

October 6, 1972
[H. R. 4183]

Public Law 92-163

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[86 STAT.]

AN ACT

To authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes.

Federal Advisory Committee Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Advisory Committee Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

- (b) The Congress further finds and declares that —
 - (1) the need for many existing advisory committees has not been adequately reviewed;
 - (2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;
 - (3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;
 - (4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;
 - (5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and
 - (6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

DEFINITIONS

SEC. 3. For the purpose of this Act—
(1) The term "Director" means the Director of the Office of Management and Budget.
(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

- (A) established by statute or reorganization plan, or
- (B) established or utilized by the President, or
- (C) established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

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(3) The term "agency" has the same meaning as in section 551 (1) of title 5, United States Code.
(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

APPLICABILITY

SEC. 4. (a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.
(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

- (1) the Central Intelligence Agency; or
- (2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

SEC. 5. (a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

- (1) contain a clearly defined purpose for the advisory committee;
- (2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;
- (3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;
- (4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

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(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Director, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

- (A) the committee's official designation;
- (B) the committee's objectives and the scope of its activity;
- (C) the period of time necessary for the committee to carry out its purposes;
- (D) the agency or official to whom the committee reports;
- (E) the agency responsible for providing the necessary support for the committee;
- (F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;
- (G) the estimated annual operating costs in dollars and man-years for such committee;
- (H) the estimated number and frequency of committee meetings;

- (I) the committee's termination date, if less than two years from the date of the committee's establishment; and
- (J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

ADVISORY COMMITTEE PROCEDURES

SEC. 10. (a) (1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agendas, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the

advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a) (1) and (a) (3) of this section shall not apply to any advisory committee meeting which the President, or the head of the agency to which the advisory committee reports, determines is concerned with matters listed in section 552(b) of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

AVAILABILITY OF TRANSCRIPTS

SEC. 11. (a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of title 5, United States Code.

FISCAL AND ADMINISTRATIVE PROVISIONS

SEC. 12. (a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

RESPONSIBILITIES OF LIBRARY OF CONGRESS

SEC. 13. Subject to section 552 of title 5, United States Code, the Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Library of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

"(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 41, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

"(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

"(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

"(n) The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552b. Open meetings."
"552a. Records about individuals."

EX PARTE COMMUNICATIONS

Sec. 4. (a) Section 557 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) (1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

"(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

"(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

"(i) all such written communications;

"(ii) memoranda stating the substance of all such oral communications; and

"(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

"(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why his claim or interest in the proceeding should not be dismissed, deplored, disregarded, or otherwise adversely affected on account of such violation; and

"(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

"(2) This subsection does not constitute authority to withhold information from Congress."

(b) Section 551 of title 5, United States Code, is amended

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the "act," at the end of paragraph (13) and inserting in lieu thereof "act"; and

(3) by adding at the end thereof the following new paragraph: "(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for study reports on any matter or proceeding covered by this subchapter."

(c) Section 559(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the interests of justice and the policy of the underlying statute administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur."

5 USC 557.

CONFIRMING AMENDMENTS

Sec. 5. (a) Section 410(b) (1) of title 39, United States Code, is amended by inserting after "Section 552 (public information)," the words "section 552a (records about individuals), section 552b (open meetings)."

(b) Section 552(b) (3) of title 5, United States Code, is amended to read as follows:

"(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld."

(c) Subsection (d) of section 10 of the Federal Advisory Committee Act is amended by striking out the first sentence and inserting in lieu thereof the following: "Subsections (a) (1) and (a) (3) of this section shall not apply to any portion of an advisory committee meeting where

5 USC app. 1.

5 USC 552.

44 USC 3301 et seq.

5 USC 552a.

5 USC, sec. 500.

"Ex parte communication."

involve the use of human subjects for the testing of chemical or biological agents."

(b) Section 201 of the Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc-11; 69 Stat. 585) is amended by striking out "odd-numbered years" and inserting in place thereof "the first odd-numbered year following the year in which the Presidential election is held".

(c) Section 2455(b) of title 10, United States Code, is amended by striking out "yearly period ending with the preceding December 31" and inserting "preceding fiscal year".

REPORT BY THE DEPARTMENT OF EDUCATION

Sec. 204. Section 605(b) of the Higher Education Act of 1965 (20 U.S.C. 1125(b); 79 Stat. 1284) is amended by striking out "which shall include an index and analysis" and inserting in lieu thereof "listing".

REPORT BY THE DEPARTMENT OF ENERGY

Sec. 205. (a) Section 208(c) of the Department of Energy Organization Act (42 U.S.C. 7138(c); 91 Stat. 576) is amended to read as follows:

"(c)(1) The Inspector General shall, not later than May 31 and November 30 of each year, submit to the Secretary and the Congress semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to:

"(A) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities during the reporting period;

"(B) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to subparagraph (A);

"(C) an identification of each significant recommendation described in previous reports under this subsection on which corrective action has not been completed;

"(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

"(E) information concerning the numbers and types of audit reports completed by the Office during the reporting period.

(2) Within sixty days of the transmission of each semiannual report to the Congress, the Secretary shall make copies of such report available to the public upon request and at a reasonable cost."

(b) Section 208(d) of such Act is amended by striking out "thirty days" and inserting in lieu thereof "seven days".

REPORTS BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sec. 206. (a) Section 336A of the Public Health Service Act (42 U.S.C. 254i) is amended in the matter preceding paragraph (1) by striking out "on May 1 of each year."

(b) Section 8 of the Fair Packaging and Labeling Act (15 U.S.C. 1457) is amended by striking out the last two sentences and insert-

"(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding year;

"(2) describing the exercise of individual rights of access and amendment under this section during such year;

"(3) identifying changes in or additions to systems of records; and

"(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974."

(c) Effective July 1, 1983, section 6(c) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by striking out the first sentence and inserting in lieu thereof the following: "The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year."

REPORTS BY THE DEPARTMENT OF COMMERCE

Sec. 202. (a) Section 302(d) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(d)) is amended to read as follows:

"(d) The Secretary shall submit a biennial report to the Congress, on or before March 1 of every other year beginning in 1984, setting forth a comprehensive review of his actions during the previous two fiscal years undertaken pursuant to the authority of this section, together with appropriate recommendation for legislation considered necessary for the designation and protection of marine sanctuaries."

(b) Section 7 of the National Climate Program Act of 1978 (15 U.S.C. 2906) is amended by striking out "not later than January 31 of each year" and inserting in lieu thereof "not later than March 31 of each year."

(c) Section 4(a) of the National Ocean Pollution Research and Development and Monitoring Planning Act of 1978 (33 U.S.C. 1703(a)) is amended by striking out "and a revision of the plan shall be prepared and so submitted by September 15 of each odd-numbered year occurring after 1979" and inserting in lieu thereof "and a revision of the plan shall be prepared and so submitted by September 15 every three years after 1979."

(d) Section 8 of the Fair Packaging and Labeling Act (15 U.S.C. 1457) is amended by striking out the following: "or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 5(d) of this Act."

REPORTS BY THE DEPARTMENT OF DEFENSE

Sec. 203. (a)(1) Section 808(a) of the Department of Defense Appropriation Authorization Act, 1978 (50 U.S.C. 1520(a); 91 Stat. 384) is amended by striking out clause (1) and by striking out "(2)".

(2) Section 409(a) of the Act of November 19, 1969 (50 U.S.C. 1511(a); 83 Stat. 209) is amended by adding the following sentence at the end thereof: "The report shall include a full accounting of all experiments and studies conducted by the Department of Defense in the preceding year, whether directly or under contract, which

5 USC 552a note.

Effective date.