

115TH CONGRESS
1ST SESSION

S. 2257

To establish the IMPACT for Energy Foundation.

IN THE SENATE OF THE UNITED STATES

DECEMBER 20, 2017

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

A BILL

To establish the IMPACT for Energy Foundation.

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 “Increasing and Mobi-
5 lizing Partnerships to Achieve Commercialization of Tech-
6 nologies for Energy Act” or the “IMPACT for Energy
7 Act”.

8 **SEC. 2. DEFINITIONS.**

9 In this Act:

1 (1) BOARD.—The term “Board” means the
 2 Board of Directors for the Foundation described in
 3 section 3(c).

4 (2) CHAIR.—The term “Chair” means the
 5 Chair of the Board described in section 3(c)(2).

6 (3) EXECUTIVE DIRECTOR.—The term “Execu-
 7 tive Director” means the Executive Director of the
 8 Board described in section 3(f)(2).

9 (4) FOUNDATION.—The term “Foundation”
 10 means the IMPACT for Energy Foundation estab-
 11 lished under section 3(a).

12 (5) SECRETARY.—The term “Secretary” means
 13 the Secretary of Energy.

14 **SEC. 3. ESTABLISHMENT OF IMPACT FOR ENERGY FOUNDA-**
 15 **TION.**

16 (a) ESTABLISHMENT.—

17 (1) IN GENERAL.—Not later than February 1,
 18 2019, the Secretary shall establish a nonprofit cor-
 19 poration to be known as the “IMPACT for Energy
 20 Foundation”.

21 (2) LIMITATION.—The Foundation shall not be
 22 an agency or instrumentality of the Federal Govern-
 23 ment.

24 (b) PURPOSE AND ACTIVITIES OF FOUNDATION.—

1 (1) PURPOSE.—The purpose of the Foundation
2 is to provide a mechanism to channel private sector
3 investments that support efforts to create, develop,
4 and commercialize innovative technologies that ad-
5 dress energy challenges, by methods that include—

6 (A) fostering collaboration and partner-
7 ships with energy researchers from the Federal
8 Government, State governments, institutions of
9 higher education, federally funded research and
10 development centers, industry, and nonprofit
11 organizations for the research, development, or
12 commercialization of transformative energy
13 technologies;

14 (B) leveraging technologies to support new
15 product development that supports regional eco-
16 nomic development; and

17 (C) administering prize competitions to ac-
18 celerate private sector competition and invest-
19 ment.

20 (2) ACTIVITIES.—

21 (A) IN GENERAL.—The Foundation may
22 solicit and accept gifts, grants, and other dona-
23 tions, establish accounts, and invest and expend
24 funds in support of the programs and activities
25 described in subparagraphs (B) through (D).

1 (B) STUDIES, COMPETITIONS, AND
2 PROJECTS.—The Foundation may conduct and
3 support studies, competitions, projects, re-
4 search, development, commercialization, and
5 other activities that further the purpose of the
6 Foundation described in paragraph (1).

7 (C) FELLOWSHIPS AND GRANTS.—

8 (i) IN GENERAL.—The Foundation
9 may provide fellowships and grants to re-
10 cipients selected under clause (iii) for ac-
11 tivities relating to research, development,
12 prototyping, maturing, or commercializing
13 of energy technologies.

14 (ii) USES OF FELLOWSHIPS AND
15 GRANTS.—A fellowship or grant under
16 clause (i) may include stipends, travel,
17 health insurance benefits, and other appro-
18 priate expenses.

19 (iii) SELECTION.—The Executive Di-
20 rector shall select the recipient of a fellow-
21 ship or grant based on the technical and
22 commercialization merits of the project.

23 (iv) FEDERAL LABORATORIES.—

24 (I) IN GENERAL.—Federal Lab-
25 oratories, including laboratories of the

1 Department of Energy, may apply for
2 and accept grants under clause (i).

3 (II) EFFECT.—A Federal labora-
4 tory that applies for or accepts a
5 grant under subclause (I) shall not be
6 considered to be engaging in a com-
7 petitive procedure.

8 (D) SUPPLEMENTARY PROGRAMS.—The
9 Foundation may carry out supplementary pro-
10 grams—

11 (i) to conduct and support forums,
12 meetings, conferences, courses, and train-
13 ing workshops consistent with the purpose
14 of the Foundation described in paragraph
15 (1);

16 (ii) to support and encourage the un-
17 derstanding and development of—

18 (I) data reporting models that
19 promote the translation of tech-
20 nologies from the research stage,
21 through development and maturation,
22 and to the market; and

23 (II) policies that make regulation
24 more effective and efficient by
25 leveraging the technology translation

1 data described in subclause (I) for the
 2 regulation of relevant technology sec-
 3 tors;

4 (iii) for writing, editing, printing, pub-
 5 lishing, and vending books and other mate-
 6 rials relating to research carried out under
 7 the Foundation; and

8 (iv) to conduct other activities to
 9 carry out and support the purpose de-
 10 scribed in paragraph (1).

11 (E) AUTHORITY OF FOUNDATION.—The
 12 Foundation shall be the sole entity responsible
 13 for carrying out the activities described in this
 14 paragraph.

15 (F) ADMINISTRATIVE CONTROL.—No par-
 16 ticipant in a program under this paragraph or
 17 employee of the Foundation shall exercise any
 18 administrative control over any Federal em-
 19 ployee.

20 (c) BOARD OF DIRECTORS.—

21 (1) MEMBERSHIP.—

22 (A) IN GENERAL.—The Foundation shall
 23 operate under the direction of a Board of Di-
 24 rectors, which shall be composed of—

1 (i) ex-officio members described in
 2 subparagraph (B); and

3 (ii) appointed members described in
 4 subparagraph (C).

5 (B) EX-OFFICIO MEMBERS.—

6 (i) INITIAL MEMBERS.—

7 (I) IN GENERAL.—Subject to
 8 subclause (II), the initial ex-officio
 9 members of the Board shall be—

10 (aa) the chair of the Com-
 11 mittee on Energy and Natural
 12 Resources of the Senate (or a
 13 designee);

14 (bb) the ranking minority
 15 member of the Committee on En-
 16 ergy and Natural Resources of
 17 the Senate (or a designee);

18 (cc) the chair of the Com-
 19 mittee on Energy and Commerce
 20 of the House of Representatives
 21 (or a designee);

22 (dd) the ranking minority
 23 member of the Committee on En-
 24 ergy and Commerce of the House

1 of Representatives (or a des-
2 ignee);

3 (ee) the chair of the Com-
4 mittee on Environment and Pub-
5 lic Works of the Senate (or a
6 designee);

7 (ff) the ranking minority
8 member of the Committee on En-
9 vironment and Public Works of
10 the Senate (or a designee);

11 (gg) the chair of the Com-
12 mittee on Science, Space, and
13 Technology of the House of Rep-
14 resentatives (or a designee);

15 (hh) the ranking minority
16 member of the Committee on
17 Science, Space, and Technology
18 of the House of Representatives
19 (or a designee); and

20 (ii) the Secretary (or a des-
21 ignee).

22 (II) DESIGNEES.—A designee
23 under subclause (I) shall be a member
24 of the staff of the applicable chair,

ranking minority member, or Secretary.

(ii) PERMANENT MEMBERS.—

(I) TERMINATION.—On the appointment of appointed members of the Board under subparagraph (C), the terms of service of the ex-officio members of the Board described in items (aa) through (hh) of clause (i)(I) shall terminate.

(II) PERMANENT MEMBER.—The Secretary shall serve as a permanent ex-officio member of the Board.

(iii) NONVOTING MEMBERS.—The ex-officio members of the Board shall be nonvoting members.

(C) APPOINTED MEMBERS.—

(i) IN GENERAL.—The appointed members of the Board shall be composed of 11 individuals, which shall include not fewer than 1 but not more than 5 representatives of each of—

(I) the academic community;

(II) the business community;

(III) nonprofit organizations;

1 (IV) the communities sur-
 2 rounding the laboratories and facili-
 3 ties of the Department of Energy; and

4 (V) the technology transfer and
 5 commercialization community.

6 (ii) METHOD OF APPOINTMENT.—

7 (I) IN GENERAL.—Not later than
 8 90 days after the date of enactment of
 9 this Act, the ex-officio members of the
 10 Board shall select from a list of can-
 11 didates, to be provided by, at the dis-
 12 cretion of the Secretary, the Secretary
 13 of Energy Advisory Board or the Na-
 14 tional Academy of Sciences, individ-
 15 uals for appointment as members of
 16 the Board.

17 (II) VOTE.—For the initial mem-
 18 bership of the Board, an individual se-
 19 lected for appointment under sub-
 20 clause (I) shall be appointed on a vote
 21 of not fewer than $\frac{3}{5}$ of the initial ex-
 22 officio members of the Board.

23 (iii) RESTRICTION ON MEMBERSHIP.—

24 No employee of the Department of Energy

1 shall be appointed as a member of the
2 Board.

3 (iv) AMENDMENT TO NUMBER OF AP-
4 POINTED MEMBERS.—The Board, through
5 amendments to the bylaws of the Founda-
6 tion, may provide that the number of ap-
7 pointed members of the Board shall be
8 greater than the number specified in clause
9 (i).

10 (D) TERMS AND VACANCIES.—

11 (i) TERMS.—

12 (I) IN GENERAL.—Except as pro-
13 vided in subclause (II), the term of
14 service of each appointed member of
15 the Board shall be 5 years.

16 (II) INITIAL APPOINTED MEM-
17 BERS.—The term of service for each
18 initial appointed member of the Board
19 shall be—

20 (aa) determined by the ini-
21 tial ex-officio members of the
22 Board and the initial Chair to
23 ensure that the continuity of rep-
24 resentation of board members
25 from each of the areas described

1 in subclauses (I) through (V) of
2 subparagraph (C)(i); and

3 (bb) for a term of either 3
4 or 4 years.

5 (ii) VACANCIES.—

6 (I) IN GENERAL.—Any vacancy
7 in the membership of the appointed
8 members of the Board—

9 (aa) shall be filled in accord-
10 ance with the bylaws of the
11 Foundation established under
12 subsection (d)(1)(B); and

13 (bb) shall not affect the
14 power of the remaining appointed
15 members to execute the duties of
16 the Board.

17 (II) FILLING UNEXPIRED
18 TERM.—An individual appointed to fill
19 a vacancy shall be appointed for the
20 unexpired term of the member re-
21 placed.

22 (III) SERVICE UNTIL VACANCY
23 FILLED.—An appointed member of
24 the Board may continue to serve on
25 the Board after the expiration of the

1 term of the member until a successor
2 is appointed.

3 (2) CHAIR.—

4 (A) INITIAL CHAIR.—The initial Chair of
5 the Board shall be an initial ex-officio member
6 elected by the initial ex-officio members of the
7 Board for a 3-year term that shall expire on the
8 appointment of the next Chair.

9 (B) CHAIR AFTER MEMBERS ARE AP-
10 POINTED.—On the termination of the term of
11 service of the initial Chair under subparagraph
12 (A), the appointed members of the Board shall
13 elect an appointed member of the Board to
14 serve as the Chair, who shall serve as the Chair
15 for the entire remaining term of service of that
16 member.

17 (3) COMPENSATION.—

18 (A) IN GENERAL.—Members of the Board
19 may not receive compensation for service on the
20 Board.

21 (B) CERTAIN EXPENSES.—In accordance
22 with the bylaws of the Foundation, members of
23 the Board may be reimbursed for travel ex-
24 penses, including per diem in lieu of subsist-

1 ence, and other necessary expenses incurred in
2 carrying out the duties of the Board.

3 (d) MEETINGS AND QUORUM.—

4 (1) MEETINGS.—Not later than 180 days after
5 the establishment of the appointed Board, the initial
6 appointed members of the Board shall—

7 (A) serve as incorporators; and

8 (B) take such actions as are necessary—

9 (i) to incorporate the Foundation;

10 (ii) to establish the bylaws of the
11 Foundation;

12 (iii) to establish the general policies of
13 the Foundation for carrying out the pur-
14 pose described in subsection (b)(1); and

15 (iv) to appoint the members of the
16 Board in accordance with subsection
17 (c)(1)(C)(ii).

18 (2) QUORUM.—A majority of the members of
19 the Board shall constitute a quorum for purposes of
20 conducting the business of the Board.

21 (e) CERTAIN BYLAWS.—

22 (1) IN GENERAL.—The Board shall include in
23 the bylaws of the Foundation established under sub-
24 section (d)(1)(B) the following policies:

1 (A) Policies for the selection of the offi-
2 cers, employees, agents, and contractors of the
3 Foundation.

4 (B) Policies, including ethical standards,
5 for the acceptance, solicitation, and disposition
6 of gifts, grants, and other donations to the
7 Foundation, which shall require that—

8 (i) officers, employees, agents, and
9 contractors of the Foundation (including
10 members of the Board) avoid encum-
11 brances that would result in a conflict of
12 interest, including a financial conflict of in-
13 terest or a divided allegiance; and

14 (ii) information concerning any owner-
15 ship or controlling interest in any entity
16 related to the activities of the Foundation
17 be disclosed by officers, employees, agents,
18 and contractors of the Foundation (includ-
19 ing members of the Board) and the rel-
20 atives (as defined in section 109 of the
21 Ethics in Government Act of 1978 (5
22 U.S.C. App.)) of the officers, employees,
23 agents, contractors, and members.

24 (C) Policies for the disposition of the as-
25 sets of the Foundation.

1 (D) Policies for the conduct of the general
2 operations of the Foundation.

3 (E) Policies for writing, editing, printing,
4 publishing, and vending of books and other ma-
5 terials.

6 (2) REQUIREMENTS.—In establishing the by-
7 laws of the Foundation, the Board shall ensure that
8 the bylaws of the Foundation and the activities car-
9 ried out under the bylaws of the Foundation shall
10 not—

11 (A) reflect unfavorably on the ability of the
12 Foundation or the Secretary to carry out re-
13 sponsibilities or official duties in a fair and ob-
14 jective manner; or

15 (B) compromise, or appear to compromise,
16 the integrity of any agency or program of the
17 Federal Government, or any officer or employee
18 involved in the program.

19 (f) POWERS AND DUTIES.—

20 (1) OPERATION UNDER DIRECTION OF
21 BOARD.—The Foundation shall operate under the
22 direction of the Board.

23 (2) EXECUTIVE DIRECTOR.—

24 (A) IN GENERAL.—An Executive Director
25 of the Foundation shall be—

1 (i) appointed by, and serve at the
2 pleasure of, the Board; and

3 (ii) responsible for—

4 (I) the day-to-day operations of
5 the Foundation; and

6 (II) such specific duties and re-
7 sponsibilities as the Board may pre-
8 scribe.

9 (B) COMPENSATION.—The rate of com-
10 pensation of the Executive Director shall be
11 fixed by the Board.

12 (3) CORPORATE SEAL.—The Foundation may
13 adopt, alter, and use a corporate seal, which shall be
14 judicially noticed.

15 (4) OFFICERS, EMPLOYEES, AND AGENTS.—The
16 Foundation may—

17 (A) hire, promote, compensate, and dis-
18 charge officers, employees, agents, and contrac-
19 tors;

20 (B) define the duties of the officers, em-
21 ployees, agents, and contractors;

22 (C) require surety bonds or make other
23 provisions against losses occasioned by acts of
24 the officers, employees, agents, or contractors;

1 (D) with the consent of any Federal agen-
2 cy, use the information, services, staff, and fa-
3 cilities of the agency; and

4 (E) appoint other groups of advisors as
5 may be determined necessary.

6 (5) OTHER POWERS.—The Foundation may—

7 (A) modify or consent to the modification
8 of any contract or agreement to which the
9 Foundation is a party or in which the Founda-
10 tion has an interest;

11 (B) enter into contracts with public and
12 private organizations for the writing, editing,
13 printing, and publishing of books and other ma-
14 terial;

15 (C) take such action as may be necessary
16 to obtain patents and licenses for devices and
17 procedures developed by the Foundation;

18 (D) enter into contracts, leases, coopera-
19 tive agreements, and other transactions as the
20 Executive Director considers appropriate to
21 conduct the activities of the Foundation;

22 (E) solicit, accept, hold, administer, invest,
23 and spend any gift, devise, or bequest of real or
24 personal property made to the Foundation;

1 (F) sue and be sued in its corporate name
 2 and complain and defend itself in any court of
 3 competent jurisdiction; and

4 (G) exercise such other powers, including
 5 incidental powers, as are necessary to carry out
 6 the powers, duties, and functions of the Foun-
 7 dation under this Act.

8 (6) FEES.—The Foundation may assess fees
 9 for the provision of professional, administrative, and
 10 management services by the Foundation in amounts
 11 determined reasonable and appropriate by the Exec-
 12 utive Director.

13 (g) INCORPORATION.—The initial members of the
 14 Board shall serve as incorporators and shall take any ac-
 15 tions necessary to incorporate the Foundation.

16 (h) NONPROFIT STATUS.—The Foundation shall be
 17 considered to be an organization described in section
 18 501(c) of the Internal Revenue Code of 1986, and exempt
 19 from taxation under section 501(a) of such Code.

20 (i) GENERAL PROVISIONS.—

21 (1) FOUNDATION INTEGRITY.—The Board
 22 shall—

23 (A) be accountable for the integrity of the
 24 operations of the Foundation; and

1 (B) ensure that integrity through the de-
2 velopment and enforcement of criteria and pro-
3 cedures relating to—

4 (i) standards of conduct;

5 (ii) financial disclosure statements;

6 (iii) conflicts of interest;

7 (iv) recusals and waivers;

8 (v) audits; and

9 (vi) other matters determined appro-
10 priate by the Board.

11 (2) FINANCIAL CONFLICTS OF INTEREST.—Any
12 individual who is an officer, employee, or member of
13 the Board shall not, in accordance with the policies
14 established under subsection (e)(1)(B)(ii), personally
15 or substantially participate in the consideration or
16 determination by the Board of any matter that
17 would directly and foreseeably affect any financial
18 interest of—

19 (A) the individual;

20 (B) a relative (as defined in section 109 of
21 the Ethics in Government Act of 1978 (5
22 U.S.C. App.)) of the individual; or

23 (C) any business organization or other en-
24 tity—

- 1 (i) of which the individual is an officer
2 or employee;
3 (ii) of which the individual is negoti-
4 ating for employment; or
5 (iii) in which the individual has any
6 other financial interest.

7 (3) AUDITS; AVAILABILITY OF RECORDS.—The
8 Board shall—

9 (A) conduct annual audits of the financial
10 condition of the Foundation; and

11 (B) make those audits, and all other
12 records, documents, and other papers of the
13 Foundation, available to the Secretary and the
14 Comptroller General of the United States for
15 examination or audit.

16 (4) REPORTS.—

17 (A) IN GENERAL.—Not later than 150
18 days after the end of each fiscal year, the
19 Board shall publish a report describing the ac-
20 tivities of the Foundation during the preceding
21 fiscal year.

22 (B) CONTENTS.—Each report published
23 under subparagraph (A) shall include, for the
24 applicable fiscal year—

(i) a comprehensive statement of the operations, activities, financial condition, and accomplishments of the Foundation, including an accounting of the use of amounts transferred under subsection (k)(1); and

(ii) with respect to the financial condition of the Foundation—

(I) the source, and a description, of each gift or grant of real or personal property to the Foundation;

(II) the source and amount of each cash gift or grant to the Foundation; and

(III) a specification of any restrictions on the purposes for which the gifts and grants described in subclauses (I) and (II) may be used.

(C) AVAILABILITY.—The Board shall—

(i) make copies of each report submitted under subparagraph (A) available—

(I) for public inspection; and

(II) to the appropriate committees of Congress; and

1 (ii) on request, provide a copy of any
 2 report submitted under subparagraph (A)
 3 to any individual for a charge that shall
 4 not exceed the cost of providing the copy.

5 (D) PUBLIC MEETING.—The Board shall
 6 annually hold a public meeting—

7 (i) to summarize the activities of the
 8 Foundation; and

9 (ii) to distribute written reports de-
 10 scribing—

11 (I) those activities; and

12 (II) the scientific results derived
 13 from those activities.

14 (5) SERVICE OF FEDERAL EMPLOYEES.—A
 15 Federal employee may serve on a committee advisory
 16 to the Foundation and otherwise cooperate with and
 17 assist the Foundation in carrying out this Act, sub-
 18 ject to the condition that the Federal employee shall
 19 not direct or control any activity of the Foundation.

20 (6) RELATIONSHIP WITH EXISTING ENTITIES.—
 21 The Board may, in accordance with appropriate
 22 agreements, merge the Foundation with, acquire, or
 23 use the resources of an existing nonprofit private
 24 corporation that has a mission similar to the pur-

1 pose of the Foundation described in subsection
2 (b)(1).

3 (7) INTELLECTUAL PROPERTY RIGHTS.—The
4 Board shall adopt written standards with respect to
5 the ownership of any intellectual property rights de-
6 rived from the collaborative efforts of the Founda-
7 tion before the commencement of any collaborative
8 efforts.

9 (8) TRANSFER OF FUNDS.—The Board may
10 transfer amounts to the Secretary, and the Sec-
11 retary may accept transfers of amounts from the
12 Foundation.

13 (j) SUPPORT SERVICES.—The Secretary may provide
14 facilities, utilities, and support services to the Foundation
15 if it is determined by the Secretary to be advantageous
16 to the research programs of the Department of Energy.

17 (k) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to carry out this section
19 such sums as are necessary for fiscal year 2018 and each
20 fiscal year thereafter.

21 **SEC. 4. ESTABLISHMENT OF FOR-PROFIT SUBSIDIARIES.**

22 (a) ESTABLISHMENT.—The Board may establish one
23 or more for-profit subsidiaries, which may include an im-
24 pact investment fund—

1 (1) to stimulate economic development activities
 2 relating to the purpose of the Foundation described
 3 in section 3(b)(1); and

4 (2) to attract for-profit investment partners for
 5 technology translation and commercialization activi-
 6 ties.

7 (b) AUTHORITIES OF THE FOR-PROFIT SUB-
 8 SIDIARY.—

9 (1) IN GENERAL.—Subject to paragraph (2), a
 10 for-profit subsidiary established under subsection (a)
 11 may—

12 (A) enter partnerships with economic de-
 13 velopment corporations, including incubators,
 14 accelerators, and small business investment
 15 companies;

16 (B) pay for the cost of building and ad-
 17 ministering facilities, including microlabs and
 18 incubators, to support the activities of the
 19 Foundation described in section 3(b)(2); and

20 (C) provide funding to startups.

21 (2) COST RECOVERY REQUIREMENTS.—A for-
 22 profit subsidiary established under subsection (a)
 23 shall—

24 (A) ensure that the Foundation owns any
 25 intellectual property rights generated through

- 1 activities funded by the for-profit subsidiary, if
- 2 appropriate; and
- 3 (B) own an equity stake in any startup in-
- 4 vested in by the for-profit subsidiary.

○