

113TH CONGRESS  
2D SESSION

# S. 1973

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

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## 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

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## 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 tech-  
 nology 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)”; and

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

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

5 “(B) TERMINATION DATE.—The exemp-  
 6 tion under subparagraph (A) shall apply during  
 7 the 6-year period beginning on the date of en-  
 8 actment of this paragraph.”.

## 9 **TITLE III—ASSESSMENT OF** 10 **IMPACT**

### 11 **SEC. 301. REPORT BY GOVERNMENT ACCOUNTABILITY OF-** 12 **FICE.**

13 Not later than 3 years after the date of enactment  
 14 of this Act, the Comptroller General of the United States  
 15 shall submit to Congress a report describing the results  
 16 of the projects developed under sections 201, 202, and  
 17 203, including information regarding—

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

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

24 (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.

○