

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

H. R. 4713

To amend the Homeland Security Act of 2002 to make certain improvements in the Office for Civil Rights and Civil Liberties of the Department of Homeland Security, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. PETERS (for himself and Mr. JOHNSON)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Home-
5 land Security Office for Civil Rights and Civil Liberties
6 Authorization Act”.

7 **SEC. 2. OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.**

8 (a) IN GENERAL.—Section 705 of the Homeland Se-
9 curity Act of 2002 (6 U.S.C. 345) is amended—

1 (1) in the section heading, by striking “**ESTAB-**
2 **LISHMENT OF**”; and

3 (2) by striking subsections (a) and (b) and in-
4 serting the following new subsections:

5 “(a) **IN GENERAL.**—There is established within the
6 Department an Office for Civil Rights and Civil Liberties.
7 The head of such Office is the Officer for Civil Rights
8 and Civil Liberties (referred to in this section as the ‘Offi-
9 cer’), who shall report directly to the Secretary.

10 “(b) **RESPONSIBILITIES.**—The Officer shall carry out
11 the following responsibilities:

12 “(1) Oversee compliance with constitutional,
13 statutory, regulatory, policy, and other requirements
14 relating to the civil rights and civil liberties of indi-
15 viduals affected by the programs and activities of
16 the Department.

17 “(2) Integrate civil rights and civil liberties pro-
18 tections into all programs and activities of the De-
19 partment.

20 “(3) Conduct civil rights and civil liberties im-
21 pact assessments, including, as appropriate, prior to
22 the implementation of new Department regulations,
23 initiatives, programs, or policies.

24 “(4) Conduct periodic reviews and assessments
25 of policies, procedures, and activities of the Depart-

1 ment relating to civil rights and civil liberties, in-
2 cluding reviews initiated by the Officer.

3 “(5) Provide policy advice, recommendations,
4 and other technical assistance relating to civil rights
5 and civil liberties to the Secretary and to heads of
6 components, directorates, and offices and other per-
7 sonnel within the Department.

8 “(6) Review, assess, and investigate complaints,
9 including complaints filed by members of the public,
10 and information indicating possible abuses of civil
11 rights or civil liberties at the Department, unless the
12 Inspector General of the Department determines
13 that any such complaint should be investigated by
14 the Inspector General.

15 “(7) As the Officer determines necessary, ini-
16 tiate reviews, investigations, and assessments of the
17 administration of the programs and activities by the
18 Department relating to civil rights and civil liberties.

19 “(8) Coordinate with the Privacy Officer to en-
20 sure that—

21 “(A) programs, policies, and procedures in-
22 volving civil rights, civil liberties, and privacy
23 considerations are addressed in an integrated
24 and comprehensive manner; and

1 “(B) Congress receives appropriate reports
2 regarding such programs, policies, and proce-
3 dures.

4 “(9) Lead the equal employment opportunity
5 programs of the Department, including complaint
6 management and adjudication, workforce diversity,
7 and promotion of the merit system principles.

8 “(10) On a semi-annual basis, make publicly
9 available through accessible communications chan-
10 nels, including the website of the Department—

11 “(A) information on the responsibilities
12 and functions of, and how to contact, the Of-
13 fice;

14 “(B) summary of the investigations that
15 result in final recommendations that are issued
16 by the Officer carried out pursuant to para-
17 graph (6); and

18 “(C) summaries of impact assessments
19 issued by the Officer and carried out pursuant
20 to paragraph (3) or (7).

21 “(11) Engage with individuals and communities
22 whose civil rights and civil liberties may be affected
23 by programs and activities of the Department, in-
24 cluding by informing such individuals and commu-
25 nities about report and redress processes and advis-

1 ing the Secretary and heads of components, direc-
2 torates, offices, and other personnel within the De-
3 partment of concerns raised by such individuals and
4 communities.

5 “(c) TRANSPARENCY.—

6 “(1) COMPLAINTS.—In the case of a complaint
7 made concerning allegations of abuses of civil rights
8 and civil liberties under paragraph (6) of subsection
9 (b), the Officer shall—

10 “(A) provide to the individual who made
11 the complaint notice of the receipt of such com-
12 plaint within 30 days of receiving the com-
13 plaint; and

14 “(B) inform the complainant of the deter-
15 mination of the Officer regarding the initiation
16 of a review, assessment, or investigation within
17 the Office, a referral to the Inspector General
18 of the Department, or any other action taken.

19 “(2) INVESTIGATIONS.—In the case of an inves-
20 tigation initiated by the Officer pursuant to para-
21 graph (6) or (7) of subsection (b) in which findings
22 or recommendations are issued, the Officer shall, on
23 a semi-annual basis, make publicly available through
24 accessible communications channels, including the
25 website of the Department—

1 “(A) the findings and recommendations of
2 the Officer, if any;

3 “(B) a summary of the investigations that
4 result in final recommendations that are issued
5 by the Officer; and

6 “(C) shall not include any personally iden-
7 tifiable information related to any individual in-
8 volved in such investigation.

9 “(3) SUBMITTAL TO HEADS OF OPERATIONAL
10 COMPONENTS.—The Officer shall transmit a copy of
11 each summary produced under paragraph (2) to the
12 Secretary and to the relevant head of each relevant
13 operational component of the Department.

14 “(4) REPORTS TO CONGRESS.—Upon the con-
15 clusion of any investigation conducted by the Officer
16 under paragraph (6) or (7) of subsection (b) in
17 which findings or recommendations are issued, the
18 Officer shall submit to Congress a report on the in-
19 vestigation, which shall be prepared and submitted
20 without any prior comment or amendment by the
21 Secretary, Deputy Secretary, or any other officer or
22 employee of the Department or the Office of Man-
23 agement and Budget, unless the Officer seeks such
24 comment.

1 “(d) COMPONENT CIVIL RIGHTS AND CIVIL LIB-
2 ERTIES OFFICER.—The head of each of the operational
3 components of the Department, in consultation with the
4 Officer, shall designate a career appointee (as such term
5 is defined in section 3132 of title 5, United States Code)
6 from such component as the Officer for Civil Rights and
7 Civil Liberties of that component. The Officer for Civil
8 Rights and Civil Liberties of each such component shall
9 coordinate with and provide information to the Officer for
10 Civil Rights and Civil Liberties of the Department on mat-
11 ters related to civil rights and civil liberties within the
12 components.

13 “(e) ACCESS TO INFORMATION.—The Officer—

14 “(1) shall have access in a timely manner to all
15 records, reports, audits, reviews, documents, papers,
16 recommendations, and other materials available to
17 the Department that relate to programs and oper-
18 ations with respect to the responsibilities of the Offi-
19 cer under subsection (b); and

20 “(2) may, to the extent the Officer determines
21 necessary, and subject to the approval of the Sec-
22 retary—

23 “(A) issue a subpoena to require the pro-
24 duction, by any person other than a Federal
25 agency, of all information, documents, reports,

1 answers, records, accounts, papers, and other
2 documentary evidence necessary in the perform-
3 ance of the responsibilities of the Officer under
4 this section; and

5 “(B) administer to or take from any per-
6 son an oath, affirmation, or affidavit, whenever
7 necessary in the performance of the responsibil-
8 ities of the Officer under this section.

9 “(f) ANNUAL REPORT.—Not later than March 31 of
10 each year, the Officer shall submit to the appropriate com-
11 mittees and subcommittees of Congress a report on the
12 implementation of this section during the year preceding
13 the year during which the report is submitted. Each such
14 report shall include, for the year covered by the report—

15 “(1) a list of Department programs and activi-
16 ties for which civil rights and civil liberties impact
17 assessments were conducted, or policy advice, rec-
18 ommendations, or other technical assistance was
19 provided;

20 “(2) a summary of investigations resulting in
21 recommendations issued under paragraph (6) or (7)
22 of subsection (b) by the Officer to the Secretary or
23 the head of a component, directorate, or office, to-
24 gether with information on the status of the compo-

1 nent, directorate, or office’s implementation of such
2 recommendations;

3 “(3) information on the diversity and equal em-
4 ployment opportunity activities of the Department,
5 including information on complaint management and
6 adjudication of equal employment opportunity com-
7 plaints and efforts to ensure compliance throughout
8 the Department with equal employment opportunity
9 requirements;

10 “(4) a description of any efforts to engage with
11 individuals and communities whose civil rights and
12 civil liberties may be affected by activities carried
13 out by the Department, including public meetings;
14 and

15 “(5) information on total staffing for the Office
16 for Civil Rights and Civil Liberties, including—

17 “(A) the number of full-time, part-time
18 and contract support personnel; and

19 “(B) information on the number of em-
20 ployees whose primary responsibilities include
21 supporting the Officer in carrying out para-
22 graph (9) of subsection (b).”.

23 (b) CLERICAL AMENDMENT.—The item relating to
24 section 705 in section 1(b) of the Homeland Security Act
25 of 2002 is amended to read as follows:

1 **“SEC. 705. OFFICER FOR CIVIL RIGHTS AND CIVIL LIB-**
2 **ERTIES.”**

3 (c) REPORTING TO CONGRESS.—Section
4 1062(f)(1)(A)(i) of the National Security Intelligence Re-
5 form Act of 2004 (42 U.S.C. 2000ee–1(f)(1)(A)(i)) is
6 amended by inserting “the Committee on Homeland Secu-
7 rity of the House of Representatives,” after “Affairs of
8 the Senate,”.

9 **SEC. 3. COMPTROLLER GENERAL REVIEW.**

10 Not later than 2 years after the date of the enact-
11 ment of this Act, the Comptroller General of the United
12 States shall submit to Congress a report on subsection
13 (b)(11) of section 705 of the Homeland Security Act of
14 2002 (6 U.S.C. 345), as amended by section 2.