

**AMENDMENT OFFERED BY MS. MCCOLLUM
TO THE AMENDMENT IN THE NATURE OF A
SUBSTITUTE**

At the end of chapter 1 of subtitle H of title V, add
the following:

1 **SEC. . PRIVACY AND CIVIL LIBERTIES OVERSIGHT**
2 **BOARD.**

3 (a) IN GENERAL.—There is established within the
4 Executive Office of the President a Privacy and Civil Lib-
5 erties Oversight Board (referred to in this subtitle as the
6 “Board”).

7 (b) FINDINGS.—Consistent with the report of the Na-
8 tional Commission on Terrorist Attacks Upon the United
9 States, Congress makes the following findings:

10 (1) In conducting the war on terrorism, the
11 Government may need additional powers and may
12 need to enhance the use of its existing powers.

13 (2) This shift of power and authority to the
14 Government calls for an enhanced system of checks
15 and balances to protect the precious liberties that
16 are vital to our way of life and to ensure that the
17 Government uses its powers for the purposes for
18 which the powers were given.

19 (c) PURPOSE.—The Board shall—



1 (1) analyze and review actions the executive
2 branch takes to protect the Nation from terrorism;
3 and

4 (2) ensure that liberty concerns are appro-
5 priately considered in the development and imple-
6 mentation of laws, regulations, and policies related
7 to efforts to protect the Nation against terrorism.

8 (d) FUNCTIONS.—

9 (1) ADVICE AND COUNSEL ON POLICY DEVEL-
10 OPMENT AND IMPLEMENTATION.—The Board
11 shall—

12 (A) review proposed legislation, regula-
13 tions, and policies related to efforts to protect
14 the Nation from terrorism, including the devel-
15 opment and adoption of any information shar-
16 ing guidelines under this Act;

17 (B) review the implementation of new and
18 existing legislation, regulations, and policies re-
19 lated to efforts to protect the Nation from ter-
20 rorism, including the implementation of any in-
21 formation sharing guidelines under this Act;

22 (C) advise the President and the depart-
23 ments, agencies, and elements of the executive
24 branch to ensure that privacy and civil liberties
25 are appropriately considered in the development



1 and implementation of such legislation, regula-
2 tions, policies, and guidelines; and

3 (D) in providing advice on proposals to re-
4 tain or enhance a particular governmental
5 power, consider whether the department, agen-
6 cy, or element of the executive branch has
7 explained—

8 (i) that the power actually materially
9 enhances security;

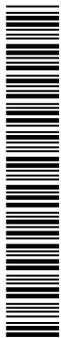
10 (ii) that there is adequate supervision
11 of the use by the executive branch of the
12 power to ensure protection of privacy and
13 civil liberties; and

14 (iii) that there are adequate guidelines
15 and oversight to properly confine its use.

16 (2) OVERSIGHT.—The Board shall continually
17 review—

18 (A) the regulations, policies, and proce-
19 dures, and the implementation of the regula-
20 tions, policies, and procedures, of the depart-
21 ments, agencies, and elements of the executive
22 branch to ensure that privacy and civil liberties
23 are protected;

24 (B) the information sharing practices of
25 the departments, agencies, and elements of the



1 executive branch to determine whether they ap-
2 propriately protect privacy and civil liberties
3 and adhere to any information sharing guide-
4 lines prescribed under this Act and to other
5 governing laws, regulations, and policies regard-
6 ing privacy and civil liberties; and

7 (C) other actions by the executive branch
8 related to efforts to protect the Nation from
9 terrorism to determine whether such actions—

10 (i) appropriately protect privacy and
11 civil liberties; and

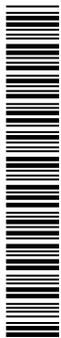
12 (ii) are consistent with governing
13 laws, regulations, and policies regarding
14 privacy and civil liberties.

15 (3) RELATIONSHIP WITH PRIVACY AND CIVIL
16 LIBERTIES OFFICERS.—The Board shall—

17 (A) review and assess reports and other in-
18 formation from privacy officers and civil lib-
19 erties officers under this Act;

20 (B) when appropriate, make recommenda-
21 tions to such privacy officers and civil liberties
22 officers regarding their activities; and

23 (C) when appropriate, coordinate the ac-
24 tivities of such privacy officers and civil liberties
25 officers on relevant interagency matters.



1 (4) TESTIMONY.—The Members of the Board
2 shall appear and testify before Congress upon re-
3 quest.

4 (e) REPORTS.—

5 (1) IN GENERAL.—The Board shall—

6 (A) receive and review reports from privacy
7 officers and civil liberties officers under this
8 Act; and

9 (B) periodically submit, not less than semi-
10 annually, reports—

11 (i)(I) to the appropriate committees of
12 Congress, including the Committees on the
13 Judiciary of the Senate and the House of
14 Representatives, the Committee on Govern-
15 mental Affairs of the Senate, the Com-
16 mittee on Government Reform of the
17 House of Representatives, the Select Com-
18 mittee on Intelligence of the Senate, and
19 the Permanent Select Committee on Intel-
20 ligence of the House of Representatives;
21 and

22 (II) to the President; and

23 (ii) which shall be in unclassified form
24 to the greatest extent possible, with a clas-
25 sified annex where necessary.



1 (2) CONTENTS.—Not less than 2 reports sub-
2 mitted each year under paragraph (1)(B) shall
3 include—

4 (A) a description of the major activities of
5 the Board during the preceding period; and

6 (B) information on the findings, conclu-
7 sions, and recommendations of the Board re-
8 sulting from its advice and oversight functions
9 under subsection (d).

10 (f) INFORMING THE PUBLIC.—The Board
11 shall—

12 (1) make its reports, including its reports to
13 Congress, available to the public to the greatest ex-
14 tent that is consistent with the protection of classi-
15 fied information and applicable law; and

16 (2) hold public hearings and otherwise inform
17 the public of its activities, as appropriate and in a
18 manner consistent with the protection of classified
19 information and applicable law.

20 (g) ACCESS TO INFORMATION.—

21 (1) AUTHORIZATION.—If determined by the
22 Board to be necessary to carry out its responsibil-
23 ities under this section, the Board is authorized to—

24 (A) have access from any department,
25 agency, or element of the executive branch, or



1 any Federal officer or employee, to all relevant
2 records, reports, audits, reviews, documents, pa-
3 pers, recommendations, or other relevant mate-
4 rial, including classified information consistent
5 with applicable law;

6 (B) interview, take statements from, or
7 take public testimony from personnel of any de-
8 partment, agency, or element of the executive
9 branch, or any Federal officer or employee;

10 (C) request information or assistance from
11 any State, tribal, or local government; and

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

19 (2) ENFORCEMENT OF SUBPOENA.—In the case
20 of contumacy or failure to obey a subpoena issued
21 under paragraph (1)(D), the United States district
22 court for the judicial district in which the subpoe-
23 naed person resides, is served, or may be found may
24 issue an order requiring such person to produce the
25 evidence required by such subpoena.



1 (3) AGENCY COOPERATION.—Whenever infor-
2 mation or assistance requested under subparagraph
3 (A) or (B) of paragraph (1) is, in the judgment of
4 the Board, unreasonably refused or not provided, the
5 Board shall report the circumstances to the head of
6 the department, agency, or element concerned with-
7 out delay. The head of the department, agency, or
8 element concerned shall ensure that the Board is
9 given access to the information, assistance, material,
10 or personnel the Board determines to be necessary
11 to carry out its functions.

12 (h) MEMBERSHIP.—

13 (1) MEMBERS.—The Board shall be composed
14 of a full-time chairman and 4 additional members,
15 who shall be appointed by the President, by and
16 with the advice and consent of the Senate.

17 (2) QUALIFICATIONS.—Members of the Board
18 shall be selected solely on the basis of their profes-
19 sional qualifications, achievements, public stature,
20 expertise in civil liberties and privacy, and relevant
21 experience, and without regard to political affiliation,
22 but in no event shall more than 3 members of the
23 Board be members of the same political party.

24 (3) INCOMPATIBLE OFFICE.—An individual ap-
25 pointed to the Board may not, while serving on the



1 Board, be an elected official, officer, or employee of
2 the Federal Government, other than in the capacity
3 as a member of the Board.

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

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

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

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

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

22 (C) the members initially appointed under
23 this subsection shall serve terms of two, three,
24 four, five, and six years, respectively, from the



1 effective date of this Act, with the term of each
2 such member to be designated by the President.

3 (5) QUORUM AND MEETINGS.—After its initial
4 meeting, the Board shall meet upon the call of the
5 chairman or a majority of its members. Three mem-
6 bers of the Board shall constitute a quorum.

7 (i) COMPENSATION AND TRAVEL EXPENSES.—

8 (1) COMPENSATION.—

9 (A) CHAIRMAN.—The chairman shall be
10 compensated at the rate of pay payable for a
11 position at level III of the Executive Schedule
12 under section 5314 of title 5, United States
13 Code.

14 (B) MEMBERS.—Each member of the
15 Board shall be compensated at a rate of pay
16 payable for a position at level IV of the Execu-
17 tive Schedule under section 5315 of title 5,
18 United States Code, for each day during which
19 that member is engaged in the actual perform-
20 ance of the duties of the Board.

21 (2) TRAVEL EXPENSES.—Members of the
22 Board shall be allowed travel expenses, including per
23 diem in lieu of subsistence, at rates authorized for
24 persons employed intermittently by the Government
25 under section 5703(b) of title 5, United States Code,



1 while away from their homes or regular places of
2 business in the performance of services for the
3 Board.

4 (j) STAFF.—

5 (1) APPOINTMENT AND COMPENSATION.—The
6 Chairman, in accordance with rules agreed upon by
7 the Board, shall appoint and fix the compensation of
8 a full-time executive director and such other per-
9 sonnel as may be necessary to enable the Board to
10 carry out its functions, without regard to the provi-
11 sions of title 5, United States Code, governing ap-
12 pointments in the competitive service, and without
13 regard to the provisions of chapter 51 and sub-
14 chapter III of chapter 53 of such title relating to
15 classification and General Schedule pay rates, except
16 that no rate of pay fixed under this subsection may
17 exceed the equivalent of that payable for a position
18 at level V of the Executive Schedule under section
19 5316 of title 5, United States Code.

20 (2) DETAILEES.—Any Federal employee may
21 be detailed to the Board without reimbursement
22 from the Board, and such detailee shall retain the
23 rights, status, and privileges of the detailee's regular
24 employment without interruption.



1 (3) CONSULTANT SERVICES.—The Board may
2 procure the temporary or intermittent services of ex-
3 perts and consultants in accordance with section
4 3109 of title 5, United States Code, at rates that do
5 not exceed the daily rate paid a person occupying a
6 position at level IV of the Executive Schedule under
7 section 5315 of such title.

8 (k) SECURITY CLEARANCES.—The appropriate de-
9 partments, agencies, and elements of the executive branch
10 shall cooperate with the Board to expeditiously provide the
11 Board members and staff with appropriate security clear-
12 ances to the extent possible under existing procedures and
13 requirements.

14 (l) TREATMENT AS AGENCY, NOT AS ADVISORY COM-
15 MITTEE.—The Board—

16 (1) is an agency (as defined in section 551(1)
17 of title 5, United States Code); and

18 (2) is not an advisory committee (as defined in
19 section 3(2) of the Federal Advisory Committee Act
20 (5 U.S.C. App.)).

