

Union Calendar No. 119

113TH CONGRESS
1ST SESSION

H. R. 1422

[Report No. 113-165]

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2013

Mr. STEWART (for himself, Mr. SMITH of Texas, Mr. HALL, Mr. ROHR-ABACHER, Mr. HARRIS, and Mr. BENISHEK) introduced the following bill; which was referred to the Committee on Science, Space, and Technology

JULY 22, 2013

Additional sponsors: Mr. DAINES, Mr. BISHOP of Utah, Mr. GOHMERT, Mr. BARTON, Mr. PRICE of Georgia, Mr. STOCKMAN, Mr. WESTMORELAND, Mrs. BACHMANN, Mr. KLINE, Mrs. LUMMIS, Mr. FRANKS of Arizona, Mr. CRAMER, Mr. SCHWEIKERT, Mr. BROUN of Georgia, Mr. YOUNG of Alaska, and Mrs. HARTZLER

JULY 22, 2013

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on April 9, 2013]

A BILL

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, 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 “EPA Science Advisory*
5 *Board Reform Act of 2013”.*

6 **SEC. 2. SCIENCE ADVISORY BOARD.**

7 *(a) MEMBERSHIP.—Section 8(b) of the Environmental*
8 *Research, Development, and Demonstration Authorization*
9 *Act of 1978 (42 U.S.C. 4365(b)) is amended to read as fol-*
10 *lows:*

11 *“(b)(1) The Board shall be composed of at least nine*
12 *members, one of whom shall be designated Chairman, and*
13 *shall meet at such times and places as may be designated*
14 *by the Chairman in consultation with the Administrator.*

15 *“(2) Each member of the Board shall be qualified by*
16 *education, training, and experience to evaluate scientific*
17 *and technical information on matters referred to the Board*
18 *under this section. The Administrator shall select Board*
19 *members from nominations received as described in para-*
20 *graph (3) and shall ensure that—*

21 *“(A) the scientific and technical points of view*
22 *represented on and the functions to be performed by*
23 *the Board are fairly balanced among the members of*
24 *the Board;*

1 “(B) at least ten percent of the membership of
2 the Board are from State, local, or tribal govern-
3 ments;

4 “(C) persons with substantial and relevant ex-
5 pertise are not excluded from the Board due to affili-
6 ation with or representation of entities that may have
7 a potential interest in the Board’s advisory activities,
8 so long as that interest is fully disclosed to the Ad-
9 ministrator and the public and appointment to the
10 Board complies with section 208 of title 18, United
11 States Code;

12 “(D) in the case of a Board advisory activity on
13 a particular matter involving a specific party, no
14 Board member having an interest in the specific
15 party shall participate in that activity;

16 “(E) Board members may not participate in ad-
17 visory activities that directly or indirectly involve re-
18 view and evaluation of their own work;

19 “(F) Board members shall be designated as spe-
20 cial Government employees; and

21 “(G) no federally registered lobbyist is appointed
22 to the Board.

23 “(3) The Administrator shall—

24 “(A) solicit public nominations for the Board by
25 publishing a notification in the Federal Register;

1 “(B) solicit nominations from relevant Federal
2 agencies, including the Departments of Agriculture,
3 Defense, Energy, and Health and Human Services;

4 “(C) make public the list of nominees, including
5 the identity of the entities that nominated them, and
6 shall accept public comment on the nominees;

7 “(D) require that, upon their provisional nomi-
8 nation, nominees shall file a written report disclosing
9 financial relationships and interests, including Envi-
10 ronmental Protection Agency grants, contracts, coop-
11 erative agreements, or other financial assistance, that
12 are relevant to the Board’s advisory activities for the
13 three-year period prior to the date of their nomina-
14 tion, and relevant professional activities and public
15 statements for the five-year period prior to the date
16 of their nomination; and

17 “(E) make such reports public, with the excep-
18 tion of specific dollar amounts, for each member of
19 the Board upon such member’s selection.

20 “(4) Disclosure of relevant professional activities
21 under paragraph (3)(D) shall include all representational
22 work, expert testimony, and contract work as well as identi-
23 fying the party for which the work was done.

24 “(5) Except when specifically prohibited by law, the
25 Agency shall make all conflict of interest waivers granted

1 *to members of the Board, member committees, or investiga-*
2 *tive panels publicly available.*

3 “(6) *Any recusal agreement made by a member of the*
4 *Board, a member committee, or an investigative panel, or*
5 *any recusal known to the Agency that occurs during the*
6 *course of a meeting or other work of the Board, member*
7 *committee, or investigative panel shall promptly be made*
8 *public by the Administrator.*

9 “(7) *The terms of the members of the Board shall be*
10 *three years and shall be staggered so that the terms of no*
11 *more than one-third of the total membership of the Board*
12 *shall expire within a single fiscal year. No member shall*
13 *serve more than two terms over a ten-year period.”.*

14 (b) *RECORD.—Section 8(c) of such Act (42 U.S.C.*
15 *4365(c)) is amended—*

16 (1) *in paragraph (1)—*

17 (A) *by inserting “risk or hazard assess-*
18 *ment,” after “at the time any proposed”; and*

19 (B) *by inserting “risk or hazard assess-*
20 *ment,” after “to the Board such proposed”; and*

21 (2) *in paragraph (2)—*

22 (A) *by inserting “risk or hazard assess-*
23 *ment,” after “the scientific and technical basis of*
24 *the proposed”; and*

1 (B) by adding at the end the following:
2 *“The Board’s advice and comments, including*
3 *dissenting views of Board members, and the re-*
4 *sponse of the Administrator shall be included in*
5 *the record with respect to any proposed risk or*
6 *hazard assessment, criteria document, standard,*
7 *limitation, or regulation and published in the*
8 *Federal Register.”.*

9 (c) *MEMBER COMMITTEES AND INVESTIGATIVE PAN-*
10 *ELS.—Section 8(e) of such Act (42 U.S.C. 4365(e)) is*
11 *amended by adding at the end the following: “These member*
12 *committees and investigative panels—*

13 *“(1) shall be constituted and operate in accord-*
14 *ance with the provisions set forth in paragraphs (2)*
15 *and (3) of subsection (b), in subsection (h), and in*
16 *subsection (i);*

17 *“(2) do not have authority to make decisions on*
18 *behalf of the Board; and*

19 *“(3) may not report directly to the Environ-*
20 *mental Protection Agency.”.*

21 (d) *PUBLIC PARTICIPATION.—Section 8 of such Act*
22 *(42 U.S.C. 4365) is amended by adding after subsection (g)*
23 *the following:*

24 *“(h)(1) To facilitate public participation in the advi-*
25 *sory activities of the Board, the Administrator and the*

1 *Board shall make public all reports and relevant scientific*
2 *information and shall provide materials to the public at*
3 *the same time as received by members of the Board.*

4 “(2) *Prior to conducting major advisory activities, the*
5 *Board shall hold a public information-gathering session to*
6 *discuss the state of the science related to the advisory activ-*
7 *ity.*

8 “(3) *Prior to convening a member committee or inves-*
9 *tigative panel under subsection (e) or requesting scientific*
10 *advice from the Board, the Administrator shall accept, con-*
11 *sider, and address public comments on questions to be asked*
12 *of the Board. The Board, member committees, and inves-*
13 *tigative panels shall accept, consider, and address public*
14 *comments on such questions and shall not accept a question*
15 *that unduly narrows the scope of an advisory activity.*

16 “(4) *The Administrator and the Board shall encourage*
17 *public comments, including oral comments and discussion*
18 *during the proceedings, that shall not be limited by an in-*
19 *sufficient or arbitrary time restriction. Public comments*
20 *shall be provided to the Board when received. The Board’s*
21 *reports shall include written responses to significant com-*
22 *ments offered by members of the public to the Board.*

23 “(5) *Following Board meetings, the public shall be*
24 *given 15 calendar days to provide additional comments for*
25 *consideration by the Board.”.*

1 (e) *OPERATIONS.*—Section 8 of such Act (42 U.S.C.
2 4365) is further amended by adding after subsection (h),
3 as added by subsection (d) of this section, the following:

4 “(i)(1) *In carrying out its advisory activities, the*
5 *Board shall strive to avoid making policy determinations*
6 *or recommendations, and, in the event the Board feels com-*
7 *pelled to offer policy advice, shall explicitly distinguish be-*
8 *tween scientific determinations and policy advice.*

9 “(2) *The Board shall clearly communicate uncertain-*
10 *ties associated with the scientific advice provided to the Ad-*
11 *ministrator.*

12 “(3) *The Board shall ensure that advice and comments*
13 *reflect the views of the members and shall encourage dis-*
14 *senting members to make their views known to the public*
15 *and the Administrator.*

16 “(4) *The Board shall conduct periodic reviews to en-*
17 *sure that its advisory activities are addressing the most im-*
18 *portant scientific issues affecting the Environmental Pro-*
19 *tection Agency.*”.

20 **SEC. 3. RELATION TO THE FEDERAL ADVISORY COMMITTEE**

21 **ACT.**

22 *Nothing in this Act or the amendments made by this*
23 *Act shall be construed as supplanting the requirements of*
24 *the Federal Advisory Committee Act (5 U.S.C. App.).*

1 **SEC. 4. RELATION TO THE ETHICS IN GOVERNMENT ACT OF**
2 **1978.**

3 *Nothing in this Act or the amendments made by this*
4 *Act shall be construed as supplanting the requirements of*
5 *the Ethics in Government Act of 1978 (5 U.S.C. App.).*

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