

114th Congress }
1st Session }

SENATE

{ REPORT
114-151

EVIDENCE-BASED POLICYMAKING
COMMISSION ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

WITH SUPPLEMENTAL VIEWS

TO ACCOMPANY

S. 991

TO ESTABLISH THE COMMISSION ON EVIDENCE-BASED
POLICYMAKING, AND FOR OTHER PURPOSES



OCTOBER 1, 2015.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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EVIDENCE-BASED POLICYMAKING COMMISSION ACT

OCTOBER 1, 2015.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

together with

SUPPLEMENTAL VIEWS

[To accompany S. 991]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 991) to establish the Commission on Evidence-Based Policymaking, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 991, the Evidence-Based Policymaking Commission Act of 2015, is to establish a commission to study the inventory and infrastructure of data related to federal programs, tax expenditures, and statistical protocols across the federal government. The bill would establish a fifteen-member Commission on Evidence-Based Policymaking (Commission) to determine the best structure for information that is collected and maintained by fed-

eral agencies to effectively analyze and evaluate federal programs and tax expenditures. The Commission would also make recommendations on how to incorporate outcomes measurements, randomized controlled trials, and rigorous impact analyses into program design. The Commission will consider whether to establish a clearinghouse for information collected by federal agencies and who should have access to that data. The Commission will report to the President and the Congress with its findings along with recommendations for legislation or administrative action it considers appropriate. The Commission's authority would terminate eighteen months after enactment of the bill.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The federal government is expected to spend more than four trillion dollars annually by 2017¹ and it administers at least 1,500 discrete programs.² In addition, the Congressional Budget Office expects that tax expenditures—financial assistance provided to particular activities, entities, or groups of individuals separately through the federal tax code—will total almost one and a half trillion dollars in fiscal year 2015.³ One of Congress's chief concerns should be ensuring such amounts are spent wisely and on public programs and tax expenditures that are effective.

One way to do so is through rigorous oversight by Congressional Committees, and reviews conducted by the Government Accountability Office and the agencies' inspectors general. Additionally, through the Government Performance and Results Act⁴ and the Government Performance and Results Modernization Act,⁵ Congress established a framework for developing and integrating information about agencies' strategic priorities, the results-oriented performance goals that flow from those priorities, and performance data showing the level of achievement of those goals.

However, some former administration officials, including individuals who served under President Barack Obama and President George W. Bush, note that there is a lack of a consistent, data-driven approach to federal program evaluation as an inherent function embedded in federal programs.⁶ One estimate concluded that "less than \$1 out of every \$100 of government spending is backed by even the most basic evidence that the money is being spent wisely."⁷ Furthermore, in scientific studies looking at policy-making, such as randomized controlled trials of eleven large social programs that account for over ten billion dollars in annual spending, experts

¹ CONG. BUDGET OFFICE, AN UPDATE TO THE BUDGET AND ECONOMIC OUTLOOK: 2014 TO 2024 (2014), available at https://www.cbo.gov/sites/default/files/45653-OutlookUpdate_2014_Aug.pdf.

² While estimates of the total number of federal programs are inaccurate due to the lack of centralized reporting of programs, the Government Accountability Office estimates there are at least 1,500 programs. See, U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-83, GOVERNMENT EFFICIENCY AND EFFECTIVENESS: INCONSISTENT DEFINITIONS AND INFORMATION LIMIT THE USEFULNESS OF FEDERAL PROGRAM INVENTORIES (2014), available at <http://www.gao.gov/products/GAO-15-83>.

³ CONG. BUDGET OFFICE, THE BUDGET AND ECONOMIC OUTLOOK: 2015 TO 2025, 92 (2015), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/49892-Outlook2015.pdf>.

⁴ Pub. L. No. 103-62.

⁵ Pub. L. No. 111-352.

⁶ John Bridgeland and Peter Orszag, *Can Government Play Moneyball?*, THE ATLANTIC MAGAZINE, July/August 2013, available at <http://www.theatlantic.com/magazine/archive/2013/07/can-government-play-moneyball/309389/>.

⁷ *Id.*

found that “[t]en out of the 11 including Upward Bound and Job Corps showed weak or no positive effects’ on their participants.”⁸

Many government officials and scholars advocate for consistent, data-driven evidence-based policymaking to assist lawmakers in determining where federal dollars ought to be spent and tax expenditures authorized. Evidence-based policy making requires empirically assessing the effectiveness of public programs and tax expenditures and then factoring that assessment into the budget and policy decisions related to the program. This type of analysis, if implemented, enhances the continued oversight, measurement, and evaluation of a program to ensure it is achieving the desired results and warrants continued funding.⁹

Evidence-based policymaking is not a new idea; it has been utilized by governments around the world, including in the United Kingdom, particularly during the Blair Government, and in Australia.¹⁰ In the United States, evidence-based policymaking has been employed at the state budget level for years; researchers supporting a report on evidence-based policymaking for the Pew Charitable Trusts identified over one hundred state laws across forty-two states passed between 2004 and 2014 that support the use of evidence-based programs and practices.¹¹

More recently, this evaluation methodology has been incorporated at various times at the federal level. For example, President Bush’s Fiscal Year 2008 budget request included ten million dollars to support new competitive grants to encourage states to use existing funding streams to support proven and effective nurse home visitation programs known as Evidence Based Home Visiting (EBHV).¹² The EBHV program sought to fund models “shown, in well-designed randomized controlled trials, to produce sizeable, sustained effects on important child outcomes such as abuse and neglect.”¹³ Additionally, President Obama’s Fiscal Year 2016 budget request includes a demonstration project that would test whether encouraging states to increase access to evidence-based alternatives to treat behavioral and mental health conditions will reduce over-prescription of psychotropic medications and improve outcomes for children in foster care.¹⁴

The Evidence-Based Policymaking Commission Act of 2015 is an effort to build on bipartisan support for a better-functioning government. The legislation mandates the study of the inventory and

⁸*Id.*

⁹PEW TRUSTS, EVIDENCE-BASED POLICYMAKING: A GUIDE FOR EFFECTIVE GOVERNMENT (Nov. 2014), available at <http://www.pewtrusts.org/en/media/Assets/2014/11/EvidenceBasedPolicymakingAGuideforEffectiveGovernment.pdf>.

¹⁰Gary Banks, Chairman, Australian Government Productivity Commission, Address at the Australian and New Zealand School of Government, Evidence-based policy-making: What is it? How do we get it?, 3–4 (Feb. 4, 2009), available at <http://www.pc.gov.au/news-media/speeches/cs20090204>.

¹¹PEW TRUSTS, EVIDENCE-BASED POLICYMAKING: A GUIDE FOR EFFECTIVE GOVERNMENT (Nov. 2014), available at <http://www.pewtrusts.org/en/media/Assets/2014/11/EvidenceBasedPolicymakingAGuideforEffectiveGovernment.pdf>.

¹²President’s FY 2008 Budget Appropriations for the Administration for Children and Families: Hearing Before the Committee on Appropriations, Subcomm. On Labor, Health and Human Services, Education and Related Agencies, 110th Cong. (2007) (statement of Daniel Schneider), available at <http://www.hhs.gov/asl/testify/2007/03/t20070308n.html>.

¹³Edward Rodrigue and Richard V. Reeves, *Home Visiting Programs: An Early Test for the 114th Congress*, THE BROOKINGS INSTITUTION (Feb. 5, 2011), available at <http://www.brookings.edu/blogs/social-mobility-memos/posts/2015/02/05-home-visiting-funding-reeves>.

¹⁴The President’s Budget Fiscal Year 2016, *Middle Class Economics: Building and Using Evidence to Improve Results 4*, https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/fact_sheets/building-and-using-evidence-to-improve-results.pdf.

infrastructure of administrative data related to federal programs, and tax expenditures, survey data, and related statistical data series to determine how evidence-based policymaking can be incorporated into the legislating process. The Commission created under this legislation is a step to ensure that federal tax dollars are spent wisely. Promoting impact evaluations allows Congress and policymakers the ability to determine the effectiveness of federal programs and tax expenditures prior to their authorization and assists them in determining whether funding should continue.

III. LEGISLATIVE HISTORY

Senator Patty Murray introduced S. 991 on April 17, 2015. The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Tammy Baldwin joined as cosponsor on June 24, 2015.

The Committee considered S. 991 at a business meeting on June 24, 2015. During the business meeting, Senator Ron Johnson offered a substitute amendment as modified, that made technical corrections to the bill and prohibited new funding from being appropriated to implement the bill. The substitute amendment was adopted by voice vote with Senators Johnson, McCain, Lankford, Ayotte, Ernst, Sasse, Carper, Tester, Baldwin, and Heitkamp present.

The Committee ordered the bill, as amended, reported favorably by voice vote on June 24, 2015. Senators present for the vote on the bill were Senators Johnson, McCain, Lankford, Ayotte, Ernst, Sasse, Carper, Tester, Baldwin, and Heitkamp.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides the bill's short title, the "Evidence-Based Policymaking Commission of 2015."

Section 2. Establishment

This section establishes an executive branch "Commission on Evidence-Based Policymaking" (referred to as the "Commission").

Section 3. Members of the Commission

Section 3 sets the requirements and composition of the commission. Appointments to the Commission must be made within forty-five days of the date of the bill's enactment. The Commission will be comprised of fifteen members. Three of the members shall be appointed by the President, including one each of: an academic researcher, data expert, or individual with experience in administering programs; an individual with expertise in database management, confidentiality, and privacy matters; and the Director of the Office of Management and Budget (or the Director's designee).

Additionally, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the Senate and the Minority Leader of the Senate shall each appoint three nominees that meet the following qualifications: two academic researchers, data experts, or individuals with experience in administering programs; and an individual with expertise in database management, confidentiality, and privacy matters.

In making the appointments, appointing parties should consider individuals with expertise in economics, statistics, program evaluation, data security, confidentiality, or database management. Of those members selected for the Commission, the President is to select one to be the chairperson and the Speaker of the House of Representatives is to select the co-chairperson. Each member shall be appointed for the duration of the Commission, and any vacancy shall be filled in the manner in which the original appointment was made. Commission members shall serve without pay, but shall be permitted travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

Section 4. Duties of the Commission

This section explains the duties of the Commission. The duties are: (1) to perform a comprehensive study of the inventory and infrastructure of data and statistical protocols related to federal policymaking and the agencies responsible for maintaining that data to determine the optimal arrangement for which administrative data may be integrated and made available to facilitate program evaluation, continuous improvement, policy-relevant research, and cost-benefit analyses; (2) make recommendations on how to best incorporate such information into program design; (3) determine whether and how to establish a clearinghouse for program and survey data, what data should be included, which survey data may be linked to, and any legal and administrative barriers to including or linking these data series; (4) evaluate what data-sharing infrastructure should be used to facilitate data merging and access for research purposes; (5) determine how a clearinghouse could be self-funded; (6) determine who should have access to data and what qualifications those individuals and entities should have; (7) evaluate what limitations should be placed on the use of provided data and how to ensure individual privacy and confidentiality is protected; (8) evaluate how data and research results can be used to improve program design; and (9) evaluate what incentives may facilitate interagency sharing of information to improve programmatic effectiveness and enhance data accuracy and comprehensiveness.

Upon the affirmative vote of at least three-quarters of the Commission, the Commission will report to the President and Congress on its findings and conclusions, including recommendations for legislation or administrative actions, no later than fifteen months after a majority of members are appointed.

Section 5. Operation and powers of the Commission

Section 5 requires certain relevant Executive Branch agencies to offer their respective expertise in advising and consulting the Commission. This section also sets forth the Commission's operating procedure, including: requiring it to meet not later than thirty days after the date upon which a majority of its members have been appointed, and at such times thereafter as the chairperson or co-chairperson shall determine; providing that the chairperson and co-chairperson shall, with the approval of a majority of the members

of the Commission, establish written rules of procedure, including a quorum requirement; permitting the Commission to hold hearings, take testimony, receive evidence, contract with and compensate government and private agencies, use the United States mail system in the same way that a federal agency can, and accept, use, and dispose of gifts or donations of services or property.

Section 6. Funding

This section provides that no funds are authorized to be appropriated to carry out S. 991, and, subject to that limitation and at the request of the Director of the Census, agencies identified as “Principal Statistical Agencies” in the report, published by the Office of Management and Budget, entitled “Statistical Programs of the United States Government, Fiscal Year 2015” shall provide funds, in a total amount not to exceed three million dollars, to the Director for purposes of carrying out the activities of the Commission. Further, this section provides that the Bureau of the Census shall provide administrative support to the Commission, which may include providing physical space at, and access to, the headquarters of the Bureau of the Census, located in Suitland, Maryland.

Section 7. Personnel

This section creates a role of Director on the Commission. The Director shall be appointed by the chairperson with the concurrence of the co-chairperson and shall be paid at a rate of pay established by the chairperson and co-chairperson, not to exceed the annual rate of basic pay payable for level V of the Executive Schedule (section 5316 of title 5, United States Code). The Director, at his or her discretion, may appoint and fix the pay of additional staff. The Commission may also procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay for a comparable position paid under the General Schedule.

Section 8. Termination

This section provides a termination date for the Commission not later than eighteen months after the date of enactment of this Act.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JULY 6, 2015.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 991, the Evidence-Based Policymaking Commission Act of 2015.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 991—Evidence-Based Policymaking Commission Act of 2015

S. 991 would establish the Commission on Evidence-Based Policymaking (commission) to study the inventory and infrastructure of data related to federal programs. The 15-member commission would be directed to determine the best structure for information that is collected and maintained by federal agencies to effectively analyze and evaluate federal programs. In addition, the commission would consider whether to establish a clearinghouse for information collected by federal agencies. Finally, the bill would require the commission to report to the President and the Congress, no later than 15 months after a majority of members have been appointed, a statement of its findings along with recommendations for legislation or administrative actions it considers appropriate. The commission's authority would terminate 18 months after enactment of the bill.

CBO estimates that implementing S. 991 would cost \$3 million over the 2016–2020 period, assuming appropriation of the necessary amounts. The bill would authorize several federal agencies to contribute up to \$3 million from appropriated funds to carry out the duties of the commission. Enacting S. 991 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 991 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.

On May 28, 2015, CBO transmitted a cost estimate for H.R. 1831, the Evidence-Based Policymaking Commission Act of 2015, as ordered reported by the House Committee on Oversight and Government Reform on April 16, 2015. The bills are similar, and CBO's estimates of the budgetary effects are the same.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

SUPPLEMENTAL VIEWS OF RANKING MEMBER CARPER

I support greater use of evidence in policymaking and believe that the Commission created by this bill will allow Congress to take a significant leap forward in using data-based evidence to assess programs. Data-driven approaches to federal policymaking can improve outcomes and save money in the long term, and the Administrations of both Presidents George W. Bush and Barack Obama have taken innovative approaches to using data-based evidence that Congress can build upon.

I want to emphasize again, however, that Congress has multiple tools and resources it can use to assess the performance of government programs, including committee oversight, the Government Accountability Office, and Inspectors General. On a daily basis, Congress also gets extremely useful information on government programs from the good work of journalists. And, of course, Members hear about the good and bad of government programs from their constituents—feedback that puts those programs in a perspective that perhaps no statistics on paper ever can.

So while I support and applaud the goals of this bill, I take some exception to the suggestion that government programs are not currently supported by “basic evidence,” in the common sense. We can improve the quality of evidence we do have, and we should always strive to do that. But we should also assure the American taxpayers that there are already a lot of eyes on federal spending, which leads to a vigorous and healthy debate on which programs deserve taxpayer dollars, and which ones do not.

THOMAS R. CARPER.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.

