

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 Armed Services of
11 the House of Representatives;

12 (E) the Committee on Foreign Affairs of
13 the House of Representatives; and

14 (F) the Permanent Select Committee on
15 Intelligence of the House of Representatives.

16 (3) INTELLIGENCE COMMUNITY.—The term
17 “intelligence community” has the meaning given
18 that term in section 3(4) of the National Security
19 Act of 1947 (50 U.S.C. 3003(4)).

20 (c) ESTABLISHMENT OF COMMISSION.—

21 (1) ESTABLISHMENT.—There is established the
22 Afghanistan War Commission (in this section re-
23 ferred to as the “Commission”).

24 (2) MEMBERSHIP.—

1 (A) COMPOSITION.—The Commission shall
2 be composed of 12 members of whom—

3 (i) 1 shall be appointed by the Chair-
4 man of the Committee on Armed Services
5 of the Senate;

6 (ii) 1 shall be appointed by the rank-
7 ing member of the Committee on Armed
8 Services of the Senate;

9 (iii) 1 shall be appointed by the Chair-
10 man of the Committee on Armed Services
11 of the House of Representatives;

12 (iv) 1 shall be appointed by the rank-
13 ing member of the Committee on Armed
14 Services of the House of Representatives;

15 (v) 1 shall be appointed by the Chair-
16 man of the Committee on Foreign Rela-
17 tions of the Senate;

18 (vi) 1 shall be appointed by the rank-
19 ing member of the Committee on Foreign
20 Relations of the Senate;

21 (vii) 1 shall be appointed by the
22 Chairman of the Committee on Foreign
23 Affairs of the House of Representatives;

24 (viii) 1 shall be appointed by the
25 ranking member of the Committee on For-

1 eign Affairs of the House of Representa-
2 tives;

3 (ix) 1 shall be appointed by the Chair-
4 man of the Select Committee on Intel-
5 ligence of the Senate;

6 (x) 1 shall be appointed by the rank-
7 ing member of the Select Committee on In-
8 telligence of the Senate.

9 (xi) 1 shall be appointed by the Chair-
10 man of the Permanent Select Committee
11 on Intelligence of the House of Represent-
12 atives; and

13 (xii) 1 shall be appointed by the rank-
14 ing member of the Permanent Select Com-
15 mittee on Intelligence of the House of Rep-
16 resentatives.

17 (B) QUALIFICATIONS.—It is the sense of
18 Congress that each member of the Commission
19 appointed under subparagraph (A) should have
20 significant professional experience from a posi-
21 tion in—

22 (i) the Department of Defense;

23 (ii) the Department of State;

24 (iii) the intelligence community;

1 (iv) the United States Agency for
2 International Development; or

3 (v) a relevant academic or scholarly
4 institution.

5 (C) PROHIBITIONS.—A member of the
6 Commission appointed under subparagraph (A)
7 may not—

8 (i) be a current member of Congress
9 or a former member of Congress who
10 served in Congress after January 3, 2001;

11 (ii) have served in military or civilian
12 positions having significant operational or
13 strategic decision-making responsibilities
14 for conducting United States Government
15 actions in Afghanistan during the applica-
16 ble period; or

17 (iii) have been a party to any United
18 States or coalition defense contract during
19 the applicable period.

20 (D) DATE.—The appointments of the
21 members of the Commission shall be made not
22 later than 60 days after the date of enactment
23 of this Act.

24 (3) PERIOD OF APPOINTMENT; VACANCIES.—

1 (A) IN GENERAL.—A member of the Com-
2 mission shall be appointed for the life of the
3 Commission.

4 (B) VACANCIES.—A vacancy in the Com-
5 mission—

6 (i) shall not affect the powers of the
7 Commission; and

8 (ii) shall be filled in the same manner
9 as the original appointment.

10 (4) MEETINGS.—

11 (A) INITIAL MEETING.—Not later than 30
12 days after the date on which all members of the
13 Commission have been appointed, the Commis-
14 sion shall hold the first meeting of the Commis-
15 sion.

16 (B) FREQUENCY.—The Commission shall
17 meet at the call of the Chairperson.

18 (C) QUORUM.—A majority of the members
19 of the Commission shall constitute a quorum,
20 but a lesser number of members may hold hear-
21 ings.

22 (5) CHAIRPERSON AND VICE CHAIRPERSON.—
23 The Commission shall select, by a simple majority
24 vote, a Chairperson and a Vice Chairperson from

1 among the members of the Commission who volun-
2 teer to perform such roles.

3 (d) PURPOSE OF COMMISSION.— The purpose of the
4 Commission is to examine the war in Afghanistan, create
5 strategic and grand strategic lessons learned, and develop
6 recommendations for the Government of the United States
7 and future policymakers and senior military decision mak-
8 ers in the United States.

9 (e) DUTIES OF COMMISSION.—

10 (1) STUDY.—

11 (A) IN GENERAL.—The Commission shall
12 conduct a thorough study of all matters relating
13 to combat operations, reconstruction and secu-
14 rity force assistance activities, intelligence oper-
15 ations, and diplomatic activities of the United
16 States pertaining to the war in Afghanistan.

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

19 (i) the activities and actions of the
20 United States in and related to Afghani-
21 stan immediately prior to the attacks on
22 September 11, 2001, and during the initial
23 invasion of Afghanistan by the United
24 States;

1 (ii) the resurgence of the Taliban and
2 other combatants during the applicable pe-
3 riod;

4 (iii) the efficacy of the various mili-
5 tary missions conducted by United States
6 and coalition forces, including train, ad-
7 vise, and assist operations, security and
8 stability operations, and counter-narcotics
9 and counter-terrorism operations, and the
10 extent to which such missions conflicted;

11 (iv) peace negotiations involving the
12 United States, the Islamic Republic of Af-
13 ghanistan, and the Taliban; and

14 (v) the withdrawal of the United
15 States military from Afghanistan.

16 (C) CONTENTS.—The study required
17 under subparagraph (A) shall include the fol-
18 lowing elements:

19 (i) An analysis of the political and
20 strategic decisions that influenced—

21 (I) interactions of the Govern-
22 ment of the United States with the
23 Government of Afghanistan;

24 (II) the strategic objectives of the
25 war, including how such objectives

1 changed, during the applicable period
2 and the extent to which such objec-
3 tives furthered strategies by the
4 United States to terminate the war;

5 (III) the number of members of
6 the Armed Services in Afghanistan
7 during the applicable period;

8 (IV) the command and control
9 relationships of the Armed Forces;

10 (V) the integration of military
11 forces with other instruments of
12 United States national power; and

13 (VI) the metrics used for meas-
14 uring and reporting progress towards
15 strategic objectives and the extent to
16 which such metrics were analytically
17 effective or accurate.

18 (ii) A statement addressing the mili-
19 tary, diplomatic, and intelligence inter-
20 actions of the United States with Pakistan
21 during the applicable period, including any
22 interactions between Government of Paki-
23 stan and the Government of Afghanistan
24 or the Taliban.

1 (iii) An examination of the partici-
2 tion in the war in Afghanistan by member
3 states of the North Atlantic Treaty Orga-
4 nization.

5 (iv) An examination of the long-term
6 impact of the war in Afghanistan on gov-
7 ernment institutions in the United States.

8 (v) An examination of the authorities
9 used to conduct the war and an assessment
10 of the effectiveness of legislative actions
11 taken to conduct oversight of the war.

12 (vi) A description of any other mat-
13 ters that the Commission determines sig-
14 nificantly affected the conduct and the out-
15 come of the war in Afghanistan.

16 (vii) Recommendations for legislation
17 and administrative actions to address any
18 shortcomings in the conduct of the war in
19 Afghanistan identified by the Commission.

20 (2) REPORTS REQUIRED.—

21 (A) IN GENERAL.—

22 (i) ANNUAL REPORT.—Not later than
23 1 year after the date of the initial meeting
24 of the Commission, and annually there-
25 after, the Commission shall submit to the

1 appropriate congressional committees a re-
2 port describing the progress of the Com-
3 mission.

4 (ii) FINAL REPORT.—Not later than 4
5 years after the date of the initial meeting
6 of the Commission, the Commission shall
7 submit to the President and Congress a re-
8 port that contains a detailed statement of
9 the findings and conclusions of the Com-
10 mission, together with the recommenda-
11 tions of the Commission.

12 (B) FORM.—The report required by sub-
13 paragraph (A)(ii) shall be submitted and pub-
14 licly released on a Government website in un-
15 classified form but may contain a classified
16 annex, which the Commission shall make every
17 effort to ensure is classified at the lowest classi-
18 fication level.

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

21 (i) IN GENERAL.—Not later than 2
22 years after the date that the report re-
23 quired by subparagraph (A)(ii) is sub-
24 mitted and every 2 years thereafter until
25 the entirety of the classified annex of such

1 report is declassified and publicly available,
2 each relevant agency of jurisdiction shall
3 submit to the committee of jurisdiction a
4 report on the efforts of such agency to de-
5 classify such annex.

6 (ii) CONTENTS.—Each report required
7 by clause (i) shall include—

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

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

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

22 (f) POWERS OF COMMISSION.—

23 (1) HEARINGS.—The Commission may hold
24 such hearings, sit and act at such times and places,
25 take such testimony, and receive such evidence as

1 the Commission considers advisable to carry out this
2 section.

3 (2) ASSISTANCE FROM FEDERAL AGENCIES.—

4 (A) INFORMATION.—

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

10 (ii) FURNISHING INFORMATION.—On
11 request of the Chairperson of the Commis-
12 sion, the head of the department or agency
13 shall expeditiously furnish the information
14 to the Commission.

15 (B) GENERAL SERVICES.—Upon the re-
16 quest of the Commission, the Administrator of
17 General Services shall provide to the Commis-
18 sion, on a reimbursable basis, the administra-
19 tive support services and office space necessary
20 for the Commission to carry out its purposes
21 and functions under this section.

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

1 (4) GIFTS.—The Commission may accept, use,
2 and dispose of gifts or donations of services or prop-
3 erty.

4 (g) NONAPPLICABILITY OF FEDERAL ADVISORY
5 COMMITTEE ACT.—

6 (1) IN GENERAL.—The Federal Advisory Com-
7 mittee Act (5 U.S.C. App.) shall not apply to the
8 Commission.

9 (2) PUBLIC MEETINGS AND RELEASE OF PUB-
10 LIC VERSIONS OF REPORTS.—The Commission
11 shall—

12 (A) hold public hearings and meetings to
13 the extent appropriate; and

14 (B) release public versions of the reports
15 required under subsection (e)(2).

16 (3) PUBLIC HEARINGS.—Any public hearings of
17 the Commission shall be conducted in a manner con-
18 sistent with the protection of information provided
19 to or developed for or by the Commission as re-
20 quired by any applicable statute, regulation, or Ex-
21 ecutive order.

22 (h) COMMISSION PERSONNEL MATTERS.—

23 (1) COMPENSATION OF MEMBERS.—A member
24 of the Commission who is not an officer or employee
25 of the Federal Government shall be compensated at

1 a rate equal to the daily equivalent of the annual
2 rate of basic pay prescribed for level IV of the Exec-
3 utive Schedule under section 5315 of title 5, United
4 States Code, for each day (including travel time)
5 during which the member is engaged in the perform-
6 ance of the duties of the Commission.

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

14 (3) STAFF.—

15 (A) IN GENERAL.—The Chairperson, in
16 consultation with the Vice Chairperson of the
17 Commission, may, without regard to the civil
18 service laws (including regulations), appoint
19 and terminate an executive director and such
20 other additional personnel as may be necessary
21 to enable the Commission to perform its duties,
22 except that the employment of an executive di-
23 rector shall be subject to confirmation by the
24 Commission.

1 (B) QUALIFICATIONS FOR PERSONNEL.—

2 The Chairperson and the Vice Chairperson of
3 the Commission shall give preference in such
4 appointments under subparagraph (A) to indi-
5 viduals from academic backgrounds, and former
6 military personnel should include representation
7 from the reserve components

8 (C) COMPENSATION.—The Chairperson, in
9 consultation with the Vice Chairperson of the
10 Commission, may fix the compensation of the
11 executive director and other personnel without
12 regard to chapter 51 and subchapter III of
13 chapter 53 of title 5, United States Code, relat-
14 ing to classification of positions and General
15 Schedule pay rates, except that the rate of pay
16 for the executive director and other personnel
17 may not exceed the rate payable for level V of
18 the Executive Schedule under section 5316 of
19 that title.

20 (4) DETAIL OF GOVERNMENT EMPLOYEES.—A

21 Federal Government employee may be detailed to
22 the Commission without reimbursement, and such
23 detail shall be without interruption or loss of civil
24 service status or privilege.

1 (5) PROCUREMENT OF TEMPORARY AND INTER-
2 MITTENT SERVICES.—The Chairperson, in consulta-
3 tion with the Vice Chairperson of the Commission,
4 may procure temporary and intermittent services
5 under section 3109(b) of title 5, United States Code,
6 at rates for individuals that do not exceed the daily
7 equivalent of the annual rate of basic pay prescribed
8 for level V of the Executive Schedule under section
9 5316 of that title.

10 (6) SECURITY CLEARANCES.—The appropriate
11 departments or agencies of the United States shall
12 cooperate with the Commission in expeditiously pro-
13 viding to the members and staff of the Commission
14 appropriate security clearances to the extent possible
15 pursuant to existing procedures and requirements.

16 (i) TERMINATION OF COMMISSION.—The Commis-
17 sion shall terminate 90 days after the date on which the
18 Commission submits the report required under subsection
19 (e)(2)(A)(ii).

20 (j) AUTHORIZATION OF APPROPRIATIONS.—

21 (1) IN GENERAL.—There is authorized to be
22 appropriated to the Commission such amounts as
23 necessary to carry out activities under this section.

24 (2) AVAILABILITY.—Any sums appropriated
25 under the authorization contained in this section

1 shall remain available, without fiscal year limitation,
2 until the date of the termination of the Commission
3 under subsection (i).