

Union Calendar No. 35

115TH CONGRESS
1ST SESSION

H. R. 1431

[Report No. 115-63]

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

MARCH 8, 2017

Mr. LUCAS (for himself, Mr. PETERSON, Mr. SMITH of Texas, Mr. BIGGS, Mr. BANKS of Indiana, Mr. ROHRABACHER, Mr. POSEY, Mr. BROOKS of Alabama, Mr. WEBER of Texas, Mr. BABIN, Mr. HIGGINS of Louisiana, Mr. HULTGREN, Mr. BRIDENSTINE, Mr. ABRAHAM, Mr. LAHOOD, Mr. WEBSTER of Florida, Mr. MARSHALL, Mr. DUNN, Mr. SESSIONS, Mr. CHAFFETZ, Mr. SCHWEIKERT, Mr. PALAZZO, Mr. YOUNG of Alaska, Mr. BARTON, Mr. PEARCE, Mr. FARENTHOLD, Mr. GOSAR, Mr. TIPTON, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on Science, Space, and Technology

MARCH 27, 2017

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

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 2017”.

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

7 (a) INDEPENDENT ADVICE.—Section 8(a) of the En-
8 vironmental Research, Development, and Demonstration
9 Authorization Act of 1978 (42 U.S.C. 4365(a)) is amend-
10 ed by inserting “independently” after “Advisory Board
11 which shall”.

12 (b) MEMBERSHIP.—Section 8(b) of the Environ-
13 mental Research, Development, and Demonstration Au-
14 thorization Act of 1978 (42 U.S.C. 4365(b)) is amended
15 to read as follows:

16 “(b)(1) The Board shall be composed of at least nine
17 members, one of whom shall be designated Chairman, and
18 shall meet at such times and places as may be designated
19 by the Chairman.

20 “(2) Each member of the Board shall be qualified by
21 education, training, and experience to evaluate scientific
22 and technical information on matters referred to the
23 Board under this section. The Administrator shall ensure
24 that—

1 “(A) the scientific and technical points of view
2 represented on and the functions to be performed by
3 the Board are fairly balanced among the members of
4 the Board;

5 “(B) at least ten percent of the membership of
6 the Board are from State, local, or tribal govern-
7 ments;

8 “(C) persons with substantial and relevant ex-
9 pertise are not excluded from the Board due to af-
10 filiation with or representation of entities that may
11 have a potential interest in the Board’s advisory ac-
12 tivities, so long as that interest is fully disclosed to
13 the Administrator and the public and appointment
14 to the Board complies with section 208 of title 18,
15 United States Code;

16 “(D) in the case of a Board advisory activity on
17 a particular matter involving, or for which the Board
18 has evidence that it may involve, a specific party, no
19 Board member having an interest in the specific
20 party shall participate in that activity;

21 “(E) Board members may not participate in ad-
22 visory activities that directly or indirectly involve re-
23 view or evaluation of their own work, unless fully
24 disclosed to the public and the work has been exter-
25 nally peer-reviewed;

1 “(F) Board members shall be designated as
2 special Government employees;

3 “(G) no registered lobbyist is appointed to the
4 Board; and

5 “(H) a Board member shall have no current
6 grants or contracts from the Environmental Protec-
7 tion Agency and shall not apply for a grant or con-
8 tract for 3 years following the end of that member’s
9 service on the Board.

10 “(3) The Administrator shall—

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

13 “(B) solicit nominations from relevant Federal
14 agencies, including the Departments of Agriculture,
15 Defense, Energy, the Interior, and Health and
16 Human Services;

17 “(C) solicit nominations from—

18 “(i) institutions of higher education (as de-
19 fined in section 101(a) of the Higher Education
20 Act of 1965 (20 U.S.C. 1001(a))); and

21 “(ii) scientific and research institutions
22 based in work relevant to that of the Board;

23 “(D) make public the list of nominees, includ-
24 ing the identity of the entities that nominated each,
25 and shall accept public comment on the nominees;

1 “(E) require that, upon their provisional nomi-
2 nation, nominees shall file a written report disclosing
3 financial relationships and interests, including Envi-
4 ronmental Protection Agency grants, contracts, co-
5 operative agreements, or other financial assistance,
6 that are relevant to the Board’s advisory activities
7 for the three-year period prior to the date of their
8 nomination, and relevant professional activities and
9 public statements for the five-year period prior to
10 the date of their nomination; and

11 “(F) make such reports public, with the excep-
12 tion of specific dollar amounts, for each member of
13 the Board upon such member’s selection.

14 “(4) Disclosure of relevant professional activities
15 under paragraph (3)(E) shall include all representational
16 work, expert testimony, and contract work as well as iden-
17 tifying the party for which the work was done.

18 “(5) Except when specifically prohibited by law, the
19 Agency shall make all conflict of interest waivers granted
20 to members of the Board, member committees, or inves-
21 tigative panels publicly available.

22 “(6) Any recusal agreement made by a member of
23 the Board, a member committee, or an investigative panel,
24 or any recusal known to the Agency that occurs during
25 the course of a meeting or other work of the Board, mem-

1 ber committee, or investigative panel shall promptly be
2 made public by the Administrator.

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

8 (c) RECORD.—Section 8(c) of such Act (42 U.S.C.
9 4365(c)) is amended—

10 (1) in paragraph (1)—

11 (A) by inserting “or draft risk or hazard
12 assessment,” after “at the time any proposed”;

13 (B) by striking “formal”; and

14 (C) by inserting “or draft risk or hazard
15 assessment,” after “to the Board such pro-
16 posed”; and

17 (2) in paragraph (2)—

18 (A) by inserting “or draft risk or hazard
19 assessment,” after “the scientific and technical
20 basis of the proposed”; and

21 (B) by adding at the end the following:
22 “The Board’s advice and comments, including
23 dissenting views of Board members, and the re-
24 sponse of the Administrator shall be included in
25 the record with respect to any proposed risk or

1 hazard assessment, criteria document, standard,
2 limitation, or regulation and published in the
3 Federal Register.”.

4 (d) MEMBER COMMITTEES AND INVESTIGATIVE PAN-
5 ELS.—Section 8(e)(1)(A) of such Act (42 U.S.C.
6 4365(e)(1)(A)) is amended by adding at the end the fol-
7 lowing: “These member committees and investigative pan-
8 els—

9 “(i) shall be constituted and operate
10 in accordance with the provisions set forth
11 in paragraphs (2) and (3) of subsection
12 (b), in subsection (h), and in subsection
13 (i);

14 “(ii) do not have authority to make
15 decisions on behalf of the Board; and

16 “(iii) may not report directly to the
17 Environmental Protection Agency.”.

18 (e) PUBLIC PARTICIPATION.—Section 8 of such Act
19 (42 U.S.C. 4365) is amended by amending subsection (h)
20 to read as follows:

21 “(h)(1) To facilitate public participation in the advi-
22 sory activities of the Board, the Administrator and the
23 Board shall make public all reports and relevant scientific
24 information and shall provide materials to the public at
25 the same time as received by members of the Board.

1 “(2) Prior to conducting major advisory activities, the
2 Board shall hold a public information-gathering session to
3 discuss the state of the science related to the advisory ac-
4 tivity.

5 “(3) Prior to convening a member committee or in-
6 vestigative panel under subsection (e) or requesting sci-
7 entific advice from the Board, the Administrator shall ac-
8 cept, consider, and address public comments on questions
9 to be asked of the Board. The Board, member committees,
10 and investigative panels shall accept, consider, and ad-
11 dress public comments on such questions and shall not ac-
12 cept a question that unduly narrows the scope of an advi-
13 sory activity.

14 “(4) The Administrator and the Board shall encour-
15 age public comments, including oral comments and discus-
16 sion during the proceedings, that shall not be limited by
17 an insufficient or arbitrary time restriction. Public com-
18 ments shall be provided to the Board when received, and
19 shall be published in the Federal Register grouped by com-
20 mon themes. If multiple repetitious comments are re-
21 ceived, only one such comment shall be published along
22 with the number of such repetitious comments received.
23 Any report made public by the Board shall include written
24 responses to significant comments, including those that

1 present an alternative hypothesis-based scientific point of
2 view, offered by members of the public to the Board.

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

6 (f) OPERATIONS.—Section 8 of such Act (42 U.S.C.
7 4365) is further amended by amending subsection (i) to
8 read as follows:

9 “(i)(1) In carrying out its advisory activities, the
10 Board shall strive to avoid making policy determinations
11 or recommendations, and, in the event the Board feels
12 compelled to offer policy advice, shall explicitly distinguish
13 between scientific determinations and policy advice.

14 “(2) The Board shall clearly communicate uncertain-
15 ties associated with the scientific advice provided to the
16 Administrator or Congress.

17 “(3) The Board shall ensure that advice and com-
18 ments reflect the views of the members and shall encour-
19 age dissenting members to make their views known to the
20 public, the Administrator, and Congress.

21 “(4) The Board shall conduct periodic reviews to en-
22 sure that its advisory activities are addressing the most
23 important scientific issues affecting the Environmental
24 Protection Agency.

1 “(5) The Board shall be fully and timely responsive
2 to Congress.”.

3 **SEC. 3. RELATION TO THE FEDERAL ADVISORY COM-**
4 **MITTEE ACT.**

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

8 **SEC. 4. RELATION TO THE ETHICS IN GOVERNMENT ACT OF**
9 **1978.**

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

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