

113TH CONGRESS
2D SESSION

S. 1973

To improve management of the National Laboratories, enhance technology commercialization, facilitate public-private partnerships, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2014

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

A BILL

To improve management of the National Laboratories, enhance technology commercialization, facilitate public-private partnerships, 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 “America Implementing New National Opportunities To
6 Vigorously Accelerate Technology, Energy, and Science
7 Act” or the “America INNOVATES Act”.

8 (b) TABLE OF CONTENTS.—The table of contents of
9 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Definitions.
 Sec. 3. Savings clause.

TITLE I—INNOVATION MANAGEMENT AT DEPARTMENT OF ENERGY

- Sec. 101. Under Secretary for Science and Energy.
 Sec. 102. National Laboratories operations and performance management.
 Sec. 103. Sense of Senate on an integrated strategy for National Laboratories in the 21st century.

TITLE II—CROSS-SECTOR PARTNERSHIPS AND GRANT COMPETITIVENESS

- Sec. 201. Agreements for Commercializing Technology pilot program.
 Sec. 202. Public-private partnerships for commercialization.
 Sec. 203. Inclusion of early-stage technology demonstration in authorized technology transfer activities.
 Sec. 204. Information and resources for startups and small businesses.
 Sec. 205. Funding competitiveness for institutions of higher education and other nonprofit institutions.

TITLE III—ASSESSMENT OF IMPACT

- Sec. 301. Report by Government Accountability Office.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) DEPARTMENT.—The term “Department”
 4 means the Department of Energy.

5 (2) NATIONAL LABORATORY.—The term “Na-
 6 tional Laboratory” has the meaning given the term
 7 in section 2 of the Energy Policy Act of 2005 (42
 8 U.S.C. 15801).

9 (3) SECRETARY.—The term “Secretary” means
 10 the Secretary of Energy.

11 **SEC. 3. SAVINGS CLAUSE.**

12 Nothing in this Act or an amendment made by this
 13 Act abrogates or otherwise affects the primary responsibil-
 14 ities of any National Laboratory to the Department.

1 **TITLE I—INNOVATION MANAGE-**
 2 **MENT AT DEPARTMENT OF**
 3 **ENERGY**

4 **SEC. 101. UNDER SECRETARY FOR SCIENCE AND ENERGY.**

5 (a) IN GENERAL.—Section 202(b) of the Department
 6 of Energy Organization Act (42 U.S.C. 7132(b)) is
 7 amended—

8 (1) by striking “Under Secretary for Science”
 9 each place it appears and inserting “Under Sec-
 10 retary for Science and Energy”; and

11 (2) in paragraph (4)—

12 (A) in subparagraph (F), by striking
 13 “and” at the end;

14 (B) in subparagraph (G), by striking the
 15 period at the end and inserting a semicolon;
 16 and

17 (C) by inserting after subparagraph (G)
 18 the following:

19 “(H) establish appropriate linkages be-
 20 tween offices under the jurisdiction of the
 21 Under Secretary; and

22 “(I) perform such functions and duties as
 23 the Secretary shall prescribe, consistent with
 24 this section.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 3164(b)(1) of the Department of
 2 Energy Science Education Enhancement Act (42
 3 U.S.C. 7381a(b)(1)) is amended by striking “Under
 4 Secretary for Science” and inserting “Under Sec-
 5 retary for Science and Energy”.

6 (2) Section 641(h)(2) of the United States En-
 7 ergy Storage Competitiveness Act of 2007 (42
 8 U.S.C. 17231(h)(2)) is amended by striking “Under
 9 Secretary for Science” and inserting “Under Sec-
 10 retary for Science and Energy”.

11 **SEC. 102. NATIONAL LABORATORIES OPERATIONS AND**
 12 **PERFORMANCE MANAGEMENT.**

13 (a) IN GENERAL.—The Secretary shall ensure that
 14 the following duties and responsibilities are carried out
 15 through one or more appropriate statutory or administra-
 16 tive entities:

17 (1) Evaluation, coordination, and promotion of
 18 transfer of National Laboratory research and devel-
 19 opment results to the market in collaboration with
 20 the Technology Transfer Coordinator.

21 (2) Submission to the Secretary of reports de-
 22 scribing recommendations for best practices for the
 23 National Laboratories including, with respect to
 24 management and operations procedures, conflict of

1 interest regulations, engagement with the private
 2 sector, and technology transfer methodologies.

3 (3) Implementation of other duties, as the Sec-
 4 retary determines appropriate, to improve the oper-
 5 ations and performance of the National Labora-
 6 tories.

7 (b) REPORTING.—The Secretary, in consultation with
 8 the appropriate committees of Congress, shall provide an
 9 annual update on progress made in carrying out sub-
 10 section (a), including the improvement of National Lab-
 11 oratory operations and performance and strategic depart-
 12 mental and National Laboratory coordination.

13 **SEC. 103. SENSE OF SENATE ON AN INTEGRATED STRATEGY**
 14 **FOR NATIONAL LABORATORIES IN THE 21ST**
 15 **CENTURY.**

16 It is the sense of the Senate that—

17 (1) the establishment of the independent Com-
 18 mission to Review the Effectiveness of the National
 19 Energy Laboratories under section 319 of title III of
 20 division D of the Consolidated Appropriations Act,
 21 2014, is an important step towards developing a co-
 22 ordinated strategy for the National Laboratories in
 23 the 21st century; and

24 (2) Congress looks forward to—

1 (A) receiving the findings and conclusions
2 of the Commission; and

3 (B) engaging with the Administration—
4 (i) in strengthening the mission of the
5 National Laboratories; and
6 (ii) to reform and modernize the oper-
7 ations and management of the National
8 Laboratories.

9 **TITLE II—CROSS-SECTOR PART-**
10 **NERSHIPS AND GRANT COM-**
11 **PETITIVENESS**

12 **SEC. 201. AGREEMENTS FOR COMMERCIALIZING TECH-**
13 **NOLOGY PILOT PROGRAM.**

14 (a) IN GENERAL.—The Secretary shall carry out the
15 Agreements for Commercializing Technology pilot pro-
16 gram of the Department, as announced by the Secretary
17 on December 8, 2011, in accordance with this section.

18 (b) TERMS.—Each agreement entered into pursuant
19 to the pilot program referred to in subsection (a) shall
20 provide to the contractor of the applicable National Lab-
21 oratory, to the maximum extent determined to be appro-
22 priate by the Secretary, increased authority to negotiate
23 contract terms, such as intellectual property rights, in-
24 demnification, payment structures, performance guaran-
25 tees, and multiparty collaborations.

1 (c) ELIGIBILITY.—

2 (1) IN GENERAL.—Notwithstanding any other
3 provision of law (including regulations), any Na-
4 tional Laboratory may enter into an agreement pur-
5 suant to the pilot program referred to in subsection
6 (a).

7 (2) AGREEMENTS WITH NON-FEDERAL ENTI-
8 TIES.—To carry out paragraph (1) and subject to
9 paragraph (3), the Secretary shall permit the direc-
10 tors of the National Laboratories to execute agree-
11 ments with non-Federal entities, including non-Fed-
12 eral entities already receiving Federal funding that
13 will be used to support activities under agreements
14 executed pursuant to paragraph (1).

15 (3) RESTRICTION.—The requirements of chap-
16 ter 18 of title 35, United States Code (commonly
17 known as the “Bayh-Dole Act”) shall apply if—

18 (A) the agreement is a funding agreement
19 (as that term is defined in section 201 of that
20 title); and

21 (B) at least 1 of the parties to the funding
22 agreement is eligible to receive rights under
23 that chapter.

24 (d) SUBMISSION TO SECRETARY.—Each affected di-
25 rector of a National Laboratory shall submit to the Sec-

1 retary, with respect to each agreement entered into under
2 this section—

3 (1) a summary of information relating to the
4 relevant project;

5 (2) the total estimated costs of the project;

6 (3) estimated commencement and completion
7 dates of the project; and

8 (4) other documentation determined to be ap-
9 propriate by the Secretary.

10 (e) CERTIFICATION.—The Secretary shall require the
11 contractor of the affected National Laboratory to certify
12 that each activity carried out under a project for which
13 an agreement is entered into under this section—

14 (1) is not in direct competition with the private
15 sector; and

16 (2) does not present, or minimizes, any appar-
17 ent conflict of interest, and avoids or neutralizes any
18 actual conflict of interest, as a result of the agree-
19 ment under this section.

20 (f) EXTENSION.—The pilot program referred to in
21 subsection (a) shall be extended for a term of 3 years after
22 the date of enactment of this Act.

23 (g) REPORT.—Not later than 60 days after the date
24 described in subsection (f), the Secretary, in coordination
25 with directors of the National Laboratories, shall submit

1 to the Committee on Science, Space, and Technology of
 2 the House of Representatives and the Committee on En-
 3 ergy and Natural Resources of the Senate a report that—

4 (1) assesses the overall effectiveness of the pilot
 5 program referred to in subsection (a);

6 (2) identifies opportunities to improve the effec-
 7 tiveness of the pilot program;

8 (3) assesses the potential for program activities
 9 to interfere with the responsibilities of the National
 10 Laboratories to the Department; and

11 (4) provides a recommendation regarding the
 12 future of the pilot program.

13 **SEC. 202. PUBLIC-PRIVATE PARTNERSHIPS FOR COMMER-**
 14 **CIALIZATION.**

15 (a) IN GENERAL.—Subject to subsections (b) and (c),
 16 the Secretary shall delegate to directors of the National
 17 Laboratories signature authority with respect to any
 18 agreement described in subsection (b) the total cost of
 19 which (including the National Laboratory contributions
 20 and project recipient cost share) is less than \$1,000,000.

21 (b) AGREEMENTS.—Subsection (a) applies to—

22 (1) a cooperative research and development
 23 agreement;

24 (2) a non-Federal work-for-others agreement;
 25 and

1 (3) any other agreement determined to be ap-
2 propriate by the Secretary, in collaboration with the
3 directors of the National Laboratories.

4 (c) ADMINISTRATION.—

5 (1) ACCOUNTABILITY.—The director of the af-
6 fected National Laboratory and the affected con-
7 tractor shall carry out an agreement under this sec-
8 tion in accordance with applicable policies of the De-
9 partment, including by ensuring that the agreement
10 does not compromise any national security, eco-
11 nomic, or environmental interest of the United
12 States.

13 (2) CERTIFICATION.—The director of the af-
14 fected National Laboratory and the affected con-
15 tractor shall certify that each activity carried out
16 under a project for which an agreement is entered
17 into under this section does not present, or mini-
18 mizes, any apparent conflict of interest, and avoids
19 or neutralizes any actual conflict of interest, as a re-
20 sult of the agreement under this section.

21 (3) AVAILABILITY OF RECORDS.—On entering
22 an agreement under this section, the director of a
23 National Laboratory shall submit to the Secretary
24 for monitoring and review all records of the National
25 Laboratory relating to the agreement.

1 (4) RATES.—The director of a National Lab-
 2 oratory may charge higher rates for services per-
 3 formed under a partnership agreement entered into
 4 pursuant to this section, regardless of the full cost
 5 of recovery.

6 (d) CONFORMING AMENDMENT.—Section 12 of the
 7 Stevenson-Wydler Technology Innovation Act of 1980 (15
 8 U.S.C. 3710a) is amended—

9 (1) in subsection (a)—

10 (A) by redesignating paragraphs (1) and
 11 (2) as subparagraphs (A) and (B), respectively,
 12 and indenting the subparagraphs appropriately;

13 (B) by striking “Each Federal agency”
 14 and inserting the following:

15 “(1) IN GENERAL.—Except as provided in para-
 16 graph (2), each Federal agency”; and

17 (C) by adding at the end the following:

18 “(2) EXCEPTION.—Notwithstanding paragraph
 19 (1), in accordance with section 202(a) of the Amer-
 20 ica INNOVATES Act, approval by the Secretary of
 21 Energy shall not be required for any technology
 22 transfer agreement proposed to be entered into by a
 23 National Laboratory of the Department of Energy,
 24 the total cost of which (including the National Lab-

1 oratory contributions and project recipient cost
 2 share) is less than \$1,000,000.”; and

3 (2) in subsection (b), by striking “subsection
 4 (a)(1)” each place it appears and inserting “sub-
 5 section (a)(1)(A)”.

6 **SEC. 203. INCLUSION OF EARLY-STAGE TECHNOLOGY DEM-**
 7 **ONSTRATION IN AUTHORIZED TECHNOLOGY**
 8 **TRANSFER ACTIVITIES.**

9 Section 1001 of the Energy Policy Act of 2005 (42
 10 U.S.C. 16391) is amended by—

11 (1) redesignating subsection (g) as subsection
 12 (h); and

13 (2) inserting after subsection (f) the following:

14 “(g) **EARLY-STAGE TECHNOLOGY DEMONSTRA-**
 15 **TION.**—The Secretary shall permit the directors of the Na-
 16 tional Laboratories to use funds allocated for technology
 17 transfer within the Department to carry out early-stage
 18 and pre-commercial technology demonstration activities to
 19 remove technology barriers that limit private sector inter-
 20 est and demonstrate potential commercial applications of
 21 any research and technologies arising from National Lab-
 22 oratory activities intended to meet the Federal Govern-
 23 ment’s research needs.”.

1 **SEC. 204. INFORMATION AND RESOURCES FOR STARTUPS**
 2 **AND SMALL BUSINESSES.**

3 Section 9 of the Small Business Act (15 U.S.C. 638)
 4 is amended by adding at the end the following:

5 “(tt) INFORMATION.—In carrying out the SBIR and
 6 STTR programs of the Department of Energy, the Sec-
 7 retary of Energy shall provide to small business concerns
 8 seeking funding under the programs information con-
 9 cerning resources that are available to small business con-
 10 cerns at National Laboratories and federally funded re-
 11 search and development centers.”.

12 **SEC. 205. FUNDING COMPETITIVENESS FOR INSTITUTIONS**
 13 **OF HIGHER EDUCATION AND OTHER NON-**
 14 **PROFIT INSTITUTIONS.**

15 Section 988(b) of the Energy Policy Act of 2005 (42
 16 U.S.C. 16352(b)) is amended—

17 (1) in paragraph (1), by striking “Except as
 18 provided in paragraphs (2) and (3)” and inserting
 19 “Except as provided in paragraphs (2), (3), and
 20 (4)”;

21 (2) by adding at the end the following:

22 “(4) EXEMPTION FOR INSTITUTIONS OF HIGH-
 23 ER EDUCATION AND OTHER NONPROFIT INSTITU-
 24 TIONS.—

25 “(A) IN GENERAL.—Paragraph (1) shall
 26 not apply to a research or development activity

performed by an institution of higher education or nonprofit institution (as defined in section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703)).

“(B) TERMINATION DATE.—The exemption under subparagraph (A) shall apply during the 6-year period beginning on the date of enactment of this paragraph.”.

TITLE III—ASSESSMENT OF IMPACT

SEC. 301. REPORT BY GOVERNMENT ACCOUNTABILITY OFFICE.

Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report describing the results of the projects developed under sections 201, 202, and 203, including information regarding—

(1) partnerships initiated as a result of those projects and the potential linkages presented by those partnerships with respect to national priorities and other taxpayer-funded research; and

(2) whether the activities carried out under those projects result in—

(A) fiscal savings;

1 (B) expansion of National Laboratory ca-
2 pabilities;

3 (C) increased efficiency of technology
4 transfers; or

5 (D) an increase in general efficiency of the
6 National Laboratory system.

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