and eligibility criteria of the agency, in-
13 cluding any special access approval required for
14 access to such records or materials.

15 (3) RESTRICTION ON USE.—The members of
16 the Commission and the members of the staff of the
17 Commission may not use any information acquired
18 in the course of their official activities on the Com-
19 mission for nonofficial purposes.

20 (4) NEED TO KNOW.—For purposes of any law
21 or regulation governing access to classified informa-
22 tion that pertains to the national security of the
23 United States and to facilitate the advisory func-
24 tions of the Commission under this Act, a member
25 of the Commission or a member of the staff of the

1 Commission seeking access to a record or material
2 under this Act shall be deemed for purposes of this
3 subsection to have a need to know the contents of
4 the record or material.

5 (5) **RULE OF CONSTRUCTION.**—A reference in
6 this subsection to the “staff of the Commission” in-
7 cludes individuals described in sections 6(d) and
8 6(e).

9 (d) **MAILS.**—The Commission may use the United
10 States mails in the same manner and under the same con-
11 ditions as other departments and agencies of the United
12 States.

13 (e) **GIFTS.**—The Commission may accept, use, and
14 dispose of gifts or donations of services or property.

15 (f) **ADMINISTRATIVE SUPPORT SERVICES.**—The Ad-
16 ministrator of General Services shall provide to the Com-
17 mission, on a reimbursable basis, such administrative sup-
18 port services as the Commission may request.

19 **SEC. 6. PERSONNEL MATTERS.**

20 (a) **COMPENSATION OF MEMBERS.**—Members of the
21 Commission shall not be compensated by reason of their
22 service on the Commission.

23 (b) **TRAVEL EXPENSES.**—The members of the Com-
24 mission shall be allowed travel expenses, including per
25 diem in lieu of subsistence, at rates authorized for employ-

1 ees of agencies under subchapter I of chapter 57 of title
2 5, United States Code, while away from their homes or
3 regular places of business in the performance of services
4 for the Commission.

5 (c) STAFF.—Subject to such rules as the Commission
6 may prescribe, the Chairperson of the Commission, with-
7 out regard to the provisions of title 5, United States Code,
8 governing appointments in the competitive service, and
9 without regard to the provisions of chapter 51 and sub-
10 chapter III of chapter 53 of such title (relating to classi-
11 fication and General Schedule pay rates), may appoint and
12 fix the pay of a staff director and such other personnel
13 as may be necessary to enable the Commission to carry
14 out its functions; except that no rate of pay fixed under
15 this subsection may exceed the maximum rate of basic pay
16 payable for GS–15 of the General Schedule.

17 (d) STAFF OF FEDERAL AGENCIES.—Upon request
18 of the Chairperson of the Commission, the head of any
19 department or agency of the United States may detail, on
20 a nonreimbursable basis, any of the personnel of that de-
21 partment or agency to the Commission to assist it in car-
22 rying out its functions under this Act.

23 (e) EXPERTS AND CONSULTANTS.—With the ap-
24 proval of the Commission, the Chairperson of the Commis-
25 sion may procure temporary and intermittent services

1 under section 3109(b) of title 5, United States Code, at
2 rates for individuals not to exceed the daily equivalent of
3 the maximum rate of basic pay payable for GS-15 of the
4 General Schedule.

5 **SEC. 7. REPORT.**

6 (a) SUBMISSION TO THE PRESIDENT.—The Commis-
7 sion shall transmit its final report to the President not
8 later than 2 years after the initial meeting of the Commis-
9 sion. Such report shall contain a detailed statement of the
10 findings and conclusions of the Commission, together with
11 its recommendations for such legislative, administrative,
12 or other action as the Commission considers appropriate.

13 (b) SUBMISSION TO THE CONGRESS.—Not later than
14 6 months after receiving the final report of the Commis-
15 sion under subsection (a), the President shall transmit
16 such report to Congress, together with any comments or
17 recommendations (including any proposed legislation)
18 which the President considers appropriate.

19 **SEC. 8. TERMINATION OF COMMISSION.**

20 The Commission shall terminate on the 90th day
21 after the date on which the Commission is required to sub-
22 mit its final report under section 7(a).

23 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

24 There are authorized to be appropriated to carry out
25 this Act—

- 1 (1) \$5,000,000 for fiscal year 2013; and
- 2 (2) \$5,000,000 for fiscal year 2014.

○