

DWIGHT D. EISENHOWER MEMORIAL COMMISSION  
REFORM ACT

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DECEMBER 22, 2014.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. HASTINGS of Washington, from the Committee on Natural  
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5203]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5203) to enhance the operation of the Dwight D. Eisenhower Memorial Commission, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Dwight D. Eisenhower Memorial Commission Reform Act”.

**SEC. 2. DWIGHT D. EISENHOWER MEMORIAL.**

(a) AMENDMENTS.—Section 8162 of Public Law 106–79 (40 U.S.C. 8903 note) is amended as follows:

(1) In subsection (c)—

(A) in paragraph (2) by striking “Members of the Senate” and inserting “persons”; and

(B) in paragraph (3), by striking “Members of the House of Representatives” and inserting “persons”.

(2) By redesignating subsections (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (q) as subsections (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), and (r), respectively.

(3) By inserting after subsection (e) the following:

“(f) APPOINTMENTS.—Each appointment of a Commission member shall be made in consultation with the Eisenhower Foundation, a section 501(c)(3) public foundation located in Abilene, Kansas.”

(b) TERMINATION OF COMMISSION MEMBERSHIP AND STAFF; RECORDS.—

(1) TERMINATION OF MEMBERSHIP.—The term as a member of the Dwight D. Eisenhower Memorial Commission of each individual serving as such a member on the date of the enactment of this Act is hereby terminated.

(2) STAFF.—The employment as Executive Director and other staff of the Commission of each individual so employed on the date of the enactment of this Act is hereby terminated effective on the date that is 30 days after the date of enactment of this Act.

(3) RECORDS.—Any records of the Commission in existence on the date that the staff is no longer employed by the Commission under paragraph (2) shall be retained by the General Services Administration or the Secretary of the Interior until such time as a new Dwight D. Eisenhower Memorial Commission is appointed and staffed. The records of the former Commission shall be transferred to the newly appointed Commission as soon as possible.

#### PURPOSE OF THE BILL

The purpose of H.R. 5203 is to enhance the operation of the Dwight D. Eisenhower Memorial Commission.

#### BACKGROUND AND NEED FOR LEGISLATION

In 1999, Public Law 106–79 established the Eisenhower Memorial Commission to create and build “an appropriate permanent memorial to Dwight D. Eisenhower . . . to perpetuate his memory and his contributions to the United States.” The Commission is composed of 12 members: four are selected from the Senate, four from the House of Representatives, and the President chooses four others.

The Commission has worked since then to select a site for the memorial, choose an architect, approve a design, and see it built. In 2006, Congress approved as the memorial site the square located across Independence Avenue from the National Air and Space Museum, north of the Department of Education.

The completion of the memorial has been put in jeopardy by a controversial design and extraordinary cost. H.R. 5203 moves the memorial forward by providing for a new commission to bring leadership to the bumbled process.

President Eisenhower’s place in history as an American icon is well understood, and a memorial in his honor will help ensure that future generations have the opportunity to appreciate his legacy. However, the memorial as currently conceived has been divisive and failed to meet the basic requirements of the Commemorative Works Act (CWA). Specifically, the CWA calls for memorials in Washington, D.C. to be “constructed of durable material suitable to the outdoor environment” in a “permanent manner.” The Committee on Natural Resources remains concerned that the most “permanent” aspect of the current design would be the maintenance, repair, and replacement cost of its experimental steel mesh screens, which the designer calls “tapestries.” It remains to be established how the mesh would endure the harsh District of Columbia climate, debris, and other environmental factors. Marble, granite, limestone, and bronze are materials that have been time-tested over millennia. They are not just durable; they have proven themselves to be permanent.

The current design also fails to comply with the purpose of the CWA: to preserve the integrity of the L’Enfant and McMillan Plans

for the Nation's Capital. The Committee notes that this is an unambiguous requirement of the CWA and that the current design violates the L'Enfant Plan by inserting enormous 80-foot-by-10-foot columns in the 160-foot Maryland Avenue right-of-way.

In the course of Committee legislative and oversight hearings, it has been established that the competition that selected the current designer was not open to the general public. The procedure employed by the Commission, which contracted with the General Services Administration (GSA), was narrow, restrictive, and undemocratic. The GSA "Design Excellence" competition process that was used is designed to choose architects for complex federal buildings, but it is not at all suited for public memorials. While recent competitions for memorials in the National Mall area considered thousands of entries, the Eisenhower Commission relied on a shadowy portfolio evaluation process, which included only 44 entrants, and ultimately considered only four "design visions." The selection suggests that the designer choice was less about an appropriate tribute to President Eisenhower and more about the reputation and fame of the designer.

Furthermore, an investigation completed by the Natural Resources Committee revealed that standard procedure for the Design Excellence program was not followed. It was weighted in such a way that the application of the chosen architect received an advantage.

A work of this magnitude deserves the participation, ingenuity, and creativity of the public. Such a narrow design competition serves only to intimidate the innovative thinking of designers and architects around the country and misses an opportunity to engage and excite Americans about the memorial.

To invite the widest possible participation, the newly-constituted Commission should conduct an open competition and selection process. There should be no entry fee, and the only requirements are that a designer is over 18 years of age and a U.S. citizen. The designer for the competition may be, but is not limited to, an architect, landscape architect, urban designer, artist, teacher, student, veteran, or a collaboration of any of these. To ensure that all entrants have an equal and fair chance, in the initial stage of the competition, entries should be submitted anonymously and evaluated blindly. Every American should have the opportunity to submit a proposal for the Eisenhower Memorial.

The Committee recognizes that consensus around a work of this significance can be elusive, but the degree of discord in this instance is extraordinary. President Eisenhower's own descendants have astutely described problems of design and process with respect to the current proposal. Through Committee hearings, the united Eisenhower family encapsulated the views of the general public. John Eisenhower, President Eisenhower's son and former U.S. Ambassador to Belgium, counseled that "taxpayers and donors alike will be better served with an Eisenhower Square that is a green open space with a simple statue in the middle." Although there is no legal requirement that the Eisenhowers support the design, the Committee urges the Commission to consider it a policy of common sense that the descendants ought to be proud of the memorial.

The Committee directs the Commission to seek a design that is modest but beautiful and dignified. It should be self-explanatory so that ordinary Americans will understand the ideas being conveyed without the need of a visitor center or guide. The Committee agrees, as stated in a hearing on the memorial, “Monuments speak to us without signage. They are not ink blots that leave things to the interpretation of the visitor. Monuments are statements, not question marks.”

H.R. 5203 will turn over the Commission membership and staff, allowing for the selection of a broad range of individuals to serve. Currently, two-thirds of the seats are held exclusively for Members of the House and Senate. Commissioners will be selected in consultation with Eisenhower Foundation, a nonprofit organization in Kansas dedicated to the legacy of President Eisenhower. Henceforth, appointments will be made with additional input from the experts on Eisenhower. Current commissioners may be reappointed to the panel.

The Committee anticipates that the next Eisenhower Commission will expand its focus on raising private dollars. While federal appropriations have supplemented recent memorials, funding has been largely private. Documents supplied to the Committee demonstrate that private fundraising efforts of the Commission have been unsuccessful to the tune of negative \$1 million. While the authorizing legislation did not require private dollars, the ability or inability to raise private funds has a natural effect of regulating the cost of a project. The price tag of the current proposal is over \$142 million. The Committee determined through its hearings that appropriate memorials can be built for significantly less money, and avoid the divisive criticism accompanying an ostentatious design. In fact, the existing, unspent appropriations should be adequate to correct course and launch a private fundraising effort to complete the memorial.

#### COMMITTEE ACTION

H.R. 5203 was introduced on July 25, 2014, by Congressman Rob Bishop (R-UT) and was referred to the Committee on Natural Resources. On July 30, 2014, the Natural Resources Committee met to consider the bill. Congressman Bishop offered an amendment designated #1 to the bill; the amendment was adopted by unanimous consent. No further amendments were offered, and the bill, as amended, was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides

that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 5203—Dwight D. Eisenhower Memorial Commission Reform Act*

H.R. 5203 would terminate the appointments of the current members of the Dwight D. Eisenhower Memorial Commission and terminate the employment of the Executive Director and staff of the Commission. The President, the Speaker of the House, and the President Pro Tempore of the Senate would appoint new members of the Commission. CBO estimates that implementing the bill would have no significant effect on the federal budget. Enacting H.R. 5203 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 5203 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On July 11, 2013, CBO transmitted a cost estimate for H.R. 1126, the Dwight D. Eisenhower Memorial Completion Act, as ordered reported by the House Committee on Natural Resources on June 12, 2013. H.R. 5203 is similar to provisions in H.R. 1126 regarding the commission's membership and staff. However, H.R. 1126 also would direct the commission to select an alternative design. The CBO cost estimates reflect that difference.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that implementing the bill would have no significant effect on the federal budget.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to enhance the operation of the Dwight D. Eisenhower Memorial Commission.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

## COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**SECTION 8162 OF PUBLIC LAW 106-79**

SEC. 8162. DWIGHT D. EISENHOWER MEMORIAL. (a) FINDINGS.—Congress finds that—

(1) the people of the United States feel a deep debt of gratitude to Dwight D. Eisenhower, who served as Supreme Commander of the Allied Forces in Europe in World War II and subsequently as 34th President of the United States; and

(2) an appropriate permanent memorial to Dwight D. Eisenhower should be created to perpetuate his memory and his contributions to the United States.

(b) COMMISSION.—There is established a commission to be known as the “Dwight D. Eisenhower Memorial Commission” (referred to in this section as the “Commission”).

(c) MEMBERSHIP.—The Commission shall be composed of—

(1) four persons appointed by the President, not more than two of whom may be members of the same political party;

(2) four **[Members of the Senate]** *persons* appointed by the President Pro Tempore of the Senate in consultation with the Majority Leader and Minority Leader of the Senate, of which not more than two appointees may be members of the same political party; and

(3) four **[Members of the House of Representatives]** *persons* appointed by the Speaker of the House of Representatives in consultation with the Majority Leader and Minority Leader of the House of Representatives, of which not more than two appointees may be members of the same political party.

(d) CHAIR AND VICE CHAIR.—The members of the Commission shall select a Chair and Vice Chair of the Commission. The Chair and Vice Chair shall not be members of the same political party.

(e) VACANCIES.—Any vacancy in the Commission shall not affect its powers if a quorum is present, but shall be filled in the same manner as the original appointment.

(f) APPOINTMENTS.—*Each appointment of a Commission member shall be made in consultation with the Eisenhower Foundation, a section 501(c)(3) public foundation located in Abilene, Kansas.*

[(f)] (g) MEETINGS.—

(1) INITIAL MEETING.—Not later than 45 days after the date on which a majority of the members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Commission shall meet at the call of the Chair.

[(g)] (h) QUORUM.—A majority of the members of the Commission shall constitute a quorum but a lesser number of members may hold hearings.

[(h)] (i) NO COMPENSATION.—A member of the Commission shall serve without compensation, but may be reimbursed for expenses incurred in carrying out the duties of the Commission.

[(i)] (j) DUTIES.—The Commission shall consider and formulate plans for such a permanent memorial to Dwight D. Eisenhower, including its nature, design, construction, and location.

[(j)] (k) POWERS OF THE COMMISSION.—

(1) IN GENERAL.—

(A) POWERS.—The Commission may—

(i) make such expenditures for services and materials for the purpose of carrying out this section as the Commission considers advisable from funds appropriated or received as gifts for that purpose;

(ii) solicit and accept contributions to be used in carrying out this section or to be used in connection with the construction or other expenses of the memorial;

(iii) hold hearings and enter into contracts;

(iv) enter into contracts for specialized or professional services as necessary to carry out this section; and

(v) take such actions as are necessary to carry out this section.

(B) SPECIALIZED OR PROFESSIONAL SERVICES.—Services under subparagraph (A)(iv) may be—

(i) obtained without regard to the provisions of title 5, United States Code, including section 3109 of that title; and

(ii) may be paid without regard to the provisions of title 5, United States Code, including chapter 51 and subchapter III of chapter 53 of that title.

(2) GIFTS OF PROPERTY.—The Commission may accept gifts of real or personal property to be used in carrying out this section, including to be used in connection with the construction or other expenses of the memorial.

(3) FEDERAL COOPERATION.—At the request of the Commission, a Federal department or agency may provide any information or other assistance to the Commission that the head of the Federal department or agency determines to be appropriate.

(4) POWERS OF MEMBERS AND AGENTS.—

(A) IN GENERAL.—If authorized by the Commission, any member or agent of the Commission may take any action that the Commission is authorized to take under this section.

(B) ARCHITECT.—The Commission may appoint an architect as an agent of the Commission to—

(i) represent the Commission on various governmental source selection and planning boards on the selection of the firms that will design and construct the memorial; and

(ii) perform other duties as designated by the Chairperson of the Commission.

(C) TREATMENT.—An authorized member or agent of the Commission (including an individual appointed under subparagraph (B)) providing services to the Commission shall be considered an employee of the Federal Government in the performance of those services for the purposes of chapter 171 of title 28, United States Code, relating to tort claims.

(5) TRAVEL.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

[(k)] (l) REPORTS.—The Commission shall—

(1) report the plans under subsection (i), together with recommendations, to the President and the Congress at the earliest practicable date; and

(2) in the interim, make annual reports on its progress to the President and the Congress.

[(l)] (m) APPLICABILITY OF OTHER LAWS.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

[(m)] (n) AUTHORITY TO ESTABLISH MEMORIAL.—

(1) IN GENERAL.—The Commission may establish a permanent memorial to Dwight D. Eisenhower on land under the jurisdiction of the Secretary of the Interior in the District of Columbia or its environs.

(2) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS.—The establishment of the memorial shall be in accordance with the Commemorative Works Act (40 U.S.C. 1001 et seq.).

(3) EXPIRATION.—Any reference in section 8903(e) of title 40, U.S.C. to the expiration at the end of, or extension beyond, a 7-year period shall be considered to be a reference to an expiration on, or extension beyond, September 30, 2014.

[(n)] (o) MEMORIAL FUND.—

(1) ESTABLISHMENT.—There is created in the Treasury a fund for the memorial to Dwight D. Eisenhower that includes amounts contributed under subsection (j)(2).

(2) USE OF FUND.—The fund shall be used for the expenses of establishing the memorial.

(3) INTEREST.—The Secretary of the Treasury shall credit to the fund the interest on obligations held in the fund.

[(o)] (p) STAFF AND SUPPORT SERVICES.—

## (1) IN GENERAL.—

## (A) POWERS.—The Commission may—

(i) make such expenditures for services and materials for the purpose of carrying out this section as the Commission considers advisable from funds appropriated or received as gifts for that purpose;

(ii) solicit and accept contributions to be used in carrying out this section or to be used in connection with the construction or other expenses of the memorial;

(iii) hold hearings and enter into contracts;

(iv) enter into contracts for specialized or professional services as necessary to carry out this section; and

(v) take such actions as are necessary to carry out this section.

## (B) SPECIALIZED OR PROFESSIONAL SERVICES.—Services under subparagraph (A)(iv) may be—

(i) obtained without regard to the provisions of title 5, United States Code, including section 3109 of that title; and

(ii) may be paid without regard to the provisions of title 5, United States Code, including chapter 51 and subchapter III of chapter 53 of that title.

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(A) IN GENERAL.—If authorized by the Commission, any member or agent of the Commission may take any action that the Commission is authorized to take under this section.

(B) ARCHITECT.—The Commission may appoint an architect as an agent of the Commission to—

(i) represent the Commission on various governmental source selection and planning boards on the selection of the firms that will design and construct the memorial; and

(ii) perform other duties as designated by the Chairperson of the Commission.

(C) TREATMENT.—An authorized member or agent of the Commission (including an individual appointed under subparagraph (B)) providing services to the Commission shall be considered an employee of the Federal Government in the performance of those services for the purposes of chapter 171 of title 28, United States Code, relating to tort claims.

(5) TRAVEL.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sub-

chapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

[(p)] (q) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as necessary to carry out this section.

[(q)] (r) APPROPRIATION OF FUNDS.—In addition to amounts provided elsewhere in this Act, there is appropriated to the Commission \$300,000, to remain available until expended.

## DISSENTING VIEWS

### H.R. 5203—DWIGHT D. EISENHOWER MEMORIAL COMMISSION REFORM ACT

H.R. 5203 terminates the current membership of the Dwight D. Eisenhower Memorial Commission. New members will be selected under the terms of the Commemorative Works Act. In addition, the bill terminates the tenure of the commission's staff and Executive Director.

In 1999, Congress authorized the Dwight D. Eisenhower Memorial and tasked the Eisenhower Memorial Commission with selecting a design and site for the permanent memorial. Since its selection in 2009, the design by architect Frank Gehry, which was chosen using guidelines outlined by the General Services Administration's Design Excellence Program, has been contentious, primarily due to concerns about its viability and vision expressed by certain members of the Eisenhower family.

The Committee held an oversight hearing on the status of the design and its selection process in the 112th Congress. This was followed up by a legislative hearing on H.R. 1126 ("Dwight D. Eisenhower Memorial Completion Act"), which, in addition to removing the members of the commission and its staff, requires the establishment of a new competition to select a new design. The Congressional Budget Office determined that H.R. 1126 would cost \$17 million over a four year period, primarily due to the costs of a new competition.

The sponsors of H.R. 1126 and this bill seem intent on forcing the selection of a new design for the memorial. However, since the Natural Resources Committee never held a hearing on H.R. 5203, its intent is unclear. A new commission with a new Executive Director and staff could further delay completion of the project and will not necessarily result in the selection of a new design. If it does turn out that a new commission conducts a new design competition, the projected cost of \$17 million stays the same and enactment of this bill costs money even though it doesn't show up in the CBO score.

Congress passed the Commemorative Works Act to ensure that memorials are designed in an independent, professional process that is outside the influence of politics. H.R. 5203 violates that spirit.

PETER DEFAZIO,  
*Ranking Member, Committee  
on Natural Resources.*

RAÚL GRIJALVA,  
*Ranking Member Subcom-  
mittee on Public Lands  
and Environmental Regu-  
lation.*

