

# Calendar No. 316

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1160

[Report No. 112-147]

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

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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

FEBRUARY 7, 2012

Reported by Mr. BINGAMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## 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”.~~

1 **SEC. 2. DEFINITION OF SECRETARY.**

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

4 **SEC. 3. FUTURE-YEARS DEPARTMENT OF ENERGY PRO-**  
5 **GRAM.**

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

9 **“SEC. 664. FUTURE-YEARS DEPARTMENT OF ENERGY PRO-**  
10 **GRAM.**

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

18 “(b) **FISCAL YEAR.**—Any future-years Department  
19 of Energy program submitted under subsection (a) shall  
20 cover—

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

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

24 “(c) **CONSISTENT AMOUNTS.**—

25 “(1) **IN GENERAL.**—The Secretary shall ensure  
26 that amounts described in paragraph (2)(A) for any

1 fiscal year are consistent with amounts described in  
2 paragraph (2)(B) for that fiscal year.

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

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

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

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

1           (b) **CONFORMING AMENDMENT.**—The table of con-  
 2 tents in the first section of the Department of Energy Or-  
 3 ganization Act (42 U.S.C. 7101) is amended by adding  
 4 at the end of the items relating to part C of title VI the  
 5 following:

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

6 **SEC. 4. OTHER TRANSACTIONS AUTHORITY.**

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

10           “**(g) AUTHORITY TO ENTER INTO OTHER TRANS-**  
 11 **ACTIONS.**—

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

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

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

4                   “(A) section 9 of the Federal Nonnuclear  
5           Energy Research and Development Act of 1974  
6           (42 U.S.C. 5908); or

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

9           “(4) PROTECTION OF CERTAIN INFORMATION  
10          FROM DISCLOSURE.—

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

18                   “(B) AWARD INFORMATION.—The infor-  
19          mation described in this subparagraph is infor-  
20          mation in the records of the Department that—

21                           “(i) was submitted—

22                                   “(I) to the Department as part  
23                                   of a competitive or noncompetitive  
24                                   process with the potential to result in

1 an award to the person submitting the  
2 information; and

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

6 “(ii) is—

7 “(I) a proposal; proposal ab-  
8 stract, and supporting documents;

9 “(II) a business plan submitted  
10 on a confidential basis; or

11 “(III) technical information sub-  
12 mitted on a confidential basis.

13 “(5) REQUIREMENTS.—

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

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

1           “(C) COST SHARING.—A transaction under  
2 paragraph (1) shall be subject to cost sharing  
3 in accordance with section 988 of the Energy  
4 Policy Act of 2005 (42 U.S.C. 16352).

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

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

19           “(7) REPORT.—

20           “(A) DEFINITION OF NONTRADITIONAL  
21 GOVERNMENT CONTRACTOR.—In this para-  
22 graph, the term ‘nontraditional Government  
23 contractor’ has the meaning given the term  
24 ‘nontraditional defense contractor’ in section  
25 845(f) of the National Defense Authorization

1 Act for Fiscal Year 1994 (Public Law 103-160;  
2 10 U.S.C. 2371 note).

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

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

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

15 (b) IMPLEMENTATION.—

16 (1) IN GENERAL.—The final rule of the Depart-  
17 ment of Energy entitled “Assistance Regulations”  
18 (71 Fed. Reg. 27158 (May 9, 2006)) shall be appli-  
19 cable to transactions under section 646 of the De-  
20 partment of Energy Organization Act (42 U.S.C.  
21 7256) (as amended by subsection (a)).

22 (2) REGULATIONS.—The Secretary may revise,  
23 supplement, or replace such regulations as the Sec-  
24 retary determines necessary to implement the  
25 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 eruit 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 5,  
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.”.

22          **SECTION 1. SHORT TITLE.**

23                *This Act may be cited as the “Department of Energy*  
 24          *Administrative Improvement Act of 2011”.*

1 **SEC. 2. DEFINITIONS.**

2 *In this Act:*

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

5 (2) *SECRETARY.*—The term “Secretary” means  
6 *the Secretary of Energy.*

7 **SEC. 3. FUTURE-YEARS DEPARTMENT OF ENERGY PRO-**  
8 **GRAM.**

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

12 **“SEC. 664. FUTURE-YEARS DEPARTMENT OF ENERGY PRO-**  
13 **GRAM.**

14 “(a) *IN GENERAL.*—At or about the time the budget  
15 *of the President is submitted to Congress for each year*  
16 *under section 1105(a) of title 31, United States Code, the*  
17 *Secretary shall submit to Congress a future-years Depart-*  
18 *ment of Energy program (including associated annexes) re-*  
19 *flecting the estimated expenditures and proposed appro-*  
20 *priations included in the budget.*

21 “(b) *FISCAL YEAR.*—Any future-years Department of  
22 *Energy program submitted under subsection (a) shall*  
23 *cover—*

24 “(1) *the fiscal year with respect to which the*  
25 *budget is submitted; and*

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

1       “(c) *CONSISTENT AMOUNTS.*—

2               “(1) *IN GENERAL.*—*The Secretary shall ensure*  
3       *that amounts described in paragraph (2)(A) for any*  
4       *fiscal year are consistent with amounts described in*  
5       *paragraph (2)(B) for that fiscal year.*

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

8                       “(A) *The amounts specified in program and*  
9       *budget information submitted to Congress by the*  
10       *Secretary in support of expenditure estimates*  
11       *and proposed appropriations in the budget sub-*  
12       *mitted to Congress by the President under sec-*  
13       *tion 1105(a) of title 31, United States Code, for*  
14       *any fiscal year, as indicated in the future-years*  
15       *Department of Energy program submitted pur-*  
16       *suant to subsection (a).*

17                       “(B) *The total amounts of estimated ex-*  
18       *penditures and proposed appropriations nec-*  
19       *essary to support the programs, projects, and ac-*  
20       *tivities of the Department of Energy included*  
21       *pursuant to section 1105(a)(5) of title 31, United*  
22       *States Code, in the budget submitted to Congress*  
23       *under that section for any fiscal year.*

24               “(d) *MANAGEMENT CONTINGENCIES.*—*Subject to sub-*  
25       *section (c), nothing in this section prohibits the inclusion*

1 *in the future-years Department of Energy programs of*  
 2 *amounts for management contingencies.”.*

3 (b) *CONFORMING AMENDMENT.—The table of contents*  
 4 *in the first section of the Department of Energy Organiza-*  
 5 *tion Act (42 U.S.C. 7101) is amended by adding at the*  
 6 *end of the items relating to part C of title VI the following:*  
 “*Sec. 664. Future-Years Department of Energy program.*”.

7 **SEC. 4. OTHER TRANSACTIONS AUTHORITY.**

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

11 “(g) *AUTHORITY TO ENTER INTO OTHER TRANS-*  
 12 *ACTIONS.—*

13 “(1) *IN GENERAL.—In addition to any other au-*  
 14 *thority granted to the Secretary to enter into procure-*  
 15 *ment contracts, leases, cooperative agreements, grants,*  
 16 *and certain arrangements, the Secretary may enter*  
 17 *into other transactions with public agencies, private*  
 18 *organizations, or other persons on such terms as the*  
 19 *Secretary considers appropriate to further functions*  
 20 *vested in the Secretary, including research, develop-*  
 21 *ment, or demonstration projects.*

22 “(2) *ADVANCE PAYMENTS.—Notwithstanding any*  
 23 *other provision of law, the Secretary may exercise au-*  
 24 *thority provided under paragraph (1) without regard*  
 25 *to section 3324 of title 31, United States Code.*

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

4                   “(A) *section 9 of the Federal Nonnuclear*  
5                   *Energy Research and Development Act of 1974*  
6                   *(42 U.S.C. 5908); or*

7                   “(B) *section 152 of the Atomic Energy Act*  
8                   *of 1954 (42 U.S.C. 2182).*

9           “(4) *PROTECTION OF CERTAIN INFORMATION*  
10           *FROM DISCLOSURE.—*

11                   “(A) *IN GENERAL.*—*Notwithstanding any*  
12                   *other provision of law, disclosure of information*  
13                   *described in subparagraph (B) is not required,*  
14                   *and may not be compelled, under section 552 of*  
15                   *title 5, United States Code, during the 5-year pe-*  
16                   *riod beginning on the date on which the infor-*  
17                   *mation is received by the Department.*

18                   “(B) *AWARD INFORMATION.*—*The informa-*  
19                   *tion described in this subparagraph is informa-*  
20                   *tion in the records of the Department that—*

21                           “(i) *was submitted—*

22                                   “(I) *to the Department as part of*  
23                                   *a competitive or noncompetitive proc-*  
24                                   *ess with the potential to result in an*

1                   *award to the person submitting the in-*  
2                   *formation; and*

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

6                   *“(ii) is—*

7                   *“(I) a proposal, proposal abstract,*  
8                   *and supporting documents;*

9                   *“(II) a business plan submitted*  
10                  *on a confidential basis; or*

11                  *“(III) technical information sub-*  
12                  *mitted on a confidential basis.*

13                  *“(5) REQUIREMENTS.—*

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

19                  *“(B) DETERMINATION.—Before entering*  
20                  *into a transaction under paragraph (1), the Sec-*  
21                  *retary shall determine in writing that the use of*  
22                  *a standard contract, grant, or cooperative agree-*  
23                  *ment for the project is not feasible or appro-*  
24                  *priate.*

1           “(C) *COST SHARING.*—*A transaction under*  
2           *paragraph (1) shall be subject to cost sharing in*  
3           *accordance with section 988 of the Energy Policy*  
4           *Act of 2005 (42 U.S.C. 16352).*

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

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

18           “(7) *REPORT.*—

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

1           “(B) *REPORT.*—Not later than 2 years after  
2           the date of enactment of this subparagraph, and  
3           2 years thereafter, the Comptroller General of the  
4           United States shall submit to Congress a report  
5           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 are  
11                   necessary to carry out the authorities.”.

12           **(b) IMPLEMENTATION.**—

13                   (1) *IN GENERAL.*—The final rule of the Depart-  
14                   ment entitled “Assistance Regulations” (71 Fed. Reg.  
15                   27158 (May 9, 2006)) shall be applicable to trans-  
16                   actions under section 646 of the Department of En-  
17                   ergy Organization Act (42 U.S.C. 7256) (as amended  
18                   by subsection (a)).

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

23   **SEC. 5. PROTECTION OF RESULTS.**

24           (a) *IN GENERAL.*—Subject to subsection (b) and not-  
25           withstanding any other provision of law, during a period

1 of not more than 5 years after the development of informa-  
2 tion in any transaction authorized to be entered into by  
3 the Department, the Secretary may provide appropriate  
4 protections against the dissemination of the information,  
5 including exemption from subchapter II of chapter 5 of title  
6 5, United States Code.

7 (b) *APPLICABLE INFORMATION.*—This section applies  
8 to information that—

9 (1) results from a transaction entered into by the  
10 Secretary relating to research, development, dem-  
11 onstration, or commercial application; and

12 (2) is of a character that would be protected from  
13 disclosure under section 552(b)(4) of title 5, United  
14 States Code.

15 **SEC. 6. EMPLOYMENT OF PERSONNEL.**

16 (a) *IN GENERAL.*—Subject to subsections (b) through  
17 (d), the Secretary may appoint, without regard to the pro-  
18 visions of chapter 33 of title 5, United States Code, gov-  
19 erning appointments in the competitive service, exception-  
20 ally well qualified individuals to scientific, engineering, or  
21 other critical technical positions.

22 (b) *LIMITATIONS.*—

23 (1) *NUMBER OF POSITIONS.*—The number of  
24 critical positions authorized by subsection (a) may  
25 not exceed 120 at any 1 time in the Department.

1           (2) *TERM.*—*The term of an appointment under*  
2           *subsection (a) may not exceed 4 years.*

3           (3) *PRIOR EMPLOYMENT.*—*An individual ap-*  
4           *pointed under subsection (a) shall not have been a*  
5           *Department employee during the 2-year period end-*  
6           *ing on the date of appointment.*

7           (4) *PAY.*—

8           (A) *IN GENERAL.*—*The Secretary shall have*  
9           *the authority to fix the basic pay of an indi-*  
10           *vidual appointed under subsection (a) at a rate*  
11           *to be determined by the Secretary up to level I*  
12           *of the Executive Schedule without regard to the*  
13           *civil service laws.*

14           (B) *TOTAL ANNUAL COMPENSATION.*—*The*  
15           *total annual compensation for any individual*  
16           *appointed under subsection (a) may not exceed*  
17           *the highest total annual compensation payable at*  
18           *the rate determined under section 104 of title 3,*  
19           *United States Code.*

20           (5) *ADVERSE ACTIONS.*—*An individual ap-*  
21           *pointed under subsection (a) may not be considered to*  
22           *be an employee for purposes of subchapter II of chap-*  
23           *ter 75 of title 5, United States Code.*

24           (c) *REQUIREMENTS.*—

1           (1) *IN GENERAL.*—*The Secretary shall ensure*  
2     *that—*

3                     (A) *the exercise of the authority granted*  
4                     *under subsection (a) is consistent with the merit*  
5                     *principles of section 2301 of title 5, United*  
6                     *States Code; and*

7                     (B) *the Department notifies diverse profes-*  
8                     *sional associations and institutions of higher*  
9                     *education, including those serving the interests of*  
10                    *women and racial or ethnic minorities that are*  
11                    *underrepresented in scientific, engineering, and*  
12                    *mathematical fields, of position openings as ap-*  
13                    *propriate.*

14           (2) *REPORT.*—*Not later than 2 years after the*  
15     *date of enactment of this Act, the Secretary and the*  
16     *Director of the Office of Personnel Management shall*  
17     *submit to Congress a report on the use of the author-*  
18     *ity provided under this section that includes, at a*  
19     *minimum, a description or analysis of—*

20                    (A) *the ability to attract exceptionally well*  
21                    *qualified scientists, engineers, and technical per-*  
22                    *sonnel;*

23                    (B) *the amount of total compensation paid*  
24                    *each employee hired under the authority each*  
25                    *calendar year; and*

1           (C) *whether additional safeguards or meas-*  
2           *ures are necessary to carry out the authority*  
3           *and, if so, what action, if any, has been taken*  
4           *to implement the safeguards or measures.*

5           (d) *TERMINATION OF EFFECTIVENESS.—The authority*  
6           *provided by this section terminates effective on the date that*  
7           *is 4 years after the date of enactment of this Act.*

8           **SEC. 7. REEMPLOYMENT OF CIVILIAN RETIREES.**

9           (a) *IN GENERAL.—The Secretary may waive the ap-*  
10          *plication of section 8344 or 8468 of title 5, United States*  
11          *Code, on a case-by-case basis, for the employment of an an-*  
12          *nuitant in a position if the employment of the individual*  
13          *is necessary to carry out a critical function of the Depart-*  
14          *ment for which the Department has encountered exceptional*  
15          *difficulty in recruiting or retaining suitably qualified can-*  
16          *didates.*

17          (b) *LIMITATION.—An annuitant employed under the*  
18          *authority granted by subsection (a) shall not be considered*  
19          *an employee for purposes of subchapter III of chapter 83*  
20          *and chapter 84 of title 5, United States Code.*

21          (c) *LIMITATION ON TERM.—The term of employment*  
22          *of any individual hired under subsection (a) may not exceed*  
23          *an initial term of 2 years, with an additional 2-year ap-*  
24          *pointment under exceptional circumstances.*

1           (d) *TERMINATION OF EFFECTIVENESS.*—*The authority*  
2 *provided by this section terminates effective on the date that*  
3 *is 4 years after the date of enactment of this Act.*

4 **SEC. 8. DEFINITION OF NATIONAL LABORATORY.**

5           *Section 2(3) of the Energy Policy Act of 2005 (42*  
6 *U.S.C. 15801(3)) is amended by striking subparagraph (P)*  
7 *and inserting the following:*

8                           “(P) *SLAC National Accelerator Labora-*  
9                           *tory.*”.

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112<sup>TH</sup> CONGRESS  
2D SESSION

**S. 1160**

[Report No. 112-147]

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**A BILL**

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

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FEBRUARY 7, 2012

Reported with an amendment