

112TH CONGRESS
1ST SESSION

S. 1160

To improve the administration of the Department of Energy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 8, 2011

Mr. BINGAMAN (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To improve the administration of the Department of Energy,
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.**

4 This Act may be cited as the “Department of Energy
5 Administrative Improvement Act of 2011”.

6 **SEC. 2. DEFINITION OF SECRETARY.**

7 In this Act, the term “Secretary” means the Sec-
8 retary of Energy.

1 **SEC. 3. FUTURE-YEARS DEPARTMENT OF ENERGY PRO-**
2 **GRAM.**

3 (a) IN GENERAL.—Part C of title VI of the Depart-
4 ment of Energy Organization Act (42 U.S.C. 7251 et seq.)
5 is amended by adding at the end the following:

6 **“SEC. 664. FUTURE-YEARS DEPARTMENT OF ENERGY PRO-**
7 **GRAM.**

8 “(a) IN GENERAL.—At or about the time the budget
9 of the President is submitted to Congress for each year
10 under section 1105(a) of title 31, United States Code, the
11 Secretary shall submit to Congress a future-years Depart-
12 ment of Energy program (including associated annexes)
13 reflecting the estimated expenditures and proposed appro-
14 priations included in the budget.

15 “(b) FISCAL YEAR.—Any future-years Department
16 of Energy program submitted under subsection (a) shall
17 cover—

18 “(1) the fiscal year with respect to which the
19 budget is submitted; and

20 “(2) at least the 4 succeeding fiscal years.

21 “(c) CONSISTENT AMOUNTS.—

22 “(1) IN GENERAL.—The Secretary shall ensure
23 that amounts described in paragraph (2)(A) for any
24 fiscal year are consistent with amounts described in
25 paragraph (2)(B) for that fiscal year.

1 “(2) AMOUNTS.—Amounts referred to in para-
2 graph (1) are the following:

3 “(A) The amounts specified in program
4 and budget information submitted to Congress
5 by the Secretary in support of expenditure esti-
6 mates and proposed appropriations in the budg-
7 et submitted to Congress by the President
8 under section 1105(a) of title 31, United States
9 Code, for any fiscal year, as indicated in the fu-
10 ture-years Department of Energy program sub-
11 mitted pursuant to subsection (a).

12 “(B) The total amounts of estimated ex-
13 penditures and proposed appropriations nec-
14 essary to support the programs, projects, and
15 activities of the Department of Energy included
16 pursuant to section 1105(a)(5) of title 31,
17 United States Code, in the budget submitted to
18 Congress under that section for any fiscal year.

19 “(d) MANAGEMENT CONTINGENCIES.—Subject to
20 subsection (c), nothing in this section prohibit the inclu-
21 sion in the future-years Department of Energy programs
22 of amounts for management contingencies.”.

23 “(b) CONFORMING AMENDMENT.—The table of con-
24 tents in the first section of the Department of Energy Or-
25 ganization Act (42 U.S.C. 7101) is amended by adding

1 at the end of the items relating to part C of title VI the
2 following:

“Sec. 664. Future-Years Department of Energy program.”.

3 **SEC. 4. OTHER TRANSACTIONS AUTHORITY.**

4 (a) IN GENERAL.—Section 646 of the Department of
5 Energy Organization Act (42 U.S.C. 7256) is amended
6 by striking subsection (g) and inserting the following:

7 “(g) AUTHORITY TO ENTER INTO OTHER TRANS-
8 ACTIONS.—

9 “(1) IN GENERAL.—In addition to any other
10 authority granted to the Secretary to enter into pro-
11 curement contracts, leases, cooperative agreements,
12 grants, and certain arrangements, the Secretary may
13 enter into other transactions with public agencies,
14 private organizations, or other persons on such
15 terms as the Secretary considers appropriate to fur-
16 ther functions vested in the Secretary, including re-
17 search, development, or demonstration projects.

18 “(2) ADVANCE PAYMENTS.—Notwithstanding
19 any other provision of law, the Secretary may exer-
20 cise authority provided under paragraph (1) without
21 regard to section 3324 of title 31, United States
22 Code.

23 “(3) RELATIONSHIP TO OTHER LAW.—The au-
24 thority of the Secretary under paragraph (1) shall
25 not be subject to—

1 “(A) section 9 of the Federal Nonnuclear
2 Energy Research and Development Act of 1974
3 (42 U.S.C. 5908); or

4 “(B) section 152 of the Atomic Energy Act
5 of 1954 (42 U.S.C. 2182).

6 “(4) PROTECTION OF CERTAIN INFORMATION
7 FROM DISCLOSURE.—

8 “(A) IN GENERAL.—Notwithstanding any
9 other provision of law, disclosure of information
10 described in subparagraph (B) is not required,
11 and may not be compelled, under section 552 of
12 title 5, United States Code, during the 5-year
13 period beginning on the date on which the in-
14 formation is received by the Department.

15 “(B) AWARD INFORMATION.—The infor-
16 mation described in this subparagraph is infor-
17 mation in the records of the Department that—

18 “(i) was submitted—

19 “(I) to the Department as part
20 of a competitive or noncompetitive
21 process with the potential to result in
22 an award to the person submitting the
23 information; and

1 “(II) in conjunction with a trans-
2 action entered into by the Secretary
3 pursuant to paragraph (1); and

4 “(ii) is—

5 “(I) a proposal, proposal ab-
6 stract, and supporting documents;

7 “(II) a business plan submitted
8 on a confidential basis; or

9 “(III) technical information sub-
10 mitted on a confidential basis.

11 “(5) REQUIREMENTS.—

12 “(A) SELECTION PROCEDURES.—In enter-
13 ing into transactions under paragraph (1), the
14 Secretary shall use such competitive, merit-
15 based selection procedures as the Secretary de-
16 termines in writing to be practicable.

17 “(B) DETERMINATION.—Before entering
18 into a transaction under paragraph (1), the
19 Secretary shall determine in writing that the
20 use of a standard contract, grant, or coopera-
21 tive agreement for the project is not feasible or
22 appropriate.

23 “(C) COST SHARING.—A transaction under
24 paragraph (1) shall be subject to cost sharing

1 in accordance with section 988 of the Energy
2 Policy Act of 2005 (42 U.S.C. 16352).

3 “(D) LIMITATION ON DELEGATION.—The
4 authority of the Secretary under this subsection
5 may be delegated only to an officer of the De-
6 partment who is appointed by the President by
7 and with the advice and consent of the Senate
8 and may not be redelegated to any other per-
9 son.

10 “(6) ANNUAL REPORTS.—Not later than 1 year
11 after the date of enactment of the Department of
12 Energy Administrative Improvement Act of 2011
13 and annually thereafter, the Secretary shall submit
14 to Congress an annual report on the transactions en-
15 tered into by the Secretary pursuant to the authori-
16 ties provided under this subsection.

17 “(7) REPORT.—

18 “(A) DEFINITION OF NONTRADITIONAL
19 GOVERNMENT CONTRACTOR.—In this para-
20 graph, the term ‘nontraditional Government
21 contractor’ has the meaning given the term
22 ‘nontraditional defense contractor’ in section
23 845(f) of the National Defense Authorization
24 Act for Fiscal Year 1994 (Public Law 103–160;
25 10 U.S.C. 2371 note).

1 “(B) REPORT.—Not later than 2 years
2 after the date of enactment of this subpara-
3 graph, and 2 years thereafter, the Comptroller
4 General of the United States shall submit to
5 Congress a report describing—

6 “(i) the use by the Department of au-
7 thorities under this section, including the
8 ability to attract nontraditional Govern-
9 ment contractors; and

10 “(ii) whether additional safeguards
11 are necessary to carry out the authori-
12 ties.”.

13 (b) IMPLEMENTATION.—

14 (1) IN GENERAL.—The final rule of the Depart-
15 ment of Energy entitled “Assistance Regulations”
16 (71 Fed. Reg. 27158 (May 9, 2006)) shall be appli-
17 cable to transactions under section 646 of the De-
18 partment of Energy Organization Act (42 U.S.C.
19 7256) (as amended by subsection (a)).

20 (2) REGULATIONS.—The Secretary may revise,
21 supplement, or replace such regulations as the Sec-
22 retary determines necessary to implement the
23 amendment made by subsection (a).

1 **SEC. 5. PROTECTION OF RESULTS.**

2 (a) IN GENERAL.—Subject to subsection (b) and not-
3 withstanding any other provision of law, during a period
4 of not more than 5 years after the development of infor-
5 mation in any transaction authorized to be entered into
6 by the Department of Energy, the Secretary may provide
7 appropriate protections against the dissemination of the
8 information, including exemption from subchapter II of
9 chapter 5 of title 5, United States Code.

10 (b) APPLICABLE INFORMATION.—This section ap-
11 plies to information that—

12 (1) results from a transaction entered into by
13 the Secretary pursuant to this title or an amend-
14 ment made by this title; and

15 (2) is of a character that would be protected
16 from disclosure under section 552(b)(4) of title 5,
17 United States Code, if the information had been ob-
18 tained from a person other than an agent or em-
19 ployee of the Federal Government.

20 **SEC. 6. DIRECT HIRE AUTHORITY.**

21 (a) IN GENERAL.—Notwithstanding sections 3304
22 and 3309 through 3318 of title 5, United States Code,
23 the Secretary may, upon a determination that there is a
24 severe shortage of candidates or a critical hiring need for
25 particular positions, recruit and directly appoint highly

1 qualified scientists, engineers, or critical technical per-
2 sonnel into the competitive service.

3 (b) EXCEPTION.—The authority granted under sub-
4 section (a) shall not apply to positions in the excepted
5 service or the Senior Executive Service.

6 (c) REQUIREMENTS.—In exercising the authority
7 granted under subsection (a), the Secretary shall ensure
8 that any action taken by the Secretary—

9 (1) is consistent with the merit principles of
10 section 2301 of title 5, United States Code; and

11 (2) complies with the public notice requirements
12 of section 3327 of title 5, United States Code.

13 (d) TERMINATION OF EFFECTIVENESS.—The au-
14 thority provided by this section terminates effective on the
15 date that is 2 years after the date of enactment of this
16 Act.

17 **SEC. 7. CRITICAL PAY AUTHORITY.**

18 (a) IN GENERAL.—Notwithstanding section 5377 of
19 title 5, United States Code, and without regard to the pro-
20 visions of that title governing appointments in the com-
21 petitive service or the Senior Executive Service and chap-
22 ters 51 and 53 of that title (relating to classification and
23 pay rates), the Secretary may establish, fix the compensa-
24 tion of, and appoint individuals to critical positions needed

1 to carry out the functions of the Department of Energy,
2 if the Secretary certifies that—

3 (1) the positions—

4 (A) require expertise of an extremely high
5 level in a scientific or technical field; and

6 (B) the Department of Energy would not
7 successfully accomplish an important mission
8 without such an individual; and

9 (2) exercise of the authority is necessary to re-
10 cruit an individual exceptionally well qualified for
11 the position.

12 (b) LIMITATIONS.—The authority granted under sub-
13 section (a) shall be subject to the following conditions:

14 (1) The number of critical positions authorized
15 by subsection (a) may not exceed 40 at any 1 time
16 in the Department of Energy.

17 (2) The term of an appointment under sub-
18 section (a) may not exceed 4 years.

19 (3) An individual appointed under subsection
20 (a) may not have been a Department of Energy em-
21 ployee within the 2 years prior to the date of ap-
22 pointment.

23 (4) Total annual compensation for any indi-
24 vidual appointed under subsection (a) may not ex-
25 ceed the highest total annual compensation payable

1 at the rate determined under section 104 of title 3,
2 United States Code.

3 (5) An individual appointed under subsection
4 (a) may not be considered to be an employee for
5 purposes of subchapter II of chapter 75 of title 5,
6 United States Code.

7 (c) NOTIFICATION.—Each year, the Secretary shall
8 submit to Congress a notification that lists each individual
9 appointed under this section.

10 **SEC. 8. REEMPLOYMENT OF CIVILIAN RETIREES.**

11 (a) IN GENERAL.—Notwithstanding part 553 of title
12 5, Code of Federal Regulations (relating to reemployment
13 of civilian retirees to meet exceptional employment needs),
14 or successor regulations, the Secretary may approve the
15 reemployment of an individual to a particular position
16 without reduction or termination of annuity if the hiring
17 of the individual is necessary to carry out a critical func-
18 tion of the Department of Energy for which the Depart-
19 ment has encountered exceptional difficulty in recruiting
20 or retaining suitably qualified candidates.

21 (b) LIMITATIONS.—An annuitant hired with full sal-
22 ary and annuities under the authority granted by sub-
23 section (a)—

1 (1) shall not be considered an employee for pur-
2 poses of subchapter III of chapter 83 and chapter
3 84 of title 5, United States Code;

4 (2) may not elect to have retirement contribu-
5 tions withheld from the pay of the annuitant;

6 (3) may not use any employment under this
7 section as a basis for a supplemental or recomputed
8 annuity; and

9 (4) may not participate in the Thrift Savings
10 Plan under subchapter III of chapter 84 of title 5,
11 United States Code.

12 (c) **LIMITATION ON TERM.**—The term of employment
13 of any individual hired under subsection (a) may not ex-
14 ceed an initial term of 2 years, with an additional 2-year
15 appointment under exceptional circumstances.

16 **SEC. 9. DEFINITION OF NATIONAL LABORATORY.**

17 Section 2(3) of the Energy Policy Act of 2005 (42
18 U.S.C. 15801(3)) is amended by striking subparagraph
19 (P) and inserting the following:

20 “(P) SLAC National Accelerator Labora-
21 tory.”.

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