

116TH CONGRESS
1ST SESSION

S. 2794

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

NOVEMBER 6, 2019

Mr. CRAPO (for himself and Mrs. SHAHEEN) 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”.

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 following review and declassification. Only in the
8 rarest cases is there any legitimate need for contin-
9 ued protection of records pertaining to Missing
10 Armed Forces Personnel who have been missing for
11 decades.

12 (2) There has been insufficient priority placed
13 on identifying, locating, reviewing, or declassifying
14 records relating to Missing Armed Forces Personnel
15 and then transferring the records to the National
16 Archives for public access.

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

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

1 (5) The interest, desire, workforce, and funding
2 of Federal agencies to assemble, review, and declas-
3 sify records relating to Missing Armed Forces Per-
4 sonnel have been lacking.

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

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

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

19 (9) Legislation is necessary because section 552
20 of title 5, United States Code (commonly known as
21 the “Freedom of Information Act”), as implemented
22 by Federal agencies, has prevented the timely public
23 disclosure of records relating to Missing Armed
24 Forces Personnel.

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

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

4 (2) to require the expeditious public trans-
5 mission to the Archivist and public disclosure of
6 Missing Armed Forces Personnel records, subject to
7 narrow exceptions, as set forth in this Act.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

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

12 (2) COLLECTION.—The term “Collection”
13 means the Missing Armed Forces Personnel Records
14 Collection established under section 4(a).

15 (3) EXECUTIVE AGENCY.—The term “Executive
16 agency”—

17 (A) means an agency, as defined in section
18 552(f) of title 5, United States Code; and

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

1 (4) EXECUTIVE BRANCH MISSING ARMED
2 FORCES PERSONNEL RECORD.—The term “executive
3 branch Missing Armed Forces Personnel record”
4 means a Missing Armed Forces Personnel record of
5 an Executive agency, or information contained in
6 such a Missing Armed Forces Personnel record ob-
7 tained by or developed within the executive branch
8 of the Federal Government.

9 (5) GOVERNMENT OFFICE.—The term “Govern-
10 ment office” means an Executive agency, the Li-
11 brary of Congress, or the National Archives.

12 (6) MISSING ARMED FORCES PERSONNEL.—

13 (A) DEFINITION.—The term “Missing
14 Armed Forces Personnel” means 1 or more
15 missing persons.

16 (B) INCLUSIONS.—The term “Missing
17 Armed Forces Personnel” includes an indi-
18 vidual who was a missing person and whose sta-
19 tus was later changed to “missing and pre-
20 sumed dead”.

21 (7) MISSING ARMED FORCES PERSONNEL
22 RECORD.—The term “Missing Armed Forces Per-
23 sonnel record” means a record that relates, directly
24 or indirectly, to the loss, fate, or status of Missing
25 Armed Forces Personnel that—

1 (A) was created or made available for use
2 by, obtained by, or otherwise came into the cus-
3 tody, possession, or control of—

4 (i) any Government office;

5 (ii) any Presidential library; or

6 (iii) any of the Armed Forces; and

7 (B) relates to 1 or more Missing Armed
8 Forces Personnel who became missing persons
9 during the period—

10 (i) beginning on December 7, 1941;

11 and

12 (ii) ending on the date of enactment
13 of this Act.

14 (8) MISSING PERSON.—The term “missing per-
15 son” has the meaning given that term in section
16 1513 of title 10, United States Code.

17 (9) NATIONAL ARCHIVES.—The term “National
18 Archives”—

19 (A) means the National Archives and
20 Records Administration; and

21 (B) includes any component of the Na-
22 tional Archives and Records Administration (in-
23 cluding Presidential archival depositories estab-
24 lished under section 2112 of title 44, United
25 States Code).

1 (10) OFFICIAL INVESTIGATION.—The term “of-
2 ficial investigation” means a review, briefing, in-
3 quiry, or hearing relating to Missing Armed Forces
4 Personnel conducted by a Presidential commission,
5 committee of Congress, or agency, regardless of
6 whether it is conducted independently, at the request
7 of any Presidential commission or committee of Con-
8 gress, or at the request of any official of the Federal
9 Government.

10 (11) ORIGINATING BODY.—The term “origi-
11 nating body” means the Government office or other
12 initial source that created a record or particular in-
13 formation within a record.

14 (12) PUBLIC INTEREST.—The term “public in-
15 terest” means the compelling interest in the prompt
16 public disclosure of Missing Armed Forces Personnel
17 records for historical and governmental purposes, for
18 public research, and for the purpose of fully inform-
19 ing the people of the United States, most impor-
20 tantly families of Missing Armed Forces Personnel,
21 about the fate of the Missing Armed Forces Per-
22 sonnel and the process by which the Federal Govern-
23 ment has sought to account for them.

1 (13) RECORD.—The term “record” has the
2 meaning given the term “records” in section 3301 of
3 title 44, United States Code.

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

7 **SEC. 4. MISSING ARMED FORCES PERSONNEL RECORDS**
8 **COLLECTION AT THE NATIONAL ARCHIVES.**

9 (a) ESTABLISHMENT OF COLLECTION.—Not later
10 than 90 days after the date of enactment of this Act, the
11 Archivist shall—

12 (1) commence establishment of a collection of
13 records to be known as the “Missing Armed Forces
14 Personnel Records Collection”;

15 (2) commence preparing the subject guidebook
16 and index to the Collection; and

17 (3) establish criteria for Executive agencies to
18 follow when transmitting copies of Missing Armed
19 Forces Personnel Records to the Archivist, to in-
20 clude required metadata.

21 (b) REGULATIONS.—Not later than 180 days after
22 the date of enactment of this Act, the Review Board shall
23 promulgate rules to establish guidelines and processes for
24 the disclosure of records 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 and locate any Missing Armed
12 Forces Personnel records in the custody, pos-
13 session, or control of the Government office;
14 and

15 (B) prepare for transmission to the Archi-
16 vist in accordance with the criteria established
17 by the Archivist a copy of any Missing Armed
18 Forces Personnel records that have not pre-
19 viously been transmitted to the Archivist by the
20 Government office.

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

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

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

3 (B) whether a copy of any Missing Armed
4 Forces Personnel record has not been trans-
5 mitted to the Archivist.

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.—Infor-
10 mation that was made available or disclosed to the
11 public before the date of enactment of this Act in a
12 Missing Armed Forces Personnel record may not be
13 withheld, redacted, postponed for public disclosure,
14 or reclassified.

15 (5) WITHHELD AND SUBSTANTIALLY RE-
16 DACTED RECORDS.—For any Missing Armed Forces
17 Personnel record that is transmitted to the Archivist
18 which a Government office proposes to substantially
19 redact or withhold in full from public access, the
20 head of the Government office shall submit an un-
21 classified and publicly releasable report to the Archi-
22 vist, the Review Board, and each appropriate com-
23 mittee of the Senate and the House of Representa-
24 tives justifying the decision of the Government office
25 to substantially redact or withhold the record by

1 demonstrating that the release of information would
2 clearly and demonstrably be expected to cause an ar-
3 ticulated harm, and that the harm would be of such
4 gravity as to outweigh the public interest in access
5 to the information.

6 (b) REVIEW.—

7 (1) IN GENERAL.—Not later than 180 days
8 after the date of enactment of this Act, each Gov-
9 ernment office shall, in accordance with the criteria
10 established by the Archivist and the rules promul-
11 gated under paragraph (2)—

12 (A) identify, locate, copy, and review each
13 Missing Armed Forces Personnel record in the
14 custody, possession, or control of the Govern-
15 ment office for transmission to the Archivist
16 and disclosure to the public or, if needed, re-
17 view by the Review Board; and

18 (B) cooperate fully, in consultation with
19 the Archivist, in carrying out paragraph (3).

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

23 (3) NATIONAL ARCHIVES RECORDS.—Not later
24 than 180 days after the date of enactment of this
25 Act, the Archivist shall—

1 (A) locate and identify all Missing Armed
2 Forces Personnel records in the custody of the
3 National Archives as of the date of enactment
4 of this Act that remain classified, in whole or
5 in part;

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

9 (C) make each classified Missing Armed
10 Forces Personnel record located and identified
11 under subparagraph (A) available for review by
12 Executive agencies through the National De-
13 classification Center established under Execu-
14 tive Order 13526.

15 (4) RECORDS ALREADY PUBLIC.—A Missing
16 Armed Forces Personnel record that is in the cus-
17 tody of the National Archives on the date of enact-
18 ment of this Act and that has been publicly available
19 in its entirety without redaction shall be made avail-
20 able in the Collection without any additional review
21 by the Archivist, the Review Board, or any other
22 Government office under this Act.

23 (c) TRANSMISSION TO THE NATIONAL ARCHIVES.—
24 Each Government office shall—

1 (1) not later than 180 days after the date of
2 enactment of this Act, commence transmission to the
3 Archivist of copies of the Missing Armed Forces
4 Personnel records in the custody, possession, or con-
5 trol of the Government office; and

6 (2) not later than 1 year after the date of en-
7 actment of this Act, complete transmission to the
8 Archivist of copies of all Missing Armed Forces Per-
9 sonnel records in the possession or control of the
10 Government office.

11 (d) PERIODIC REVIEW OF POSTPONED MISSING
12 ARMED SERVICES PERSONNEL RECORDS.—

13 (1) IN GENERAL.—All Missing Armed Forces
14 Personnel records, or information within a Missing
15 Armed Forces Personnel record, the public disclo-
16 sure of which has been postponed under the stand-
17 ards under this Act shall be reviewed by the origi-
18 nating body—

19 (A)(i) periodically, but not less than every
20 5 years, after the date on which the Review
21 Board terminates under section 7(o); and

22 (ii) at the direction of the Archivist; and

23 (B) consistent with the recommendations
24 of the Review Board under section 9(b)(3)(B).

25 (2) CONTENTS.—

1 (A) IN GENERAL.—A periodic review of a
2 Missing Armed Forces Personnel record, or in-
3 formation within a Missing Armed Forces Per-
4 sonnel record, by the originating body shall ad-
5 dress the public disclosure of the Missing
6 Armed Forces Personnel record under the
7 standards under this Act.

8 (B) CONTINUED POSTPONEMENT.—If an
9 originating body conducting a periodic review of
10 a Missing Armed Forces Personnel record, or
11 information within a Missing Armed Forces
12 Personnel record, the public disclosure of which
13 has been postponed under the standards under
14 this Act, determines that continued postpone-
15 ment is required, the originating body shall pro-
16 vide to the Archivist an unclassified written de-
17 scription of the reason for the continued post-
18 ponement that the Archivist shall highlight and
19 make accessible on a publicly accessible website
20 administered by the National Archives.

21 (C) SCOPE.—The periodic review of post-
22 poned Missing Armed Forces Personnel records,
23 or information within a Missing Armed Forces
24 Personnel record, shall serve the purpose stated
25 in section 2(b)(2), to provide expeditious public

1 disclosure of Missing Armed Forces Personnel
2 records, to the fullest extent possible, subject
3 only to the grounds for postponement of disclo-
4 sure under section 6.

5 (D) DISCLOSURE ABSENT CERTIFICATION
6 BY PRESIDENT.—Not later than 10 years after
7 the date of enactment of this Act, all Missing
8 Armed Forces Personnel records, and informa-
9 tion within a Missing Armed Forces Personnel
10 record, shall be publicly disclosed in full, and
11 available in the Collection, unless—

12 (i) the head of the originating body,
13 Executive agency, or other Government of-
14 fice recommends in writing that continued
15 postponement is necessary;

16 (ii) the written recommendation de-
17 scribed in clause (i)—

18 (I) is provided to the Archivist in
19 unclassified and publicly releasable
20 form not later than 180 days before
21 the date that is 10 years after the
22 date of enactment of this Act; and

23 (II) includes—

24 (aa) a justification of the
25 recommendation to postpone dis-

1 closure with clear and convincing
2 evidence that the identifiable
3 harm is of such gravity that it
4 outweighs the public interest in
5 disclosure; and

6 (bb) a recommended speci-
7 fied time at which or a specified
8 occurrence following which the
9 material may be appropriately
10 disclosed to the public under this
11 Act;

12 (iii) the Archivist transmits all rec-
13 ommended postponements and the rec-
14 ommendation of the Archivist to the Presi-
15 dent not later than 90 days before the date
16 that is 10 years after the date of enact-
17 ment of this Act; and

18 (iv) the President transmits to the Ar-
19 chivist a certification indicating that con-
20 tinued postponement is necessary and the
21 identifiable harm, as demonstrated by clear
22 and convincing evidence, is of such gravity
23 that it outweighs the public interest in dis-
24 closure not later than the date that is 10

1 years after the date of enactment of this
2 Act.

3 **SEC. 6. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**
4 **SURE OF RECORDS.**

5 (a) IN GENERAL.—Disclosure to the public of a Miss-
6 ing Armed Forces Personnel record or particular informa-
7 tion in a Missing Armed Forces Personnel record created
8 after the date that is 25 years before the date of the review
9 of the Missing Armed Forces Personnel record by the Ar-
10 chivist may be postponed subject to the limitations under
11 this Act only—

12 (1) if it pertains to—

13 (A) military plans, weapons systems, or op-
14 erations;

15 (B) foreign government information;

16 (C) intelligence activities (including covert
17 action), intelligence sources or methods, or
18 cryptology;

19 (D) foreign relations or foreign activities of
20 the United States, including confidential
21 sources;

22 (E) scientific, technological, or economic
23 matters relating to the national security;

24 (F) United States Government programs
25 for safeguarding nuclear materials or facilities;

1 (G) vulnerabilities or capabilities of sys-
2 tems, installations, infrastructures, projects,
3 plans, or protection services relating to the na-
4 tional security; or

5 (H) the development, production, or use of
6 weapons of mass destruction; and

7 (2) the threat posed by the public disclosure of
8 the Missing Armed Forces Personnel record or infor-
9 mation is of such gravity that it outweighs the pub-
10 lic interest in disclosure.

11 (b) OLDER RECORDS.—Disclosure to the public of a
12 Missing Armed Forces Personnel record or particular in-
13 formation in a Missing Armed Forces Personnel record
14 created on or before the date that is 25 years before the
15 date of the review of the Missing Armed Forces Personnel
16 record by the Archivist may be postponed subject to the
17 limitations under this Act only if, as demonstrated by clear
18 and convincing evidence—

19 (1) the release of the information would be ex-
20 pected to—

21 (A) reveal the identity of a confidential
22 human source, a human intelligence source, a
23 relationship with an intelligence or security
24 service of a foreign government or international
25 organization, or a nonhuman intelligence

1 source, or impair the effectiveness of an intel-
2 ligence method currently in use, available for
3 use, or under development;

4 (B) reveal information that would impair
5 United States cryptologic systems or activities;

6 (C) reveal formally named or numbered
7 United States military war plans that remain in
8 effect, or reveal operational or tactical elements
9 of prior plans that are contained in such active
10 plans; or

11 (D) reveal information, including foreign
12 government information, that would cause seri-
13 ous harm to relations between the United
14 States and a foreign government, or to ongoing
15 diplomatic activities of the United States; and

16 (2) the threat posed by the public disclosure of
17 the Missing Armed Forces Personnel record or infor-
18 mation is of such gravity that it outweighs the pub-
19 lic interest in disclosure.

20 (c) EXCEPTION.—Regardless of the age of a Missing
21 Armed Forces Personnel record—the date on which a
22 Missing Armed Forces Personnel record was created—dis-
23 closure to the public of information in the Missing Armed
24 Forces Personnel record may be postponed if—

1 (1) the public disclosure of the information
2 would reveal the name or identity of a living person
3 who provided confidential information to the United
4 States and would pose a substantial risk of harm to
5 that person;

6 (2) the public disclosure of the information
7 could reasonably be expected to constitute an unwar-
8 ranted invasion of personal privacy, and that inva-
9 sion of privacy is so substantial that it outweighs the
10 public interest; or

11 (3) the public disclosure of the information
12 could reasonably be expected to cause harm to the
13 methods currently in use or available for use by
14 members of the Armed Forces to survive, evade, re-
15 sist, or escape.

16 **SEC. 7. ESTABLISHMENT AND POWERS OF THE MISSING**
17 **ARMED FORCES PERSONNEL RECORDS RE-**
18 **VIEW BOARD.**

19 (a) **ESTABLISHMENT.**—There is established as an
20 independent establishment in the executive branch a board
21 to be known as the “Missing Armed Forces Personnel
22 Records Review Board”.

23 (b) **MEMBERSHIP.**—

24 (1) **APPOINTMENTS.**—The President shall ap-
25 point, by and with the advice and consent of the

1 Senate, 5 individuals to serve as a member of the
2 Review Board to ensure and facilitate the review,
3 transmission to the Archivist, and public disclosure
4 of Missing Armed Forces Personnel records.

5 (2) QUALIFICATIONS.—The President shall ap-
6 point individuals to serve as members of the Review
7 Board—

8 (A) without regard to political affiliation;

9 (B) who are citizens of the United States
10 of integrity and impartiality;

11 (C) who are not an employee of an Execu-
12 tive agency on the date of the appointment;

13 (D) who have high national professional
14 reputation in their fields who are capable of ex-
15 ercising the independent and objective judgment
16 necessary to the fulfillment of their role in en-
17 suring and facilitating the identification, loca-
18 tion, review, transmission to the Archivist, and
19 public disclosure of Missing Armed Forces Per-
20 sonnel records;

21 (E) who possess an appreciation of the
22 value of Missing Armed Forces Personnel
23 records to scholars, the Federal Government,
24 and the public, particularly families of Missing
25 Armed Forces Personnel;

1 (F) not less than 1 of whom is a profes-
2 sional historian; and

3 (G) not less than 1 of whom is an attor-
4 ney.

5 (3) DEADLINES.—

6 (A) IN GENERAL.—Not later than 60 days
7 after the date of enactment of this Act, the
8 President shall submit nominations for all
9 members of the Review Board.

10 (B) CONFIRMATION REJECTED.—If the
11 Senate votes not to confirm a nomination to
12 serve as a member of the Review Board, not
13 later than 90 days after the date of the vote the
14 President shall submit the nomination of an ad-
15 ditional individual to serve as a member of the
16 Review Board.

17 (4) CONSULTATION.—The President shall make
18 nominations to the Review Board after considering
19 individuals recommended by the American Historical
20 Association, the Organization of American Histo-
21 rians, the Society of American Archivists, the Amer-
22 ican Bar Association, veterans' organizations, and
23 organizations representing families of Missing
24 Armed Forces Personnel.

1 (c) SECURITY CLEARANCES.—The appropriate de-
2 partments, agencies, and elements of the executive branch
3 of the Federal Government shall cooperate to ensure that
4 an application by an individual nominated to be a member
5 of the Review Board, seeking security clearances necessary
6 to carry out the duties of the Review Board, is expedi-
7 tiously reviewed and granted or denied.

8 (d) CONFIRMATION.—

9 (1) HEARINGS.—Not later than 30 days on
10 which the Senate is in session after the date on
11 which not less than 3 individuals have been nomi-
12 nated to serve as members of the Review Board, the
13 Committee on Homeland Security and Governmental
14 Affairs of the Senate shall hold confirmation hear-
15 ings on the nominations.

16 (2) COMMITTEE VOTE.—Not later than 14 days
17 on which the Senate is in session after the date on
18 which the Committee on Homeland Security and
19 Governmental Affairs holds a confirmation hearing
20 on the nomination of an individual to serve as a
21 member of the Review Board, the committee shall
22 vote on the nomination and report the results to the
23 full Senate immediately.

24 (3) SENATE VOTE.—Not later than 14 days on
25 which the Senate is in session after the date on

1 which the Committee on Homeland Security and
2 Governmental Affairs reports the results of a vote on
3 a nomination of an individual to serve as a member
4 of the Review Board, the Senate shall vote on the
5 confirmation of the nominee.

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

10 (f) CHAIRPERSON.—The members of the Review
11 Board shall elect a member as Chairperson at the initial
12 meeting of the Review Board.

13 (g) REMOVAL OF REVIEW BOARD MEMBER.—

14 (1) IN GENERAL.—A member of the Review
15 Board shall not be removed from office, other
16 than—

17 (A) by impeachment by Congress; or

18 (B) by the action of the President for inef-
19 ficiency, neglect of duty, malfeasance in office,
20 physical disability, mental incapacity, or any
21 other condition that substantially impairs the
22 performance of the member's duties.

23 (2) JUDICIAL REVIEW.—

24 (A) IN GENERAL.—A member of the Re-
25 view Board removed from office may obtain ju-

1 dicial review of the removal in a civil action
2 commenced in the United States District Court
3 for the District of Columbia.

4 (B) RELIEF.—The member may be rein-
5 stated or granted other appropriate relief by
6 order of the court.

7 (h) COMPENSATION OF MEMBERS.—

8 (1) BASIC PAY.—A member of the Review
9 Board shall be compensated at a rate equal to the
10 daily equivalent of the annual rate of basic pay pre-
11 scribed for level IV of the Executive Schedule under
12 section 5315 of title 5, United States Code, for each
13 day (including travel time) during which the member
14 is engaged in the performance of the duties of the
15 Review Board.

16 (2) TRAVEL EXPENSES.—A member of the Re-
17 view Board shall be allowed reasonable travel ex-
18 penses, including per diem in lieu of subsistence, at
19 rates for employees of agencies under subchapter I
20 of chapter 57 of title 5, United States Code, while
21 away from the member's home or regular place of
22 business in the performance of services for the Re-
23 view Board.

24 (i) DUTIES OF THE REVIEW BOARD.—

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

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

9 (A) whether a record constitutes a Missing
10 Armed Forces Personnel record; and

11 (B) whether a Missing Armed Forces Per-
12 sonnel record, or particular information in a
13 Missing Armed Forces Personnel record, quali-
14 fies for postponement of disclosure under this
15 Act.

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

19 (1) direct Government offices to transmit to the
20 Archivist Missing Armed Forces Personnel records
21 as required under this Act;

22 (2) direct Government offices to transmit to the
23 Archivist substitutes and summaries of Missing
24 Armed Forces Personnel records that can be publicly
25 disclosed to the fullest extent for any Missing Armed

1 Forces Personnel record that is proposed for post-
2 ponement;

3 (3) obtain access to Missing Armed Forces Per-
4 sonnel records that have been identified by a Gov-
5 ernment office;

6 (4) direct a Government office to make avail-
7 able to the Review Board, and if necessary inves-
8 tigate the facts surrounding, additional information,
9 records, or testimony from individuals, which the
10 Review Board has reason to believe is required to
11 fulfill its functions and responsibilities under this
12 Act;

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

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

23 (7) require any Government office to account in
24 writing for the destruction of any records relating to

1 the loss, fate, or status of Missing Armed Forces
2 Personnel;

3 (8) receive information from the public regard-
4 ing the identification and public disclosure of Miss-
5 ing Armed Forces Personnel records; and

6 (9) make a final determination regarding
7 whether a Missing Armed Forces Personnel record
8 will be disclosed to the public or disclosure of the
9 Missing Armed Forces Personnel record to the pub-
10 lic will be postponed, notwithstanding the determina-
11 tion of an Executive agency.

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

15 (l) OVERSIGHT.—

16 (1) IN GENERAL.—The Committee on Home-
17 land Security and Governmental Affairs of the Sen-
18 ate and the Committee on Oversight and Reform of
19 the House of Representatives shall have—

20 (A) continuing oversight jurisdiction with
21 respect to the official conduct of the Review
22 Board and the disposition of postponed records
23 after termination of the Review Board; and

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

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

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

7 (n) INTERPRETIVE REGULATIONS.—The Review
8 Board may issue interpretive regulations.

9 (o) TERMINATION AND WINDING UP.—

10 (1) IN GENERAL.—Two years after the date of
11 enactment of this Act, the Review Board shall, by
12 majority vote, determine whether all Government of-
13 fices have complied with the obligations, mandates,
14 and directives under this Act.

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

18 (3) REPORT.—Before the termination of the
19 Review Board under paragraph (2), the Review
20 Board shall submit to Congress reports, including a
21 complete and accurate accounting of expenditures
22 during its existence, and shall complete all other re-
23 porting requirements under this Act.

24 (4) RECORDS.—Upon termination of the Re-
25 view Board, the Review Board shall transfer all

1 records of the Review Board to the Archivist for in-
2 clusion in the Collection, and no record of the Re-
3 view Board shall be destroyed.

4 **SEC. 8. MISSING ARMED FORCES PERSONNEL RECORDS**
5 **REVIEW BOARD PERSONNEL.**

6 (a) EXECUTIVE DIRECTOR.—

7 (1) IN GENERAL.—Not later than 45 days after
8 the initial meeting of the Review Board, the Review
9 Board shall appoint an individual to the position of
10 Executive Director.

11 (2) QUALIFICATIONS.—The individual ap-
12 pointed as Executive Director of the Review
13 Board—

14 (A) shall be a citizen of the United States
15 of integrity and impartiality;

16 (B) shall be appointed without regard to
17 political affiliation; and

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

20 (3) SECURITY CLEARANCE.—

21 (A) LIMIT ON APPOINTMENT.—The Review
22 Board shall not appoint an individual as Execu-
23 tive Director until after the date on which the
24 individual qualifies for the necessary security
25 clearance.

1 (B) EXPEDITED PROVISION.—The appro-
2 priate departments, agencies, and elements of
3 the executive branch of the Federal Government
4 shall cooperate to ensure that an application by
5 an individual nominated to be Executive Direc-
6 tor, seeking security clearances necessary to
7 carry out the duties of the Executive Director,
8 is expeditiously reviewed and granted or denied.

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

10 (A) serve as principal liaison to Govern-
11 ment offices;

12 (B) be responsible for the administration
13 and coordination of the review of records by the
14 Review Board;

15 (C) be responsible for the administration
16 of all official activities conducted by the Review
17 Board; and

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

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

23 (b) STAFF.—

24 (1) IN GENERAL.—The Review Board may, in
25 accordance with the civil service laws, but without

1 regard to civil service law and regulation for com-
2 petitive service as defined in subchapter I of chapter
3 33 of title 5, United States Code, appoint and termi-
4 nate additional employees as are necessary to enable
5 the Review Board and the Executive Director to per-
6 form their duties under this Act.

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

9 (A) shall be a citizen of the United States
10 of integrity and impartiality; and

11 (B) shall not have had any previous in-
12 volvement with any official investigation or in-
13 quiry relating to the loss, fate, or status of
14 Missing Armed Forces Personnel.

15 (3) SECURITY CLEARANCE.—

16 (A) LIMIT ON APPOINTMENT.—The Review
17 Board shall not appoint an individual as an em-
18 ployee of the Review Board until after the date
19 on which the individual qualifies for the nec-
20 essary security clearance.

21 (B) EXPEDITED PROVISION.—The appro-
22 priate departments, agencies, and elements of
23 the executive branch of the Federal Government
24 shall cooperate to ensure that an application by
25 an individual who is a candidate for a position

1 with the Review Board, seeking security clear-
2 ances necessary to carry out the duties of the
3 position, is expeditiously reviewed and granted
4 or denied.

5 (c) COMPENSATION.—The Review Board shall fix the
6 compensation of the Executive Director and other employ-
7 ees of the Review Board without regard to chapter 51 and
8 subchapter III of chapter 53 of title 5, United States
9 Code, relating to classification of positions and General
10 Schedule pay rates, except that the rate of pay for the
11 Executive Director and other employees may not exceed
12 the rate payable for level V of the Executive Schedule
13 under section 5316 of title 5, United States Code.

14 (d) ADVISORY COMMITTEES.—

15 (1) IN GENERAL.—The Review Board may cre-
16 ate 1 or more advisory committees to assist in ful-
17 filling the responsibilities of the Review Board under
18 this Act.

19 (2) APPLICABILITY OF FACCA.—Any advisory
20 committee created by the Review Board shall be sub-
21 ject to the Federal Advisory Committee Act (5
22 U.S.C. App.).

1 **SEC. 9. REVIEW OF RECORDS BY THE MISSING ARMED**
2 **FORCES PERSONNEL RECORDS REVIEW**
3 **BOARD.**

4 (a) **STARTUP REQUIREMENTS.**—The Review Board
5 shall—

6 (1) not later than 90 days after the date on
7 which all members are appointed, publish an initial
8 schedule for review of all Missing Armed Forces
9 Personnel records, which the Archivist shall high-
10 light and make available on a publicly accessible
11 website administered by the National Archives; and

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

15 (b) **DETERMINATION OF THE REVIEW BOARD.**—

16 (1) **IN GENERAL.**—The Review Board shall di-
17 rect that all records that relate, directly or indi-
18 rectly, to the loss, fate, or status of Missing Armed
19 Forces Personnel be transmitted to the Archivist
20 and disclosed to the public in the Collection in the
21 absence of clear and convincing evidence that—

22 (A) the record is not a Missing Armed
23 Forces Personnel record; or

24 (B) the Missing Armed Forces Personnel
25 record, or particular information within the
26 Missing Armed Forces Personnel record, quali-

1 fies for postponement of public disclosure under
2 this Act.

3 (2) POSTPONEMENT.—In approving postpone-
4 ment of public disclosure of a Missing Armed Forces
5 Personnel record, or information within a Missing
6 Armed Forces Personnel record, the Review Board
7 shall seek to—

8 (A) provide for the disclosure of segregable
9 parts, substitutes, or summaries of the Missing
10 Armed Forces Personnel record; and

11 (B) determine, in consultation with the
12 originating body and consistent with the stand-
13 ards for postponement under this Act, which of
14 the following alternative forms of disclosure
15 shall be made by the originating body:

16 (i) Any reasonably segregable par-
17 ticular information in a Missing Armed
18 Forces Personnel record.

19 (ii) A substitute record for that infor-
20 mation which is postponed.

21 (iii) A summary of a Missing Armed
22 Forces Personnel record.

23 (3) REPORTING.—With respect to a Missing
24 Armed Forces Personnel record, or information
25 within a Missing Armed Forces Personnel record,

1 the public disclosure of which is postponed under
2 this Act, or for which only substitutions or sum-
3 maries have been disclosed to the public, the Review
4 Board shall create and transmit to the Archivist an
5 unclassified and publicly releasable report con-
6 taining—

7 (A) a description of actions by the Review
8 Board, the originating body, or any Government
9 office (including a justification of any such ac-
10 tion to postpone disclosure of any record or
11 part of any record) and of any official pro-
12 ceedings conducted by the Review Board; and

13 (B) a statement, based on a review of the
14 proceedings and in conformity with the deci-
15 sions reflected therein, designating a rec-
16 ommended specified time at which, or a speci-
17 fied occurrence following which, the material
18 may be appropriately disclosed to the public
19 under this Act, which the Review Board shall
20 disclose to the public with notice thereof, rea-
21 sonably calculated to make interested members
22 of the public aware of the existence of the state-
23 ment.

24 (4) ACTIONS AFTER DETERMINATION.—

1 (A) IN GENERAL.—Not later than 14 days
2 after the date of a determination by the Review
3 Board that a Missing Armed Forces Personnel
4 record shall be publicly disclosed in the Collec-
5 tion or postponed for disclosure and held in the
6 protected Collection, the Review Board shall no-
7 tify the head of the originating body of the de-
8 termination and highlight and make available
9 the determination on a publicly accessible
10 website reasonably calculated to make inter-
11 ested members of the public aware of the exist-
12 ence of the determination.

13 (B) OVERSIGHT NOTICE.—Simultaneous
14 with notice under subparagraph (A), the Review
15 Board shall provide notice of a determination
16 concerning the public disclosure or postpone-
17 ment of disclosure of a Missing Armed Forces
18 Personnel record, or information contained
19 within a Missing Armed Forces Personnel
20 record, which shall include a written unclassi-
21 fied justification for public disclosure or post-
22 ponement of disclosure, including an expla-
23 nation of the application of any standards in
24 section 6 to the President, to the Committee on
25 Homeland Security and Governmental Affairs

1 of the Senate, and the Committee on Oversight
2 and Reform of the House of Representatives.

3 (5) REFERRAL AFTER TERMINATION.—A Miss-
4 ing Armed Forces Personnel record that is identi-
5 fied, located, or otherwise discovered after the date
6 on which the Review Board terminates shall be
7 transmitted to the Archivist for the Collection and
8 referred to the Committee on Armed Services of the
9 Senate and the Committee on Armed Services of the
10 House of Representatives for review, ongoing over-
11 sight and, as warranted, referral for possible en-
12 forcement action relating to a violation of this Act
13 and determination as to whether declassification of
14 the Missing Armed Forces Personnel is warranted
15 under this Act.

16 (c) NOTICE TO PUBLIC.—Every 30 days, beginning
17 on the date that is 60 days after the date on which the
18 Review Board first approves the postponement of dislo-
19 sure of a Missing Armed Forces Personnel record, the Re-
20 view Board shall highlight and make accessible on a pub-
21 licly available website reasonably calculated to make inter-
22 ested members of the public aware of the existence of the
23 postponement a notice that summarizes the postpone-
24 ments approved by the Review Board, including a descrip-
25 tion of the subject, originating body, length or other phys-

1 ical description, and each ground for postponement that
2 is relied upon.

3 (d) REPORTS BY THE REVIEW BOARD.—

4 (1) IN GENERAL.—Not later than 1 year after
5 the date of enactment of this Act, and every year
6 thereafter until the Review Board terminates, the
7 Review Board shall submit a report regarding the
8 activities of the Review Board to—

9 (A) the Committee on Oversight and Re-
10 form of the House of Representatives;

11 (B) the Committee on Homeland Security
12 and Governmental Affairs of the Senate;

13 (C) the President;

14 (D) the Archivist; and

15 (E) the head of any Government office the
16 records of which have been the subject of Re-
17 view Board activity.

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

20 (A) A financial report of the expenses for
21 all official activities and requirements of the
22 Review Board and its employees.

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

1 (C) The estimated time and volume of
2 Missing Armed Forces Personnel records in-
3 volved in the completion of the duties of the Re-
4 view Board under this Act.

5 (D) Any special problems, including re-
6 quests and the level of cooperation of Govern-
7 ment offices, with regard to the ability of the
8 Review Board to carry out its duties under this
9 Act.

10 (E) A record of review activities, including
11 a record of postponement decisions by the Re-
12 view Board or other related actions authorized
13 under this Act, and a record of the volume of
14 records reviewed and postponed.

15 (F) Suggestions and requests to Congress
16 for additional legislative authority needs.

17 (G) An appendix containing copies of re-
18 ports relating to postponed records submitted to
19 the Archivist under subsection (b)(3) since the
20 end of the period covered by the most recent re-
21 port under paragraph (1).

22 (3) TERMINATION NOTICE.—Not later than 90
23 days before the Review Board expects to complete
24 the work of the Review Board under this Act, the
25 Review Board shall provide written notice to Con-

1 gress of the intent of the Review Board to terminate
2 operations at a specified date.

3 **SEC. 10. DISCLOSURE OF OTHER MATERIALS AND ADDI-**
4 **TIONAL STUDY.**

5 (a) MATERIALS UNDER SEAL OF COURT.—

6 (1) IN GENERAL.—The Review Board may re-
7 quest the Attorney General to petition any court of
8 the United States or of a foreign country to release
9 any information relevant to the loss, fate, or status
10 of Missing Armed Forces Personnel that is held
11 under seal of the court.

12 (2) GRAND JURY INFORMATION.—

13 (A) IN GENERAL.—The Review Board may
14 request the Attorney General to petition any
15 court of the United States to release any infor-
16 mation relevant to loss, fate, or status of Miss-
17 ing Armed Forces Personnel that is held under
18 the injunction of secrecy of a grand jury.

19 (B) TREATMENT.—A request for disclo-
20 sure of Missing Armed Forces Personnel mate-
21 rials under this Act shall be deemed to con-
22 stitute a showing of particularized need under
23 rule 6 of the Federal Rules of Criminal Proce-
24 dure.

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

3 (1) the Attorney General should assist the Re-
4 view Board in good faith to unseal any records that
5 the Review Board determines to be relevant and held
6 under seal by a court or under the injunction of se-
7 crecy of a grand jury;

8 (2) the Secretary of State should—

9 (A) contact the Governments of the Rus-
10 sian Federation, the People’s Republic of
11 China, and the Democratic People’s Republic of
12 Korea to seek the disclosure of all records in
13 their respective custody, possession, or control
14 relevant to the loss, fate, or status of Missing
15 Armed Forces Personnel; and

16 (B) contact any other foreign government
17 that may hold information relevant to the loss,
18 fate, or status of Missing Armed Forces Per-
19 sonnel, and seek disclosure of such information;
20 and

21 (3) all agencies should cooperate in full with the
22 Review Board to seek the disclosure of all informa-
23 tion relevant to the loss, fate, or status of Missing
24 Armed Forces Personnel consistent with the public
25 interest.

1 **SEC. 11. RULES OF CONSTRUCTION.**

2 (a) PRECEDENCE OVER OTHER LAW.—When this
3 Act requires transmission of a record to the Archivist or
4 public disclosure, it shall take precedence over any other
5 law (except section 6103 of the Internal Revenue Code of
6 1986), judicial decision construing such law, or common
7 law doctrine that would otherwise prohibit such trans-
8 mission or disclosure, with the exception of deeds gov-
9 erning access to or transfer or release of gifts and dona-
10 tions of records to the United States Government.

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

16 (c) JUDICIAL REVIEW.—Nothing in this Act shall be
17 construed to preclude judicial review under chapter 7 of
18 title 5, United States Code, of final actions taken or re-
19 quired to be taken under this Act.

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

25 (e) RULES OF THE SENATE AND HOUSE OF REP-
26 RESENTATIVES.—To the extent that any provision of this

1 Act establishes a procedure to be followed in the Senate
2 or the House of Representatives, such provision is adopt-
3 ed—

4 (1) as an exercise of the rulemaking power of
5 the Senate and House of Representatives, respec-
6 tively, and is deemed to be part of the rules of each
7 House, respectively, but applicable only with respect
8 to the procedure to be followed in that House, and
9 it supersedes other rules only to the extent that it
10 is inconsistent with such rules; and

11 (2) with full recognition of the constitutional
12 right of either House to change the rules (so far as
13 they relate to the procedure of that House) at any
14 time, in the same manner, and to the same extent
15 as in the case of any other rule of that House.

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

17 (a) PROVISIONS PERTAINING TO THE REVIEW
18 BOARD.—The provisions of this Act that pertain to the
19 appointment and operation of the Review Board shall
20 cease to be effective when the Review Board and the terms
21 of its members have terminated under section 7(o).

22 (b) OTHER PROVISIONS.—The remaining provisions
23 of this Act shall continue in effect until such time as the
24 Archivist certifies to the President and Congress that all

1 Missing Armed Forces Personnel records have been made
2 available to the public in accordance with this Act.

3 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

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

7 (b) INTERIM FUNDING.—Until such time as funds
8 are appropriated pursuant to subsection (a), the President
9 may use such sums as are available for discretionary use
10 to carry out this Act.

11 **SEC. 14. SEVERABILITY.**

12 If any provision of this Act, or the application thereof
13 to any person or circumstance, is held invalid, the remain-
14 der of this Act and the application of that provision to
15 other persons not similarly situated or to other cir-
16 cumstances shall not be affected by the invalidation.

○