

110TH CONGRESS
2D SESSION

H. R. 5687

To amend the Federal Advisory Committee Act to increase the transparency and accountability of Federal advisory committees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2008

Mr. CLAY (for himself and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To amend the Federal Advisory Committee Act to increase the transparency and accountability of Federal advisory committees, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Federal Advisory Committee Act Amendments of 2008”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Ensuring independent advice and expertise.

Sec. 3. Preventing efforts to circumvent the Federal Advisory Committee Act and public disclosure.

Sec. 4. Increasing transparency of advisory committees.

Sec. 5. Comptroller General review and reports.

Sec. 6. Definition.

Sec. 7. Effective date.

1 **SEC. 2. ENSURING INDEPENDENT ADVICE AND EXPERTISE.**

2 (a) BAR ON POLITICAL LITMUS TESTS.—Section 9
3 of the Federal Advisory Committee Act (5 U.S.C. App.)
4 is amended—

5 (1) in the section heading by inserting “**mem-**
6 **bership;**” after “**advisory committees;**”;

7 (2) by redesignating subsections (b) and (c) as
8 subsections (d) and (e), respectively; and

9 (3) by inserting after subsection (a) the fol-
10 lowing:

11 “(b) APPOINTMENTS MADE WITHOUT REGARD TO
12 POLITICAL AFFILIATION OR ACTIVITY.—All appointments
13 to advisory committees shall be made without regard to
14 political affiliation or political activity, unless required by
15 Federal statute.”.

16 (b) CONFLICTS OF INTEREST DISCLOSURE.—Section
17 9 of the Federal Advisory Committee Act (5 U.S.C. App.)
18 is further amended by inserting after subsection (b) (as
19 added by subsection (a)) the following:

20 “(c) CONFLICTS OF INTEREST DISCLOSURE.—

21 “(1) The head of each agency shall ensure that
22 no individual appointed to serve on an advisory com-
23 mittee that reports to the agency has a conflict of
24 interest that is relevant to the functions to be per-

1 formed by the advisory committee, unless the head
2 of the agency determines that the conflict is un-
3 avoidable and that the need for the individual's serv-
4 ices outweighs the potential impacts of the conflict
5 of interest. The head of each agency shall require
6 that each individual the agency appoints or intends
7 to appoint to serve on an advisory committee inform
8 the agency official responsible for appointing the in-
9 dividual of any actual or potential conflict of interest
10 the individual has that is relevant to the functions
11 to be performed and that, for an individual ap-
12 pointed to serve on an advisory committee, the con-
13 flict is publicly disclosed as described in section 11.

14 “(2) The head of each agency shall ensure that
15 each report of an advisory committee that reports to
16 the agency is the result of the advisory committee’s
17 independent judgment. Each advisory committee
18 shall include in each report of the committee a state-
19 ment describing the process used by the advisory
20 committee in formulating the recommendations or
21 conclusions contained in the report.”.

22 (c) REGULATIONS AND GUIDANCE.—Not later than
23 180 days after the date of the enactment of this Act, the
24 Administrator of General Services, in consultation with
25 the Director of the Office of Government Ethics, shall—

1 (1) promulgate regulations defining conflict of
2 interest and such other regulations as the Adminis-
3 trator finds necessary to carry out and ensure the
4 enforcement of this section; and

5 (2) issue guidance for agencies and advisory
6 committees on procedures and best practices for en-
7 suring that advisory committees provide independent
8 advice and expertise.

9 **SEC. 3. PREVENTING EFFORTS TO CIRCUMVENT THE FED-**
10 **ERAL ADVISORY COMMITTEE ACT AND PUB-**
11 **LIC DISCLOSURE.**

12 (a) DE FACTO MEMBERS.—Section 4 of the Federal
13 Advisory Committee Act (5 U.S.C. App.) is amended by
14 adding at the end the following:

15 “(d) TREATMENT OF INDIVIDUAL AS MEMBER.—An
16 individual who is not a full-time or permanent part-time
17 officer or employee of the Federal Government shall be
18 regarded as a member of a committee if the individual
19 regularly attends and participates in committee meetings
20 as if the individual were a member, even if the individual
21 does not have the right to vote or veto the advice or rec-
22 ommendations of the advisory committee.”.

23 (b) WHITE HOUSE INTERAGENCY ADVISORY COM-
24 MITTEES.—Section 11 of the Federal Advisory Committee

1 Act (5 U.S.C. App.) is amended by adding at the end the
2 following:

3 “(f) WHITE HOUSE INTERAGENCY ADVISORY COM-
4 MITTEES.—Any communication between—

5 “(1) an interagency committee or task force es-
6 tablished by the President or the Vice President or
7 any member or staff acting on behalf of such an
8 interagency committee or task force, and

9 “(2) any person who is not an officer or em-
10 ployee of the Federal Government,

11 shall be made available for public inspection and copying.

12 Any portion of a communication that involves a matter
13 described in section 552(b) of title 5, United States Code,
14 or that is subject to a valid constitutionally based privilege
15 against such disclosure, may be withheld from public dis-
16 closure.”.

17 (c) SUBCOMMITTEES.—Section 4 of the Federal Ad-
18 visory Committee Act (5 U.S.C. App.) is amended by
19 striking subsection (a) and inserting the following:

20 “(a) APPLICATION.—The provisions of this Act or of
21 any rule, order, or regulation promulgated under this Act
22 shall apply to each advisory committee, including any sub-
23 committee or subgroup thereof, except to the extent that
24 any Act of Congress establishing any such advisory com-
25 mittee specifically provides otherwise. Any subcommittee

1 or subgroup that reports to a parent committee estab-
2 lished under section 9(a) is not required to comply with
3 section 9(e). In this subsection, the term ‘subgroup’ in-
4 cludes any working group, task force, or other entity
5 formed for the purpose of assisting the committee or any
6 subcommittee of the committee in its work.”.

7 (d) COMMITTEES CREATED UNDER CONTRACT.—
8 Section 3(2) of the Federal Advisory Committee Act (5
9 U.S.C. App.) is amended in the matter following subpara-
10 graph (C) by adding at the end the following: “An advi-
11 sory committee is considered to be established by an agen-
12 cy, agencies, or the President, if it is formed, created, or
13 organized under contract, other transactional authority,
14 cooperative agreement, grant, or otherwise at the request
15 or direction of, an agency, agencies, or the President.”.

16 (e) ADVISORY COMMITTEES CONTAINING SPECIAL
17 GOVERNMENT EMPLOYEES.—Section 4 of the Federal Ad-
18 visory Committee Act (5 U.S.C. App.) is further amended
19 by adding at the end the following new subsection:

20 “(e) SPECIAL GOVERNMENT EMPLOYEES.—Com-
21 mittee members appointed as special government employ-
22 ees shall not be considered full-time or part-time officers
23 or employees of the Federal Government for purposes of
24 determining the applicability of this Act under section
25 3(2).”.

1 **SEC. 4. INCREASING TRANSPARENCY OF ADVISORY COM-**
2 **MITTEES.**

3 (a) INFORMATION REQUIREMENT.—Section 11 of the
4 Federal Advisory Committee Act (5 U.S.C. App.) is
5 amended—

6 (1) by amending the section heading to read as
7 follows:

8 **“SEC. 11. DISCLOSURE OF INFORMATION.”;**

9 (2) by redesignating subsection (a) as sub-
10 section (d) and in that subsection—

11 (A) by inserting the following subsection
12 heading: “AVAILABILITY OF PAPER COPIES OF
13 TRANSCRIPTS.—”; and

14 (B) by inserting after “duplication,” the
15 following: “paper”;

16 (3) by redesignating subsection (b) as sub-
17 section (e); and

18 (4) by inserting before subsection (d), as redес-
19 igned by paragraph (2), the following new sub-
20 sections:

21 “(a) IN GENERAL.—With respect to each advisory
22 committee, the head of the agency to which the advisory
23 committee reports shall make publicly available in accord-
24 ance with subsection (b) the following information:

25 “(1) The charter of the advisory committee.

1 “(2) A description of the process used to estab-
2 lish and appoint the members of the advisory com-
3 mittee, including the following:

4 “(A) The process for identifying prospec-
5 tive members.

6 “(B) The process of selecting members for
7 balance of viewpoints or expertise.

8 “(C) A justification of the need for rep-
9 resentative members, if any.

10 “(3) A list of all current members, including,
11 for each member, the following:

12 “(A) The name of any person or entity
13 that nominated the member.

14 “(B) The reason the member was ap-
15 pointed to the committee.

16 “(C) Whether the member is designated as
17 a special government employee or a representa-
18 tive.

19 “(D) In the case of a representative, the
20 individuals or entity whose viewpoint the mem-
21 ber represents.

22 “(E) Any conflict of interest relevant to
23 the functions to be performed by the committee.

24 “(4) A list of all members designated as special
25 government employees for whom written certifi-

1 cations were made under section 208(b) of title 18,
2 United States Code, a summary description of the
3 conflict necessitating the certification, and the rea-
4 son for granting the certification.

5 “(5) A summary of the process used by the ad-
6 visory committee for making decisions.

7 “(6) Transcripts or audio or video recordings of
8 all meetings of the committee.

9 “(7) Any written determination by the Presi-
10 dent or the head of the agency to which the advisory
11 committee reports, pursuant to section 10(d), to
12 close a meeting or any portion of a meeting and the
13 reasons for such determination.

14 “(8) Notices of future meetings of the com-
15 mittee.

16 “(9) Any additional information considered rel-
17 evant by the head of the agency to which the advi-
18 sory committee reports.

19 “(b) MANNER OF DISCLOSURE.—

20 “(1) Except as provided in paragraph (2), the
21 head of an agency shall make the information re-
22 quired to be disclosed under this section available
23 electronically on the official public internet site of
24 the agency at least 15 calendar days before each
25 meeting of an advisory committee. If the head of the

1 agency determines that such timing is not prac-
2 ticable for any required information, he shall make
3 the information available as soon as practicable but
4 no later than 48 hours before the next meeting of
5 the committee.

6 “(2) The head of an agency shall make avail-
7 able electronically, on the official public internet site
8 of the agency, a transcript or audio or video record-
9 ing of each advisory committee meeting not later
10 than 7 calendar days after the meeting.

11 “(c) PROVISION OF INFORMATION BY ADMINIS-
12 TRATOR OF GENERAL SERVICES.—The Administrator of
13 General Services shall provide, on the official public inter-
14 net site of the General Services Administration, electronic
15 access to the information made available by each agency
16 under this section.”.

17 (b) CHARTER FILING.—Section 9(e) of the Federal
18 Advisory Committee Act (5 U.S.C. App.), as redesignated
19 by section 2, is amended by striking “with (1) the Admin-
20 istrator,” and all that follows through “, or” and inserting
21 “(1) with the Administrator and”.

22 **SEC. 5. COMPTROLLER GENERAL REVIEW AND REPORTS.**

23 (a) REVIEW.—The Comptroller General of the United
24 States shall review compliance by agencies with the Fed-
25 eral Advisory Committee Act, as amended by this Act, in-

1 cluding whether agencies are appropriately appointing ad-
2 visory committee members as either special government
3 employees or representatives.

4 (b) REPORT.—The Comptroller General shall submit
5 to the committees described in subsection (c) two reports
6 on the results of the review, as follows:

7 (1) The first report shall be submitted not later
8 than one year after the date of promulgation of reg-
9 ulations under section 2.

10 (2) The second report shall be submitted not
11 later than five years after such date of promulgation
12 of regulations.

13 (c) COMMITTEES.—The committees described in this
14 subsection are the Committee on Oversight and Govern-
15 ment Reform of the House of Representatives and the
16 Committee on Homeland Security and Governmental Af-
17 fairs of the Senate.

18 **SEC. 6. DEFINITION.**

19 Section 3 of the Federal Advisory Committee Act (5
20 U.S.C. App.) is amended by adding at the end the fol-
21 lowing new paragraph:

22 “(5) The term ‘special Government employee’
23 has the same meaning as in section 202(a) of title
24 18, United States Code.”.

1 **SEC. 7. EFFECTIVE DATE.**

2 This Act shall take effect 30 days after the date of
3 the enactment of this Act, except as otherwise provided
4 in section 2(c).

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