

EPA SCIENCE ADVISORY BOARD REFORM ACT OF 2015

MARCH 2, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on Science, Space, and Technology, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1029]

[Including cost estimate of the Congressional Budget Office]

The Committee on Science, Space, and Technology, to whom was referred the bill (H.R. 1029) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “EPA Science Advisory Board Reform Act of 2015”.

SEC. 2. SCIENCE ADVISORY BOARD.

(a) INDEPENDENT ADVICE.—Section 8(a) of the Environmental Research, Development, and Demonstration Authorization Act of 1978 (42 U.S.C. 4365(a)) is amended by inserting “independently” after “Advisory Board which shall”.

(b) MEMBERSHIP.—Section 8(b) of the Environmental Research, Development, and Demonstration Authorization Act of 1978 (42 U.S.C. 4365(b)) is amended to read as follows:

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

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

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

“(B) at least ten percent of the membership of the Board are from State, local, or tribal governments;

“(C) persons with substantial and relevant expertise are not excluded from the Board due to affiliation with or representation of entities that may have a potential interest in the Board’s advisory activities, so long as that interest is fully disclosed to the Administrator and the public and appointment to the Board complies with section 208 of title 18, United States Code;

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

“(E) Board members may not participate in advisory activities that directly or indirectly involve review or evaluation of their own work, unless fully disclosed to the public and the work has been externally peer-reviewed;

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

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

“(3) The Administrator shall—

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

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

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

“(D) require that, upon their provisional nomination, nominees shall file a written report disclosing financial relationships and interests, including Environmental Protection Agency grants, contracts, cooperative agreements, or other financial assistance, that are relevant to the Board’s advisory activities for the three-year period prior to the date of their nomination, and relevant professional activities and public statements for the five-year period prior to the date of their nomination; and

“(E) make such reports public, with the exception of specific dollar amounts, for each member of the Board upon such member’s selection.

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

“(5) Except when specifically prohibited by law, the Agency shall make all conflict of interest waivers granted to members of the Board, member committees, or investigative panels publicly available.

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

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

- (c) RECORD.—Section 8(c) of such Act (42 U.S.C. 4365(c)) is amended—
- (1) in paragraph (1)—
 - (A) by inserting “or draft risk or hazard assessment,” after “at the time any proposed”;
 - (B) by striking “formal”; and
 - (C) by inserting “or draft risk or hazard assessment,” after “to the Board such proposed”; and
 - (2) in paragraph (2)—
 - (A) by inserting “or draft risk or hazard assessment,” after “the scientific and technical basis of the proposed”; and
 - (B) by adding at the end the following: “The Board’s advice and comments, including dissenting views of Board members, and the response of the Administrator shall be included in the record with respect to any proposed risk or hazard assessment, criteria document, standard, limitation, or regulation and published in the Federal Register.”.
- (d) MEMBER COMMITTEES AND INVESTIGATIVE PANELS.—Section 8(e)(1)(A) of such Act (42 U.S.C. 4365(e)(1)(A)) is amended by adding at the end the following: “These member committees and investigative panels—
- “(i) shall be constituted and operate in accordance with the provisions set forth in paragraphs (2) and (3) of subsection (b), in subsection (h), and in subsection (i);
 - “(ii) do not have authority to make decisions on behalf of the Board; and
 - “(iii) may not report directly to the Environmental Protection Agency.”.
- (e) PUBLIC PARTICIPATION.—Section 8 of such Act (42 U.S.C. 4365) is amended by amending subsection (h) to read as follows:
- “(h)(1) To facilitate public participation in the advisory activities of the Board, the Administrator and the Board shall make public all reports and relevant scientific information and shall provide materials to the public at the same time as received by members of the Board.
 - “(2) Prior to conducting major advisory activities, the Board shall hold a public information-gathering session to discuss the state of the science related to the advisory activity.
 - “(3) Prior to convening a member committee or investigative panel under subsection (e) or requesting scientific advice from the Board, the Administrator shall accept, consider, and address public comments on questions to be asked of the Board. The Board, member committees, and investigative panels shall accept, consider, and address public comments on such questions and shall not accept a question that unduly narrows the scope of an advisory activity.
 - “(4) The Administrator and the Board shall encourage public comments, including oral comments and discussion during the proceedings, that shall not be limited by an insufficient or arbitrary time restriction. Public comments shall be provided to the Board when received. The Board’s reports shall include written responses to significant comments offered by members of the public to the Board.
 - “(5) Following Board meetings, the public shall be given 15 calendar days to provide additional comments for consideration by the Board.”.
- (f) OPERATIONS.—Section 8 of such Act (42 U.S.C. 4365) is further amended by amending subsection (i) to read as follows:
- “(i)(1) In carrying out its advisory activities, the Board shall strive to avoid making policy determinations or recommendations, and, in the event the Board feels compelled to offer policy advice, shall explicitly distinguish between scientific determinations and policy advice.
 - “(2) The Board shall clearly communicate uncertainties associated with the scientific advice provided to the Administrator or Congress.
 - “(3) The Board shall ensure that advice and comments reflect the views of the members and shall encourage dissenting members to make their views known to the public, the Administrator, and Congress.
 - “(4) The Board shall conduct periodic reviews to ensure that its advisory activities are addressing the most important scientific issues affecting the Environmental Protection Agency.
 - “(5) The Board shall be fully and timely responsive to Congress.”.

SEC. 3. RELATION TO THE FEDERAL ADVISORY COMMITTEE ACT.

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

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

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

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The purpose of H.R. 1029 is to amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Science Advisory Board independence, member qualifications, public participation, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Environmental Protection Agency's (EPA) Science Advisory Board (SAB) was established by Congress in the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA).¹ Under this authorization, the SAB provides scientific advice as may be requested by the EPA Administrator and interested Congressional Committees.

Since its enactment, the size and function of the SAB has evolved. ERDDAA established a minimum number of nine members, one of which is to be the designated Chair. Members are appointed by the EPA Administrator to serve a three-year term and may be reappointed for a second three-year term. There are currently 47 members on the chartered SAB; however, this number fluctuates as members rotate off and new members are appointed. The SAB and its subcommittees and ad hoc subpanels provide scientific advice on a wide range of issues, including stream and wetland connectivity, hydraulic fracturing, environmental justice screening, and regulatory cost estimates.² The Board has also begun providing advice on the science underlying several potential, forthcoming Agency regulatory activities.³

The SAB is operated in accordance with the Federal Advisory Committee Act of 1972, which requires that advisory panels have a charter and be "fairly balanced in terms of the points of view represented and the functions to be performed." According to EPA, SAB's mission includes:

- Reviewing the quality and relevance of the scientific and technical information being used or proposed as the basis for Agency regulations;
- Reviewing research programs and the technical basis of applied programs;
- Reviewing generic approaches to regulatory science, including guidelines governing the use of scientific and technical information in regulatory decisions, and critiquing such analytic methods as mathematical modeling;
- Advising the Agency on broad scientific matters in science, technology, social and economic issues; and

¹Public Law 95-155.

²<http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsbyTopicBOARD!OpenView>.

³Dave Reynolds, "Advisors Narrow List Of Pending EPA Rules For Novel Scientific Scrutiny," Inside EPA, March 11, 2013, <http://insideepa.com/201303112427282/EPA-Daily-News/Daily-News/advisors-narrow-list-of-pending-epa-rules-for-novel-scientific-scrutiny/menu-id-95.html>.

- Advising the Agency on emergency and other short-notice programs.⁴

Toward those goals, the chartered SAB conducts much of its work through subcommittees or subpanels focused on specific issues. Currently, these subcommittees include: Drinking Water Committee; Ecological Processes and Effects Committee; Environmental Economics Advisory Committee; Environmental Engineering Committee; Exposure and Human Health Committee; Radiation Advisory Committee; Chemical Assessment Advisory Committee; and the Agricultural Science Committee.⁵ Under the SAB's charter,⁶ these "[c]ommittees, panels, and workgroups have no authority to make decisions on behalf of the SAB and may not report directly to the Agency."

EPA also receives advice from and manages 22 additional Federal Advisory Committees, including entities like the EPA Board of Scientific Counselors, the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel, and the Clean Air Scientific Advisory Committee (CASAC).⁷ These bodies carry out a variety of advisory functions. For example, CASAC "provides independent advice to the EPA Administrator on the technical bases for EPA's national ambient air quality standards" and "addresses research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality." The Chair of CASAC also sits on the chartered SAB.⁸

EPA staff and the chartered SAB allow for some public involvement in advisory activities through the nomination of experts for committees and panels and involvement in advisory committee meetings and report developments. In response to numerous comments during an SAB Session on Public Involvement in June 2011, the SAB Staff Office announced additional steps to enhance public involvement in advisory activities beginning in FY2012.⁹

LEGISLATIVE AND POLICY HISTORY

In the 113th Congress, the Subcommittee on Environment held a hearing on March 20, 2013, to examine the Environmental Protection Agency's process for receiving independent scientific advice and to receive testimony on draft legislation to strengthen public participation; improve the process for selecting expert advisors; expand transparency requirements; and limit non-scientific policy advice among advisory bodies.

The Subcommittee heard from 3 witnesses: Dr. Michael Honeycutt, Chief Toxicologist, Texas Commission on Environmental Quality; Dr. Roger McClellan, Advisor, Toxicology and Human Health Risk Analysis; and Dr. Francesca Grifo, Senior Scientist and Science Policy Fellow, Union of Concerned Scientists.

In the 113th Congress, H.R. 1422 the Science Advisory Board Reform Act of 2013 was brought to the floor. It passed on November 18, 2014, by a vote of 229–191.

⁴ <http://yosemite.epa.gov/sab/sabpeople.nsf/Webcommittees/BOARD>.

⁵ <http://yosemite.epa.gov/sab/sabproduct.nsf/WebBOARD/CommitteesandMembership?OpenDocument>.

⁶ <http://yosemite.epa.gov/sab/sabproduct.nsf/WebBOARD/currentcharter?OpenDocument>.

⁷ <http://www.epa.gov/ocem/faca/facacomcontacts.htm>.

⁸ <http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC>.

⁹ <http://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/PublicInvolvement?OpenDocument>.

COMMITTEE VIEWS

H.R. 1029 will restore balance and independence to the scientific advisory process at EPA. The bill seeks to codify existing practices and address concerns with the Science Advisory Board (SAB) by strengthening public participation, reinforcing the need for expertise, transparency, and balance in the SAB selection process, and establishing a clearer role for the SAB in providing scientific advice to the EPA and Congress.

H.R. 1029 provides needed direction to SAB and helps to fulfill President Ronald Reagan's guidance that "[t]he purpose of the Science Advisory Board is to apply the universally accepted principles of scientific peer review to the research conclusions that will form the bases for EPA regulations, a function that must remain above interest group politics."

In light of EPA's unique position as an agency that frequently provides the scientific justifications to support its regulatory decisions, it is vital that the scientific advisory and peer review process be independent and robust. This is especially true for the EPA Science Advisory Board because its members are selected by the EPA Administrator and frequently are asked to provide analysis on critical scientific matters and information from chemical assessments to EPA's research budget prioritization. If EPA science appears biased, pre-ordained toward a specific outcome, or even less than willing to consider every point of view, its credibility will suffer. The bill makes basic changes to the operations, scope, and selection process for the SAB, relying on non-controversial provisions of the Federal Advisory Committee Act, EPA's Peer Review Handbook, the National Academies' Policy on Committee Composition and Balance and Conflicts of Interest, and recommendations from Science Committee testimony.

Despite requirements in the Federal Advisory Committee Act that SAB and related panels be "fairly balanced in terms of point of view represented," the Science Committee determined that individuals with certain perspectives are overrepresented within the SAB and other viewpoints are frequently underrepresented or excluded from participation based on misinterpretation of ethics rules. Additionally, EPA often differs from the practice of other federal agencies and excludes state, local, tribal, and private sector scientists from serving as advisors. To rectify these issues, H.R. 1029 requires that all SAB members be designated as "special Government employees," prohibits the exclusion of individuals with substantial and relevant expertise, requires that at least ten percent of the Board be drawn from State, local, and tribal experts, and clarifies, in a manner consistent with existing ethics requirements, that in the case of a Board advisory activity on a particular matter involving a specific party, no Board member having an interest in the specific party shall participate in that activity. The bill also expands disclosure requirements for panelists and nominees, and requires that the EPA make reports and conflict of interest waivers available publicly.

Testimony received by the Committee demonstrated that at times Board members had been involved directly or indirectly in reviewing their own work. To address this issue, H.R. 1029 states that "Board members may not participate in advisory activities

that directly or indirectly involve review and evaluation of their own work”. This language was based on the EPA’s Peer Review Handbook language that states that “An independent peer reviewer is an expert who was not associated with the generation of the specific work product whether directly by substantial contribution to its development or indirectly by significant consultation during the development of the specific product.” Additionally, the legislation requires public disclosure of Board member recusals.

H.R. 1029 makes additional changes to facilitate participation in a manner that will improve scientific advice without unduly burdening the panel or the EPA. It encourages public comments and instructs the Board to not accept questions that narrow the scope of an advisory activity. Similarly, the bill provides additional detail to the operations of the Board, ensuring that their advice clearly distinguishes scientific and policy advice, communicates uncertainties, and offers opportunities for dissenting views to be made known to the public the Administrator, and Congress.

SECTION-BY-SECTION

Section 1. Short title

This section establishes the short title of the Act as the “EPA Science Advisory Board Reform Act of 2015.”

Section 2. Science Advisory Board

This section amends the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDAA) to:

- a. Protect the independence of the Advisor Board.
- b. Provide membership requirements of the Advisor Board, including:

- (1) A minimum of nine members, with one designated as Chairman, and that these members meet at a times and places designated by the Chairman.

- (2) Requirements to ensure that each member of the Board is qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board. The Administrator shall ensure:

- Scientific and technical points of view are fairly balanced among the Board members;
- At least ten percent of the Board are from State, local, or tribal governments;
- Persons with substantial and relevant expertise are not unduly excluded, as long as potential interests are fully disclosed;
- Board members with an interest in a specific activity may not participate in that activity;
- Board members must disclose advisory activities that involve review of their own work;
- Board members are designated as special Government employees; and
- No registered lobbyist may be appointed to the Board.

- (3) A public nomination and selection process. The Administrator shall:

- Solicit nominations from the public and relevant Federal Agencies;

- Make the list of nominees public, and solicit public comments;
 - Require nominees to publicly disclose financial relationships and interests relevant to the Board's advisory activities for the three year period prior to nomination; and
 - Require nominees to publicly disclose professional activities and public statements relevant to the Board's advisory activities for the five year period prior to nomination.
- (4–6) Disclosure of activities, conflict of interest waivers, and recusal agreements shall be publicly available unless specifically prohibited by law.
- (7) The terms of the members of the Board shall be three years and staggered to ensure that no more than one-third of total membership shall expire within a single year. Members are limited to two terms over a ten-year period.
- c. Clarify that the Administrator shall make risk and hazard assessments available to the Board for review when provided to other agencies for review and comment. This subsection also provides that the Board's advice and comments, including dissenting views of Board members, and the response of the Administrator shall be public.
- d. Provide that the member committees and investigative panels:
- Must also follow the provisions of this Act;
 - Do not have authority to make decisions on behalf of the Board; and
 - May not report directly to the EPA.
- e. Strengthen public participation. This subsection:
- Ensures all reports and relevant scientific information public at the same time they are received by the Board.
 - Requires the Board to hold a public information-gathering session to discuss the state of the science relative to the advisory activity prior to conducting major advisory activities.
 - Allows public comment on questions asked of the Board, prohibits questions that would unduly narrow the scope of an advisory activity, and encourages written responses to significant public comments.
 - Provides the public with 15 calendar days after Board meetings to provide additional comments for consideration.
- f. Protect the integrity of scientific advice and process. The Board shall:
- Strive to avoid making policy determinations or recommendations, and explicitly distinguish between scientific determinations and policy advice.
 - Clearly communicate uncertainties associated with scientific advice.
 - Ensure that advice and comments reflect the views of the members and encourage dissenting members to make their views known.
 - Conduct periodic reviews to ensure its advisory activities are addressing the most important scientific issues facing the EPA.
 - Provide advice in a timely manner.

Section 3. Relation to the Federal Advisory Committee Act

This section clarifies that this Act does not supplant the requirements of the Federal Advisory Committee Act.

Section 4. Relation to the Ethics in Government Act of 1978

This section clarifies that this Act does not supplant the Ethics in Government Act of 1978.

EXPLANATION OF AMENDMENTS

An amendment offered by Rep. Grayson was adopted by the Committee. The amendment expanded the definition of registered lobbyist to include lobbyists other than federal lobbyists.

COMMITTEE CONSIDERATION

On February 26, 2015, the Committee met in open session and ordered reported favorably the bill, H.R. 1029, as amended, by recorded vote, a quorum being present.

ROLL CALL VOTES

Bill: H.R. 1029

AMENDMENT NO. 3

Roll Call No. 4

Amendment Sponsor: Ms. Bonamici—Defeated

Member	Aye	No	Present	Not Voting
<i>Mr. Smith, Chair</i> —TX		X		
Mr. Lucas—OK**		X		
Mr. Sensenbrenner—WI				
Mr. Rohrabacher—CA		X		
Mr. Neugebauer—TX		X		
Mr. McCaul—TX				
Mr. Palazzo—MS		X		
Mr. Brooks—AL		X		
Mr. Hultgren—IL		X		
Mr. Posey—FL		X		
Mr. Massie—KY		X		
Mr. Bridenstine—OK				
Mr. Weber—TX		X		
Mr. Johnson—OH		X		
Mr. Moolenaar—MI		X		
Mr. Knight—CA		X		
Mr. Babin—TX		X		
Mr. Westerman—AR		X		
Mrs. Comstock—VA		X		
Mr. Newhouse—WA		X		
Mr. Palmer—AL		X		
Mr. Loudermilk—GA		X		
Ms. Johnson, <i>Ranking</i> —TX	X			
Ms. Lofgren—CA				
Mr. Lipinski—IL	X			
Ms. Edwards—MD				
Ms. Bonamici—OR	X			
Mr. Swalwell—CA	X			
Mr. Grayson—FL	X			
Mr. Bera—CA	X			
Ms. Esty—CT	X			
Mr. Veasey—TX	X			
Ms. Clark—MA				
Mr. Beyer—VA	X			

Member	Aye	No	Present	Not Voting
Mr. Perlmutter—CO	X			
Mr. Tonko—NY	X			
Mr. Takano—CA				
Mr. Foster—IL				
Vacant				
Totals	11	19		

Bill: H.R. 1029

AMENDMENT NO. 4

Roll Call No. 3

Amendment Sponsor: Mr. Swalwell—Defeated

Member	Aye	No	Present	Not Voting
Mr. Smith, Chair—TX		X		
Mr. Lucas—OK**		X		
Mr. Sensenbrenner—WI				
Mr. Rohrabacher—CA		X		
Mr. Neugebauer—TX		X		
Mr. McCaul—TX				
Mr. Palazzo—MS		X		
Mr. Brooks—AL		X		
Mr. Hultgren—IL		X		
Mr. Posey—FL		X		
Mr. Massie—KY		X		
Mr. Bridenstine—OK				
Mr. Weber—TX		X		
Mr. Johnson—OH		X		
Mr. Moolenaar—MI		X		
Mr. Knight—CA		X		
Mr. Babin—TX		X		
Mr. Westerman—AR		X		
Mrs. Comstock—VA		X		
Mr. Newhouse—WA		X		
Mr. Palmer—AL		X		
Mr. Loudermilk—GA		X		
Ms. Johnson, Ranking—TX	X			
Ms. Lofgren—CA				
Mr. Lipinski—IL	X			
Ms. Edwards—MD				
Ms. Bonamici—OR	X			
Mr. Swalwell—CA	X			
Mr. Grayson—FL	X			
Mr. Bera—CA	X			
Ms. Esty—CT	X			
Mr. Veasey—TX	X			
Ms. Clark—MA				
Mr. Beyer—VA	X			
Mr. Perlmutter—CO	X			
Mr. Tonko—NY	X			
Mr. Takano—CA				
Mr. Foster—IL				
Vacant				
Totals	11	19		

Bill: H.R. 1029

FINAL PASSAGE

Roll Call No. 5

Passed

Member	Aye	No	Present	Not Voting
Mr. Smith, Chair—TX	X			

Member	Aye	No	Present	Not Voting
Mr. Lucas—OK **	X			
Mr. Sensenbrenner—WI				
Mr. Rohrabacher—CA	X			
Mr. Neugebauer—TX	X			
Mr. McCaul—TX				
Mr. Palazzo—MS	X			
Mr. Brooks—AL	X			
Mr. Hultgren—IL	X			
Mr. Posey—FL	X			
Mr. Massie—KY	X			
Mr. Bridenstine—OK				
Mr. Weber—TX				
Mr. Johnson—OH	X			
Mr. Moolenaar—MI	X			
Mr. Knight—CA				
Mr. Babin—TX	X			
Mr. Westerman—AR	X			
Mrs. Comstock—VA	X			
Mr. Newhouse—WA	X			
Mr. Palmer—AL	X			
Mr. Loudermilk—GA	X			
Ms. Johnson, <i>Ranking</i> —TX		X		
Ms. Lofgren—CA				
Mr. Lipinski—IL		X		
Ms. Edwards—MD				
Ms. Bonamici—OR		X		
Mr. Swalwell—CA		X		
Mr. Grayson—FL		X		
Mr. Bera—CA		X		
Ms. Esty—CT		X		
Mr. Veasey—TX		X		
Ms. Clark—MA		X		
Mr. Beyer—VA		X		
Mr. Perlmutter—CO		X		
Mr. Tonko—NY		X		
Mr. Takano—CA				
Mr. Foster—IL				
Vacant				
Totals	17	12		

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill provides for Science Advisory Board independence, member qualifications and public participation. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goals and objectives are reflected in the descriptive portions of this report.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 1029 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

No provision of H.R. 1029 directs an agency (or other entity) to promulgate a rule or regulation.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 1029 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1029. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of Rule XIII of the rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1029 from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 2, 2015.

Hon. LAMAR SMITH,
*Chairman, Committee on Science, Space, and Technology,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1029, the EPA Science Advisory Board Reform Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1029—EPA Science Advisory Board Reform Act of 2015

H.R. 1029 would require the Environmental Protection Agency (EPA) to make various changes related to the qualifications of members serving on the Science Advisory Board (SAB) and to expand disclosure requirements for members of the board. The SAB was established in 1978 by the Congress with a broad mandate to advise EPA on technical matters related to science. Some of the bill's proposed changes include requiring EPA to solicit nominations from the public and from relevant federal agencies, such as the Departments of Agriculture, Defense, Energy, and Health and Human Services. Nominees also would be required to file a written report disclosing certain financial relationships and interests. Additionally, the bill would require EPA to make risk or hazard assessments available to the SAB and to publish the board's advice, comments, and views in the Federal Register.

Based on information from EPA, CBO estimates that implementing the changes proposed by this legislation would cost less than \$500,000 annually and about \$2 million over the 2015–2020 period, subject to the availability of appropriated funds. That funding would provide for additional personnel and related administrative expenses.

Enacting H.R. 1029 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1029 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**ENVIRONMENTAL RESEARCH, DEVELOPMENT, AND
DEMONSTRATION AUTHORIZATION ACT OF 1978**

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SEC. 8. (a) The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall *independently* provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committee on Science, Space, and Technology, on Energy and Commerce, or on Public Works and Transportation of the House of Representatives.

[(b) Such Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.]

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

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

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

(B) at least ten percent of the membership of the Board are from State, local, or tribal governments;

(C) persons with substantial and relevant expertise are not excluded from the Board due to affiliation with or representation of entities that may have a potential interest in the Board's advisory activities, so long as that interest is fully disclosed to the Administrator and the public and appointment to the Board complies with section 208 of title 18, United States Code;

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

(E) Board members may not participate in advisory activities that directly or indirectly involve review or evaluation of their own work, unless fully disclosed to the public and the work has been externally peer-reviewed;

(F) Board members shall be designated as special Government employees; and

(G) no registered lobbyist is appointed to the Board.

(3) The Administrator shall—

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

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

(C) make public the list of nominees, including the identity of the entities that nominated each, and shall accept public comment on the nominees;

(D) require that, upon their provisional nomination, nominees shall file a written report disclosing financial relationships and interests, including Environmental Protection Agency grants, contracts, cooperative agreements, or other financial assistance, that are relevant to the Board's advisory activities for the three-year period prior to the date of their nomination, and relevant professional activities and public statements for the five-year period prior to the date of their nomination; and

(E) make such reports public, with the exception of specific dollar amounts, for each member of the Board upon such member's selection.

(4) Disclosure of relevant professional activities under paragraph (3)(D) shall include all representational work, expert testimony, and contract work as well as identifying the party for which the work was done.

(5) Except when specifically prohibited by law, the Agency shall make all conflict of interest waivers granted to members of the Board, member committees, or investigative panels publicly available.

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

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

(c)(1) The Administrator, at the time any proposed or draft risk or hazard assessment, criteria document, standard, limitation, or regulation under the Clean Air Act, the Federal Water Pollution Control Act, the Resource, Conservation and Recovery Act of 1976, the Noise Control Act, the Toxic Substances Control Act, or the Safe Drinking Water Act, or under any other authority of the Administrator, is provided to any other Federal agency for [formal] review and comment, shall make available to the Board such proposed or draft risk or hazard assessment, criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.

(2) The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed or draft risk or hazard assessment, criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession. The Board's advice and comments, including dissenting views of Board members, and the response of the Administrator shall be included in the record with respect to any proposed risk or hazard assessment, criteria document, standard, limitation, or regulation and published in the Federal Register.

(d) In preparing such advice and comments, the Board shall avail itself of the technical and scientific capabilities of any Federal agency, including the Environmental Protection Agency and any national environmental laboratories.

(e) COMMITTEES.—

(1) MEMBER COMMITTEES.—

(A) IN GENERAL.—The Board is authorized to establish such member committees and investigative panels as the Administrator and the Board determine to be necessary to carry out this section. *These member committees and investigative panels—*

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

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

(iii) may not report directly to the Environmental Protection Agency.

(B) CHAIRMANSHIP.—Each member committee or investigative panel established under this subsection shall be chaired by a member of the Board.

(2) AGRICULTURE-RELATED COMMITTEES.—

(A) IN GENERAL.—The Administrator and the Board—

(i) shall establish a standing agriculture-related committee; and

(ii) may establish such additional agriculture-related committees and investigative panels as the Administrator and the Board determines to be necessary to carry out the duties under subparagraph (C).

(B) MEMBERSHIP.—The standing committee and each agriculture-related committee or investigative panel established under subparagraph (A) shall be—

(i) composed of—

(I) such quantity of members as the Administrator and the Board determines to be necessary; and

(II) individuals who are not members of the Board on the date of appointment to the committee or investigative panel; and

(ii) appointed by the Administrator and the Board, in consultation with the Secretary of Agriculture.

(C) DUTIES.—The agriculture-related standing committee and each additional committee and investigative panel established under subparagraph (A) shall provide scientific and technical advice to the Board relating to matters referred to the Board that the Administrator and the Board determines, in consultation with the Secretary of Agriculture, to have a significant direct impact on enterprises that are engaged in the business of the production of food and fiber, ranching and raising livestock, aquaculture, and all other farming- and agriculture-related industries.

(f)(1) Upon the recommendation of the Board, the Administrator shall appoint a secretary, and such other employees as deemed necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code.

(2) Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5 of the United States Code.

(g) In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator pursuant to section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

【(h) PUBLIC PARTICIPATION AND TRANSPARENCY.—The Board shall make every effort, consistent with applicable law, including section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”) and section 552a of title 5, United States Code (commonly known as the “Privacy Act”), to maximize public participation and transparency, including making the scientific and technical advice of the Board and any committees or investigative panels of the Board publically available in electronic form on the website of the Environmental Protection Agency.

【(i) REPORT TO CONGRESS.—The Administrator shall annually report to the Committees on Environment and Public Works and Agriculture of the Senate and the Committees on Transportation and Infrastructure, Energy and Commerce, and Agriculture of the House of Representatives regarding the membership and activities of the standing agriculture-related committee established pursuant to subsection (e)(2)(A)(i).】

(h)(1) To facilitate public participation in the advisory activities of the Board, the Administrator and the Board shall make public all reports and relevant scientific information and shall provide materials to the public at the same time as received by members of the Board.

(2) Prior to conducting major advisory activities, the Board shall hold a public information-gathering session to discuss the state of the science related to the advisory activity.

(3) Prior to convening a member committee or investigative panel under subsection (e) or requesting scientific advice from the Board, the Administrator shall accept, consider, and address public comments on questions to be asked of the Board. The Board, member committees, and investigative panels shall accept, consider, and address public comments on such questions and shall not accept a question that unduly narrows the scope of an advisory activity.

(4) The Administrator and the Board shall encourage public comments, including oral comments and discussion during the proceedings, that shall not be limited by an insufficient or arbitrary time restriction. Public comments shall be provided to the Board when received. The Board’s reports shall include written responses to significant comments offered by members of the public to the Board.

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

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

(2) The Board shall clearly communicate uncertainties associated with the scientific advice provided to the Administrator or Congress.

(3) The Board shall ensure that advice and comments reflect the views of the members and shall encourage dissenting members to make their views known to the public, the Administrator, and Congress.

(4) The Board shall conduct periodic reviews to ensure that its advisory activities are addressing the most important scientific issues affecting the Environmental Protection Agency.

(5) The Board shall be fully and timely responsive to Congress.

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MINORITY VIEWS

MINORITY VIEWS TO H.R. 1029, THE EPA SCIENCE ADVISORY BOARD REFORM ACT OF 2015

I strongly oppose H.R. 1029, the EPA Science Advisory Board Reform Act of 2015, because of the harm this bill would have on the health of Americans and the environment. Now, more than ever, the American people need a strong EPA to protect their right to clean air and water. This includes an effective Science Advisory Board whose role it is to provide the agency with independent scientific analysis and advice as the basis for the agency's regulations.

Unfortunately, H.R. 1029 would weaken EPA's Science Advisory Board by packing it with industry representatives. Industry-affiliated "experts" are far more likely to find that the science they are asked to review will have a financial impact on their employer. Academic scientists do not have such financial conflicts of interest with the Board's advice or EPA's actions and that is why I find it troubling that H.R. 1029 distorts the process for selecting members of the Science Advisory Board toward industry. The bill also favors industry by tying the Board up with procedural burdens so unlimited that it is unlikely any Science Advisory Board panel could ever render an opinion in a useful period of time. I assume that is the point of H.R. 1029. Endless delay means we never know what harm comes from any specific chemical or pollutant. And this manufactured doubt will lead to an endless delay in the formulation of public health regulations by EPA. Unfortunately, that also means that the health and safety of our families and friends will be needlessly put at risk.

I would be remiss if I didn't note that the origination of quite a bit of the language in H.R.1029 seems to have come from proposals put forward by groups like the American Petroleum Institute and the American Chemical Council. These are, of course, groups that represent polluting industries that would benefit greatly from the manufactured doubt and delays this bill would create. Based on what has been happening in Congress over the past several years, I can't say it's terribly surprising that the Majority is doing the bidding of the polluting industries, although it is sad.

There was a time, not too long ago, when the organizations upon whose recommendations the Committee based our legislation on were entities like the National Academies of Sciences or the American Association for the Advancement of Science. After all, this is the Science Committee. Unfortunately, over the past two years, this committee has turned a deaf ear to the scientific societies and associations. We've largely turned a deaf ear to the academic research community. And the Majority has certainly turned a deaf ear to the public interest community.

Apparently, the only people we now consult on legislation relating to the scientific process are the polluting industries who are actively and openly trying to subvert science for their own financial gain. That is deeply disappointing. As this committee moves forward, I hope we will get back to listening to the scientists when we legislate about science.

I have received letters from a number of groups who share my concerns over H.R. 1029, including: the Natural Resources Defense Council, the BlueGreen Alliance, Defenders of Wildlife, Earthjustice, the Environmental Defense Fund, Greenpeace, the League of Conservation Voters, the Union of Concerned Scientists, Jacobs Institute of Women's Health, the National Center for Health Research, the National Physicians Alliance, Public Citizen, and others.

As a former nurse, I cannot support legislation that endangers public health by weakening and delaying the scientific review process. I strongly oppose this bill.

EDDIE BERNICE JOHNSON.

