

113TH CONGRESS
1ST SESSION

H. R. 221

To require reports on the acquisitions by certain foreign persons of companies that have received American taxpayer research and development funding, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2013

Mrs. BLACKBURN (for herself and Mr. HUIZENGA of Michigan) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Science, Space, and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require reports on the acquisitions by certain foreign persons of companies that have received American taxpayer research and development funding, 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 “Stop Mergers, Acquisi-
5 tions, and Risky Takeovers Supplied by American Labor

1 and Entrepreneurship Act of 2013” or the “SMART
2 SALE Act of 2013”.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) COVERED ENTITY.—The term “covered en-
6 tity” means any person, company, institution, or
7 other entity engaged in interstate commerce in the
8 United States that owns, licenses, or otherwise holds
9 an interest in a federally-funded technology, or to
10 which Federal energy research and development
11 funding has been obligated by a Federal agency.

12 (2) COVERED TRANSACTION.—

13 (A) IN GENERAL.—The term “covered
14 transaction” means any proposed or pending
15 merger, acquisition, takeover, or other transfer
16 that could result in control of a covered entity
17 by—

18 (i) a government of a foreign country
19 described in subparagraph (B); or

20 (ii)(I) a natural person who is a cit-
21 izen of a foreign country described in sub-
22 paragraph (B) or who owes permanent al-
23 legiance to such foreign country; or

24 (II) a corporation or other legal entity
25 which is organized under the laws of such

foreign country or any political subdivision thereof if natural persons described in subclause (I) own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such legal entity.

(B) FOREIGN COUNTRY DESCRIBED.—

(i) IN GENERAL.—Except as provided in clause (ii), a foreign country referred to in subparagraph (A) means any of the following:

(I) The People's Republic of China.

(II) The Democratic People's Republic of Korea.

(III) A country that is a state sponsor of terrorism (as defined in clause (iii)).

(IV) A country that provides sanctuary to a foreign terrorist organization (as defined in clause (iv)).

(V) Any other country with respect to which the President determines the provisions of this paragraph should apply.

1 (ii) WAIVER.—The President may
2 waive the applicability of this paragraph
3 with respect to a foreign country described
4 in clause (i) on a case-by-case basis if not
5 later than 60 days before doing so the
6 President—

7 (I) determines that it is in the
8 national interest of the United States
9 to do so; and

10 (II) submits to Congress a report
11 providing a justification for the waiv-
12 er.

13 (iii) STATE SPONSOR OF TERRORISM
14 DEFINED.—In clause (i)(III), the term
15 “state sponsor of terrorism” means any
16 country the government of which the Sec-
17 retary of State has determined has repeat-
18 edly provided support for international ter-
19 rorism pursuant to—

20 (I) section 6(j) of the Export Ad-
21 ministration Act of 1979 (50 U.S.C.
22 App. 2405) (as continued in effect
23 under the International Emergency
24 Economic Powers Act);

1 (II) section 620A of the Foreign
2 Assistance Act of 1961 (22 U.S.C.
3 2371);

4 (III) section 40 of the Arms Ex-
5 port Control Act (22 U.S.C. 2780); or

6 (IV) any other provision of law.

7 (iv) FOREIGN TERRORIST ORGANIZA-
8 TION DEFINED.—In clause (i)(IV), the
9 term “foreign terrorist organization”
10 means any organization so designated by
11 the Secretary of State under section 219 of
12 the Immigration and Nationality Act (8
13 U.S.C. 1189).

14 (3) FEDERAL ENERGY RESEARCH AND DEVEL-
15 OPMENT FUNDING.—The term “Federal energy re-
16 search and development funding” means Federal
17 funding provided for the purpose of researching or
18 developing new energy technologies, products, proc-
19 esses, or systems, or for the application of existing
20 energy technologies, products, processes, or systems
21 in a novel manner. Such funding includes funding
22 for a loan or loan guarantee made by a Federal
23 agency.

24 (4) FEDERALLY-FUNDED TECHNOLOGY.—

1 (A) IN GENERAL.—Except as provided in
 2 subparagraph (B), the term “federally-funded
 3 technology” means any technology, product,
 4 process, or system developed as a result of Fed-
 5 eral energy research and development funding.

6 (B) EXCEPTION.—Such term does not
 7 apply to any technology, product, process, and
 8 system that was not—

9 (i) specified in the documents and
 10 agreements associated with the provision of
 11 the Federal energy research and develop-
 12 ment funding; or

13 (ii) a foreseeable result or byproduct
 14 of the Federal energy research and devel-
 15 opment funding at the time the funding
 16 was provided.

17 **SEC. 3. REQUIREMENTS.**

18 (a) NOTIFICATION.—

19 (1) IN GENERAL.—A covered entity shall notify
 20 the Secretary of Energy in writing not later than 7
 21 days of entering into negotiations for any covered
 22 transaction.

23 (2) CONTENTS.—A notification submitted pur-
 24 suant to paragraph (1) shall include—

25 (A) an identification of the covered entity;

1 (B) an identification of the purchasing, ac-
2 quiring, or merging entity;

3 (C) the amounts of all Federal energy re-
4 search and development funding received by the
5 covered entity, including a description of the
6 form and amount of each transaction providing
7 such funding;

8 (D) an explanation of how the covered en-
9 tity or its purchaser will repay any outstanding
10 loans or loan guarantees provided by a Federal
11 agency, including interest accrued;

12 (E) an appraisal of the value of any feder-
13 ally-funded technology owned, licensed, or oth-
14 erwise held by the covered entity, including esti-
15 mates of sales value and licensing fees; and

16 (F) a description of the technical rights
17 held by the Federal Government in all federally-
18 funded technology owned, licensed, or otherwise
19 held by the covered entity.

20 (3) PENALTIES.—Any person who knowingly
21 and intentionally fails to make a notification re-
22 quired by this subsection shall be imprisoned for not
23 more than 5 years and fined according to title 18,
24 United States Code.

1 (b) RECOUPMENT OF FEDERAL FUNDS.—A Federal
2 agency providing Federal energy research and develop-
3 ment funding shall require, as a condition of receipt of
4 such funding, that all amounts provided shall be repaid
5 to the Federal Government if a covered transaction results
6 in control of the recipient by a foreign country described
7 in section 2(2)(B).

8 (c) REGULATIONS.—Not later than 180 days after
9 the date of enactment of this Act, the Secretary of Energy
10 shall promulgate regulations to carry out this section.

11 **SEC. 4. REPORTS TO CONGRESS.**

12 (a) REPORT ON NOTIFICATION.—Not later than 30
13 days after receipt of a notification required by section
14 3(a), the Secretary of Energy shall submit to Congress
15 a report on the notification. Such a report shall contain,
16 at a minimum, the following:

17 (1) All of the information provided by the cov-
18 ered entity under section 3(a).

19 (2) An assessment of any cybersecurity threats
20 to the national interests of the United States with
21 respect to the covered transaction.

22 (3) Disclosure of any additional Federal energy
23 research and development funding payments sched-
24 uled to be made by a Federal entity to the covered
25 entity.

1 (4) An assessment of what effect the covered
2 transaction will have on the interests of the United
3 States, including the extent to which the covered
4 transaction will cause, or will have a reasonable like-
5 lihood of causing, any negative effects to the na-
6 tional and economic security interests of the United
7 States.

8 (5) An estimate of any amounts of Federal,
9 State, and foreign government funding that any
10 party to the covered transaction, other than the cov-
11 ered entity, has received.

12 (b) INITIAL REPORT.—Not later than 90 days after
13 the date of enactment of this Act, the Secretary of Energy
14 shall submit to Congress a report that—

15 (1) identifies each covered entity that is en-
16 gaged in a covered transaction as of the date of en-
17 actment of this Act; and

18 (2) specifies the total amount of Federal energy
19 research and development funding the covered entity
20 has received and is scheduled to receive.

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