

AMENDMENT NO. _____ Calendar No. _____

Purpose: To establish a commission to study the war in
Afghanistan.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

H. R. 4350

To authorize appropriations for fiscal year 2022 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, 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 intended to be proposed by Ms. DUCKWORTH
to the amendment (No. 3867) proposed by Mr. REED

Viz:

1 At the end of subtitle B of title XII, add the fol-
2 lowing:

3 **SEC. 1216. AFGHANISTAN WAR COMMISSION ACT OF 2021.**

4 (a) **SHORT TITLE.**—This section may be cited as the
5 “Afghanistan War Commission Act of 2021”.

6 (b) **DEFINITIONS.**—In this section:

7 (1) **APPLICABLE PERIOD.**—The term “applica-
8 ble period” means the period beginning June 1,
9 2001, and ending August 30, 2021.

1 (2) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term “appropriate congressional com-
3 mittees” means—

4 (A) the Committee on Armed Services of
5 the Senate;

6 (B) the Committee on Foreign Relations of
7 the Senate;

8 (C) the Select Committee on Intelligence of
9 the Senate;

10 (D) the Committee on Appropriations of
11 the Senate;

12 (E) the Committee on Armed Services of
13 the House of Representatives;

14 (F) the Committee on Foreign Affairs of
15 the House of Representatives;

16 (G) the Permanent Select Committee on
17 Intelligence of the House of Representatives;

18 and

19 (H) the Committee on Appropriations of
20 the House of Representatives.

21 (3) INTELLIGENCE COMMUNITY.—The term
22 “intelligence community” has the meaning given
23 that term in section 3(4) of the National Security
24 Act of 1947 (50 U.S.C. 3003(4)).

25 (c) ESTABLISHMENT OF COMMISSION.—

1 (1) ESTABLISHMENT.—There is established in
2 the legislative branch an independent commission to
3 be known as the Afghanistan War Commission (in
4 this section referred to as the “Commission”).

5 (2) MEMBERSHIP.—

6 (A) COMPOSITION.—The Commission shall
7 be composed of 16 members of whom—

8 (i) 1 shall be appointed by the Chair-
9 man of the Committee on Armed Services
10 of the Senate;

11 (ii) 1 shall be appointed by the rank-
12 ing member of the Committee on Armed
13 Services of the Senate;

14 (iii) 1 shall be appointed by the Chair-
15 man of the Committee on Armed Services
16 of the House of Representatives;

17 (iv) 1 shall be appointed by the rank-
18 ing member of the Committee on Armed
19 Services of the House of Representatives;

20 (v) 1 shall be appointed by the Chair-
21 man of the Committee on Foreign Rela-
22 tions of the Senate;

23 (vi) 1 shall be appointed by the rank-
24 ing member of the Committee on Foreign
25 Relations of the Senate;

1 (vii) 1 shall be appointed by the
2 Chairman of the Committee on Foreign
3 Affairs of the House of Representatives;

4 (viii) 1 shall be appointed by the
5 ranking member of the Committee on For-
6 eign Affairs of the House of Representa-
7 tives;

8 (ix) 1 shall be appointed by the Chair-
9 man of the Select Committee on Intel-
10 ligence of the Senate;

11 (x) 1 shall be appointed by the rank-
12 ing member of the Select Committee on In-
13 telligence of the Senate.

14 (xi) 1 shall be appointed by the Chair-
15 man of the Permanent Select Committee
16 on Intelligence of the House of Represent-
17 atives;

18 (xii) 1 shall be appointed by the rank-
19 ing member of the Permanent Select Com-
20 mittee on Intelligence of the House of Rep-
21 resentatives;

22 (xiii) 1 shall be appointed by the ma-
23 jority leader of the Senate;

24 (xiv) 1 shall be appointed by the mi-
25 nority leader of the Senate;

1 (xv) 1 shall be appointed by the
2 Speaker of the House of Representatives;
3 and

4 (xvi) 1 shall be appointed by the Mi-
5 nority Leader of the House of Representa-
6 tives.

7 (B) QUALIFICATIONS.—It is the sense of
8 Congress that each member of the Commission
9 appointed under subparagraph (A) should have
10 significant professional experience in national
11 security, such as a position in—

- 12 (i) the Department of Defense;
13 (ii) the Department of State;
14 (iii) the intelligence community;
15 (iv) the United States Agency for
16 International Development; or
17 (v) an academic or scholarly institu-
18 tion.

19 (C) PROHIBITIONS.—A member of the
20 Commission appointed under subparagraph (A)
21 may not—

- 22 (i) be a current member of Congress;
23 (ii) be a former member of Congress
24 who served in Congress after January 3,
25 2001;

1 (iii) be a current or former registrant
2 under the Foreign Agents Registration Act
3 of 1938 (22 U.S.C. 611 et seq.);

4 (iv) have previously investigated Af-
5 ghanistan policy or the war in Afghanistan
6 through employment in the office of a rel-
7 evant inspector general;

8 (v) have been the sole owner or had a
9 majority stake in a company that held any
10 United States or coalition defense contract
11 providing goods or services to activities by
12 the United States Government or coalition
13 in Afghanistan during the applicable pe-
14 riod; or

15 (vi) have served, with direct involve-
16 ment in actions by the United States Gov-
17 ernment in Afghanistan during the time
18 the relevant official served, as—

19 (I) a cabinet secretary or na-
20 tional security adviser to the Presi-
21 dent; or

22 (II) a four-star flag officer,
23 Under Secretary, or more senior offi-
24 cial in the Department of Defense or
25 the Department of State.

1 (D) DATE.—

2 (i) IN GENERAL.—The appointments
3 of the members of the Commission shall be
4 made not later than 60 days after the date
5 of enactment of this Act.

6 (ii) FAILURE TO MAKE APPOINT-
7 MENT.—If an appointment under subpara-
8 graph (A) is not made by the appointment
9 date specified in clause (i)—

10 (I) the authority to make such
11 appointment shall expire; and

12 (II) the number of members of
13 the Commission shall be reduced by
14 the number equal to the number of
15 appointments not made.

16 (3) PERIOD OF APPOINTMENT; VACANCIES.—

17 (A) IN GENERAL.—A member of the Com-
18 mission shall be appointed for the life of the
19 Commission.

20 (B) VACANCIES.—A vacancy in the Com-
21 mission—

22 (i) shall not affect the powers of the
23 Commission; and

24 (ii) shall be filled in the same manner
25 as the original appointment.

1 (4) MEETINGS.—

2 (A) INITIAL MEETING.—Not later than 30
3 days after the date on which all members of the
4 Commission have been appointed, the Commis-
5 sion shall hold the first meeting of the Commis-
6 sion.

7 (B) FREQUENCY.—The Commission shall
8 meet at the call of the Co-Chairpersons.

9 (C) QUORUM.—A majority of the members
10 of the Commission shall constitute a quorum,
11 but a lesser number of members may hold hear-
12 ings.

13 (5) CO-CHAIRPERSONS.—The Commission shall
14 select, by a simple majority vote—

15 (A) 1 Co-Chairperson from the members of
16 the Commission appointed by chairpersons of
17 the appropriate congressional committees; and

18 (B) 1 Co-Chairperson from the members of
19 the Commission appointed by the ranking mem-
20 bers of the appropriate congressional commit-
21 tees.

22 (d) PURPOSE OF COMMISSION.— The purpose of the
23 Commission is—

24 (1) to examine the key strategic, diplomatic,
25 and operational decisions that pertain to the war in

1 Afghanistan during the relevant period, including
2 decisions, assessments, and events that preceded the
3 war in Afghanistan; and

4 (2) to develop a series of lessons learned and
5 recommendations for the way forward that will in-
6 form future decisions by Congress and policymakers
7 throughout the United States Government.

8 (e) DUTIES OF COMMISSION.—

9 (1) STUDY.—

10 (A) IN GENERAL.—The Commission shall
11 conduct a thorough study of all matters relating
12 to combat operations, reconstruction and secu-
13 rity force assistance activities, intelligence oper-
14 ations, and diplomatic activities of the United
15 States pertaining to the Afghanistan during the
16 period beginning September 1, 1996, and end-
17 ing August 30, 2021.

18 (B) MATTERS STUDIED.—The matters
19 studied by the Commission shall include—

20 (i) for the time period specified under
21 subparagraph (A)—

22 (I) the policy objectives of the
23 United States Government, includ-
24 ing—

25 (aa) military objectives;

10

1 (bb) diplomatic objectives;
2 (cc) development objectives;
3 and
4 (dd) intelligence objectives;
5 (II) significant decisions made by
6 the United States, including the devel-
7 opment of options presented to policy-
8 makers;
9 (III) the efficacy of efforts by the
10 United States Government in meeting
11 the objectives described in clause (i),
12 including an analysis of —
13 (aa) military efforts;
14 (bb) diplomatic efforts;
15 (cc) development efforts;
16 and
17 (dd) intelligence efforts; and
18 (IV) the efficacy of counterter-
19 rorism efforts against al Qaeda, the
20 Islamic State Khorasan Province, and
21 other foreign terrorist organizations in
22 degrading the will and capabilities of
23 such organizations—
24 (aa) to mount external at-
25 tacks against the United States

1 mainland or its allies and part-
2 ners; or

3 (bb) to threaten regional
4 stability in Afghanistan and
5 neighboring countries.

6 (ii) the efficacy of metrics, measures
7 of effectiveness, and milestones used to as-
8 sess progress of diplomatic, military, and
9 intelligence efforts;

10 (iii) the efficacy of interagency plan-
11 ning and execution process by the United
12 States Government;

13 (iv) factors that led to the collapse of
14 the Afghan National Defense Security
15 Forces in 2021, including—

16 (I) training;

17 (II) assessment methodologies;

18 (III) building indigenous forces
19 on western models;

20 (IV) reliance on technology and
21 logistics support; and

22 (V) reliance on warfighting
23 enablers provided by the United
24 States;

1 (v) the efficacy of counter-corruption
2 efforts to include linkages to diplomatic
3 lines of effort, linkages to foreign and se-
4 curity assistance, and assessment meth-
5 odologies;

6 (vi) the efficacy of counter-narcotic ef-
7 forts to include alternative livelihoods,
8 eradication, interdiction, and education ef-
9 forts;

10 (vii) the role of countries neighboring
11 Afghanistan in contributing to the insta-
12 bility of Afghanistan;

13 (viii) varying diplomatic approaches
14 between Presidential administrations;

15 (ix) the extent to which the intel-
16 ligence community did or did not fail to
17 provide sufficient warning about the prob-
18 able outcomes of a withdrawal of coalition
19 military support from Afghanistan, includ-
20 ing as it relates to—

21 (I) the capability and sustain-
22 ability of the Afghanistan National
23 Defense Security Forces;

1 (II) the sustainability of the Af-
2 ghan central government, absent coa-
3 lition support;

4 (III) the extent of Taliban con-
5 trol over Afghanistan over time with
6 respect to geographic territory, gov-
7 ernance, and influence; and

8 (IV) the likelihood of the Taliban
9 regaining control of Afghanistan at
10 various levels of United States and co-
11 alition support, including the with-
12 drawal of most or all United States or
13 coalition support;

14 (x) the extent to which intelligence
15 products related to the state of the conflict
16 in Afghanistan and the effectiveness of the
17 Afghanistan National Defense Security
18 Forces complied with intelligence commu-
19 nity-wide analytic tradecraft standards and
20 fully reflected the divergence of analytic
21 views across the intelligence community;

22 (xi) an evaluation of whether any ele-
23 ment of the United States Government in-
24 appropriately restricted access to data
25 from elements of the intelligence commu-

1 nity, Congress, or the Special Inspector
2 General for Afghanistan Reconstruction
3 (SIGAR) or any other oversight body such
4 as other inspectors general or the
5 Government Accountability Office, includ-
6 ing through the use of overclassification;
7 and

8 (xii) the extent to which public rep-
9 resentations of the situation in Afghani-
10 stan before Congress by United States
11 Government officials were not consistent
12 with the most recent formal assessment of
13 the intelligence community at the time
14 those representations were made.

15 (2) REPORT REQUIRED.—

16 (A) IN GENERAL.—

17 (i) ANNUAL REPORT.—

18 (I) IN GENERAL.—Not later than
19 1 year after the date of the initial
20 meeting of the Commission, and an-
21 nually thereafter, the Commission
22 shall submit to the appropriate con-
23 gressional committees a report de-
24 scribing the progress of the activities
25 of the Commission as of the date of

1 such report, including any findings,
2 recommendations, or lessons learned
3 endorsed by the Commission.

4 (II) ADDENDA.—Any member of
5 the Commission may submit an ad-
6 dendum to a report required under
7 subclause (I) setting forth the sepa-
8 rate views of such member with re-
9 spect to any matter considered by the
10 Commission.

11 (III) BRIEFING.—On the date of
12 the submission of the first annual re-
13 port, the Commission shall brief Con-
14 gress.

15 (ii) FINAL REPORT.—

16 (I) SUBMISSION.—Not later than
17 3 years after the date of the initial
18 meeting of the Commission, the Com-
19 mission shall submit to Congress a re-
20 port that contains a detailed state-
21 ment of the findings, recommenda-
22 tions, and lessons learned endorsed by
23 the Commission.

24 (II) ADDENDA.—Any member of
25 the Commission may submit an ad-

1 dendum to the report required under
2 subclause (I) setting forth the sepa-
3 rate views of such member with re-
4 spect to any matter considered by the
5 Commission.

6 (III) EXTENSION.—The Commis-
7 sion may submit the report required
8 under subclause (I) at a date that is
9 not more than 1 year later than the
10 date specified in such clause if agreed
11 to by the chairperson and ranking
12 member of each of the appropriate
13 congressional committees.

14 (B) FORM.—The report required by para-
15 graph (1)(B) shall be submitted and publicly
16 released on a Government website in unclassi-
17 fied form but may contain a classified annex.

18 (C) SUBSEQUENT REPORTS ON DECLAS-
19 SIFICATION.—

20 (i) IN GENERAL.—Not later than 4
21 years after the date that the report re-
22 quired by subparagraph (A)(ii) is sub-
23 mitted, each relevant agency of jurisdiction
24 shall submit to the committee of jurisdic-

1 tion a report on the efforts of such agency
2 to declassify such annex.

3 (ii) CONTENTS.—Each report required
4 by clause (i) shall include—

5 (I) a list of the items in the clas-
6 sified annex that the agency is work-
7 ing to declassify at the time of the re-
8 port and an estimate of the timeline
9 for declassification of such items;

10 (II) a broad description of items
11 in the annex that the agency is declin-
12 ing to declassify at the time of the re-
13 port; and

14 (III) any justification for with-
15 holding declassification of certain
16 items in the annex and an estimate of
17 the timeline for declassification of
18 such items.

19 (f) POWERS OF COMMISSION.—

20 (1) HEARINGS.—The Commission may hold
21 such hearings, take such testimony, and receive such
22 evidence as the Commission considers necessary to
23 carry out its purpose and functions under this sec-
24 tion.

25 (2) ASSISTANCE FROM FEDERAL AGENCIES.—

1 (A) INFORMATION.—

2 (i) IN GENERAL.—The Commission
3 may secure directly from a Federal depart-
4 ment or agency such information as the
5 Commission considers necessary to carry
6 out this section.

7 (ii) FURNISHING INFORMATION.—
8 Upon receipt of a written request by the
9 Co-Chairpersons of the Commission, the
10 head of the department or agency shall ex-
11 peditiously furnish the information to the
12 Commission.

13 (B) SPACE FOR COMMISSION.—Not later
14 than 30 days after the date of the enactment of
15 this Act, the Administrator of General Services,
16 in consultation with the Commission, shall iden-
17 tify and make available suitable excess space
18 within the Federal space inventory to house the
19 operations of the Commission. If the Adminis-
20 trator of General Services is not able to make
21 such suitable excess space available within such
22 30-day period, the Commission may lease space
23 to the extent that funds are available for such
24 purpose.

1 (3) POSTAL SERVICES.—The Commission may
2 use the United States mails in the same manner and
3 under the same conditions as other departments and
4 agencies of the Federal Government.

5 (4) GIFTS.—The Commission may accept, use,
6 and dispose of gifts or donations of services, goods,
7 and property from non-Federal entities for the pur-
8 poses of aiding and facilitating the work of the Com-
9 mission. The authority in this subsection does not
10 extend to gifts of money. Gifts accepted under this
11 authority shall be documented, and conflicts of inter-
12 est or the appearance of conflicts of interest shall be
13 avoided. Subject to the authority in this section,
14 commissioners shall otherwise comply with rules set
15 forth by the Select Committee on Ethics of the Sen-
16 ate and the Committee on Ethics of the House of
17 Representatives governing employees of the Senate
18 and the House of Representatives.

19 (5) LEGISLATIVE ADVISORY COMMITTEE.—The
20 Commission shall operate as a legislative advisory
21 committee and shall not be subject to the provisions
22 of the Federal Advisory Committee Act (Public Law
23 92–463; 5 U.S.C. App) or section 552b, United
24 States Code (commonly known as the Government in
25 the Sunshine Act).

1 (g) COMMISSION PERSONNEL MATTERS.—

2 (1) COMPENSATION OF MEMBERS.—A member
3 of the Commission who is not an officer or employee
4 of the Federal Government shall be compensated at
5 a rate equal to the daily equivalent of the annual
6 rate of basic pay prescribed for level IV of the Exec-
7 utive Schedule under section 5315 of title 5, United
8 States Code, for each day (including travel time)
9 during which the member is engaged in the perform-
10 ance of the duties of the Commission.

11 (2) TRAVEL EXPENSES.—A member of the
12 Commission shall be allowed travel expenses, includ-
13 ing per diem in lieu of subsistence, at rates author-
14 ized for employees of agencies under subchapter I of
15 chapter 57 of title 5, United States Code, while
16 away from their homes or regular places of business
17 in the performance of services for the Commission.

18 (3) STAFF.—

19 (A) STATUS AS FEDERAL EMPLOYEES.—
20 Notwithstanding the requirements of section
21 2105 of title 5, United States Code, including
22 the required supervision under subsection (a)(3)
23 of such section, the members of the commission
24 shall be deemed to be Federal employees.

1 (B) EXECUTIVE DIRECTOR.—The Commis-
2 sion shall appoint and fix the rate of basic pay
3 for an Executive Director in accordance with
4 section 3161(d) of title 5, United States Code.

5 (C) PAY.—The Executive Director, with
6 the approval of the Commission, may appoint
7 and fix the rate of basic pay for additional per-
8 sonnel as staff of the Commission in accordance
9 with section 3161(d) of title 5, United States
10 Code.

11 (4) DETAIL OF GOVERNMENT EMPLOYEES.—A
12 Federal Government employee may be detailed to
13 the Commission without reimbursement, and such
14 detail shall be without interruption or loss of civil
15 service status or privilege.

16 (5) PROCUREMENT OF TEMPORARY AND INTER-
17 MITTENT SERVICES.—The Co-Chairpersons of the
18 Commission may procure temporary and intermit-
19 tent services under section 3109(b) of title 5, United
20 States Code, at rates for individuals that do not ex-
21 ceed the daily equivalent of the annual rate of basic
22 pay prescribed for level V of the Executive Schedule
23 under section 5316 of that title.

24 (h) TERMINATION OF COMMISSION.—The Commis-
25 sion shall terminate 90 days after the date on which the

1 Commission submits the report required under subsection
2 (e)(2)(A)(ii).

3 (i) AUTHORIZATION OF APPROPRIATIONS.—

4 (1) INCREASE.—The amount authorized to be
5 appropriated by section 4301 for Operation and
6 Maintenance, Defense-wide, for the Office of the
7 Secretary of Defense, is hereby increased by
8 \$3,000,000.

9 (2) OFFSET.—The amount authorized to be ap-
10 propriated by section 4301 for Operation and Main-
11 tenance, Afghanistan Security Forces Fund, for Af-
12 ghanistan Air Force, Line 090, is hereby reduced by
13 \$3,000,000.