

111TH CONGRESS
2^D SESSION

H. CON. RES. 328

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2010

Received and referred to the Committee on the Judiciary

CONCURRENT RESOLUTION

Expressing the sense of the Congress regarding the successful and substantial contributions of the amendments to the patent and trademark laws that were initially enacted in 1980 by Public Law 96–517 (commonly referred to as the “Bayh-Dole Act”) on the occasion of the 30th anniversary of its enactment.

Whereas Article I, Section 8, Clause 8, of the United States Constitution provides that Congress shall have Power “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”;

Whereas the United States Government is one of the largest funders of research in the world, but that research does not fully benefit American taxpayers unless it contributes new products and processes to the marketplace, thereby creating new companies and jobs, and solving societal problems;

Whereas the commercial development of discoveries and inventions falls upon private sector entrepreneurs, often requiring millions of dollars in development funding over many years, and even then commercial success is uncertain at best;

Whereas by enacting Public Law 96–517 (commonly referred to as the “Bayh-Dole Act”) in 1980, Congress determined that a fundamental change was needed to implement a uniform Federal patent policy, restoring the intended incentives of Article I, Section 8, Clause 8 of the United States Constitution as it relates to federally funded research;

Whereas before the enactment of that Act, few inventions arising from the billions of taxpayer dollars granted each year to American research universities, nonprofit organizations, and Federal laboratories were being translated into commercial products of benefit to the public and the United States economy;

Whereas a critical factor in developing federally funded inventions into commercial products is the continued involvement of the inventor in the process, and Government patent policies before the enactment of the Bayh-Dole Act chilled the intended incentives of the patent system in this regard;

Whereas the ability to obtain a reliable patent license for commercial development is needed to justify private sector investments, and Government patent policies before the enactment of the Bayh-Dole Act made negotiating and obtaining such licenses difficult, if not impossible;

Whereas patent ownership of potentially important inventions is crucial in the formation of many start-up companies, which form vital parts of an innovation economy, and ownership rights were discouraged by Government patent policies before the enactment of the Bayh-Dole Act;

Whereas in 1984 Congress built upon the firm foundation of the Bayh-Dole Act by permitting, in Public Law 98–620, nonprofit organizations and universities to grant licenses during the entire patent term and also to provide uniform treatment under the Bayh-Dole Act of inventions produced by nonprofit organizations that operate Government-owned laboratories;

Whereas the Bayh-Dole Act has provided incentives for universities, nonprofit organizations, and small businesses to effectively manage inventions arising from Federal support as valuable resources on behalf of United States taxpayers;

Whereas the success of the Bayh-Dole Act became apparent with the creation and dominance of the United States biotechnology and information technology industries, that remain largely dependent on university research;

Whereas the Bayh-Dole Act has been widely recognized as a best practice and is now being adopted by other countries (both developed and developing) around the world to better integrate their own research universities into their economies in order to be more competitive;

Whereas objective examples of how the Bayh-Dole Act has not only benefitted the United States but has also created a better world include the creation of over 150 new drugs, vaccines, or in vitro devices, including the hepatitis B vaccine, cisplatin, carboplatin and taxol anticancer therapeutics, laser eye surgery devices, the Palmaz balloon expandable stent, and many more; and

Whereas economic activity spurred on by the Bayh-Dole Act include the formation of more than 6,500 new companies from the inventions created under the Act, an estimated contribution of \$450,000,000,000 to United States gross industrial output, and the creation of 280,000 new high technology jobs between 1999 and 2007: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
 2 *concurring), That—*

3 (1) it is the sense of the Congress that—

4 (A) the Bayh-Dole Act (Public Law 96–
 5 517), as amended by Public Law 98–620, has
 6 made substantial contributions to the advance-
 7 ment of scientific and technological knowledge,
 8 fostered dramatic improvements in public
 9 health and safety, strengthened the higher edu-
 10 cation system, led to the development of new
 11 domestic industries and hundreds of thousands
 12 of new private sector jobs, and benefitted the
 13 economic and trade policies of the United
 14 States; and

1 (B) that Act remains critical to the future
2 well being of the United States;

3 (2) the Congress reaffirms both its support for
4 this landmark legislation and the critical role that
5 innovation, entrepreneurship, and job creation hold
6 for the future of the United States, and its commit-
7 ment to the policies and objectives of that Act; and

8 (3) the Congress shows its gratitude for the bi-
9 partisan leadership shown by Senators Birch Bayh
10 and Robert Dole and Representatives Peter Rodino,
11 Hamilton Fish, Robert Kastenmeier, Tom Railsback,
12 Don Fuqua, and former Chairman and Ranking Mi-
13 nority members of the Senate Judiciary Committee,
14 Edward Kennedy, and Strom Thurmond for secur-
15 ing the enactment of the Bayh-Dole Act, for
16 strengthening it in 1984, and for providing unwaver-
17 ing support for the policies underlying that Act.

Passed the House of Representatives November 15,
2010.

Attest: LORRAINE C. MILLER,
Clerk.