

Union Calendar No. 89

114TH CONGRESS
1ST SESSION

H. R. 1158

[Report No. 114–124]

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2015

Mr. HULTGREN (for himself, Mr. PERLMUTTER, Mr. WEBER of Texas, Mr. SWALWELL of California, Mr. SMITH of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. NEWHOUSE, Mr. LIPINSKI, Mr. ROHRABACHER, Mr. FATTAH, Mr. NEUGEBAUER, and Mr. BEN RAY LUJÁN of New Mexico) introduced the following bill; which was referred to the Committee on Science, Space, and Technology

MAY 19, 2015

Additional sponsors: Ms. ESTY and Mr. GIBSON

MAY 19, 2015

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on February 27, 2015]

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 “De-*
 5 *partment of Energy Laboratory Modernization and Tech-*
 6 *nology Transfer Act of 2015”.*

7 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
 8 *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. Technology transfer and transitions assessment.

Sec. 103. Sense of Congress.

Sec. 104. Nuclear energy innovation.

**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. Funding competitiveness for institutions of higher education and other
nonprofit institutions.

Sec. 205. Participation in the Innovation Corps program.

TITLE III—ASSESSMENT OF IMPACT

Sec. 301. Report by Government Accountability Office.

9 **SEC. 2. DEFINITIONS.**

10 *In this Act:*

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

(2) *NATIONAL LABORATORY.*—*The term “National Laboratory” means a Department of Energy nonmilitary national laboratory, including—*

(A) Ames Laboratory;

(B) Argonne National Laboratory;

(C) Brookhaven National Laboratory;

(D) Fermi National Accelerator Laboratory;

(E) Idaho National Laboratory;

(F) Lawrence Berkeley National Laboratory;

(G) National Energy Technology Laboratory;

(H) National Renewable Energy Laboratory;

(I) Oak Ridge National Laboratory;

(J) Pacific Northwest National Laboratory;

(K) Princeton Plasma Physics Laboratory;

(L) Savannah River National Laboratory;

(M) Stanford Linear Accelerator Center;

(N) Thomas Jefferson National Accelerator Facility; and

(O) any laboratory operated by the National Nuclear Security Administration, but only with respect to the civilian energy activities thereof.

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

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

4 *Nothing in this Act or an amendment made by this*
5 *Act abrogates or otherwise affects the primary responsibil-*
6 *ities of any National Laboratory to the Department.*

7 **TITLE I—INNOVATION MANAGE-**
8 **MENT AT DEPARTMENT OF**
9 **ENERGY**

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

11 (a) *IN GENERAL.*—*Section 202(b) of the Department*
12 *of Energy Organization Act (42 U.S.C. 7132(b)) is amend-*
13 *ed—*

14 (1) *by striking “Under Secretary for Science”*
15 *each place it appears and inserting “Under Secretary*
16 *for Science and Energy”; and*

17 (2) *in paragraph (4)—*

18 (A) *in subparagraph (F), by striking “and”*
19 *at the end;*

20 (B) *in subparagraph (G), by striking the*
21 *period at the end and inserting a semicolon; and*

22 (C) *by inserting after subparagraph (G) the*
23 *following:*

1 “(H) establish appropriate linkages between of-
 2 fices under the jurisdiction of the Under Secretary;
 3 and

4 “(I) perform such functions and duties as the
 5 Secretary shall prescribe, consistent with this sec-
 6 tion.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 3164(b)(1) of the Department of En-
 9 ergy Science Education Enhancement Act (42 U.S.C.
 10 7381a(b)(1)) is amended by striking “Under Sec-
 11 retary for Science” and inserting “Under Secretary
 12 for Science and Energy”.

13 (2) Section 641(h)(2) of the United States En-
 14 ergy Storage Competitiveness Act of 2007 (42 U.S.C.
 15 17231(h)(2)) is amended by striking “Under Sec-
 16 retary for Science” and inserting “Under Secretary
 17 for Science and Energy”.

18 **SEC. 102. TECHNOLOGY TRANSFER AND TRANSITIONS AS-**
 19 **SESSMENT.**

20 Not later than 1 year after the date of enactment of
 21 this Act, and annually thereafter, the Secretary shall trans-
 22 mit to the Committee on Science, Space, and Technology
 23 of the House of Representatives and the Committee on En-
 24 ergy and Natural Resources of the Senate a report which
 25 shall include—

1 (1) *an assessment of the Department's current*
2 *ability to carry out the goals of section 1001 of the*
3 *Energy Policy Act of 2005 (42 U.S.C. 16391), includ-*
4 *ing an assessment of the role and effectiveness of the*
5 *Director of the Office of Technology Transitions; and*
6 (2) *recommended departmental policy changes*
7 *and legislative changes to section 1001 of the Energy*
8 *Policy Act of 2005 (42 U.S.C. 16391) to improve the*
9 *Department's ability to successfully transfer new en-*
10 *ergy technologies to the private sector.*

11 **SEC. 103. SENSE OF CONGRESS.**

12 *It is the sense of the Congress that the Secretary should*
13 *encourage the National Laboratories and federally funded*
14 *research and development centers to inform small businesses*
15 *of the opportunities and resources that exist pursuant to*
16 *this Act.*

17 **SEC. 104. NUCLEAR ENERGY INNOVATION.**

18 *Not later than 180 days after the date of enactment*
19 *of this Act, the Secretary, in consultation with the National*
20 *Laboratories, relevant Federal agencies, and other stake-*
21 *holders, shall transmit to the Committee on Science, Space,*
22 *and Technology of the House of Representatives and the*
23 *Committee on Energy and Natural Resources of the Senate*
24 *a report assessing the Department's capabilities to author-*
25 *ize, host, and oversee privately funded fusion and non-light*

1 *water reactor prototypes and related demonstration facili-*
2 *ties at Department-owned sites. For purposes of this report,*
3 *the Secretary shall consider the Department's capabilities*
4 *to facilitate privately-funded prototypes up to 20*
5 *megawatts thermal output. The report shall address the fol-*
6 *lowing:*

7 (1) *The Department's safety review and oversight*
8 *capabilities.*

9 (2) *Potential sites capable of hosting research,*
10 *development, and demonstration of prototype reactors*
11 *and related facilities for the purpose of reducing tech-*
12 *nical risk.*

13 (3) *The Department's and National Labora-*
14 *tories' existing physical and technical capabilities rel-*
15 *evant to research, development, and oversight.*

16 (4) *The efficacy of the Department's available*
17 *contractual mechanisms, including cooperative re-*
18 *search and development agreements, work for others*
19 *agreements, and agreements for commercializing tech-*
20 *nology.*

21 (5) *Potential cost structures related to physical*
22 *security, decommissioning, liability, and other long-*
23 *term project costs.*

24 (6) *Other challenges or considerations identified*
25 *by the Secretary, including issues related to potential*

1 *cases of demonstration reactors up to 2 gigawatts of*
 2 *thermal output.*

3 ***TITLE II—CROSS-SECTOR PART-***
 4 ***NERSHIPS AND GRANT COM-***
 5 ***PETITIVENESS***

6 ***SEC. 201. AGREEMENTS FOR COMMERCIALIZING TECH-***
 7 ***NOLOGY PILOT PROGRAM.***

8 *(a) IN GENERAL.—The Secretary shall carry out the*
 9 *Agreements for Commercializing Technology pilot program*
 10 *of the Department, as announced by the Secretary on De-*
 11 *cember 8, 2011, in accordance with this section.*

12 *(b) TERMS.—Each agreement entered into pursuant to*
 13 *the pilot program referred to in subsection (a) shall provide*
 14 *to the contractor of the applicable National Laboratory, to*
 15 *the maximum extent determined to be appropriate by the*
 16 *Secretary, increased authority to negotiate contract terms,*
 17 *such as intellectual property rights, payment structures,*
 18 *performance guarantees, and multiparty collaborations.*

19 *(c) ELIGIBILITY.—*

20 *(1) IN GENERAL.—Any director of a National*
 21 *Laboratory may enter into an agreement pursuant to*
 22 *the pilot program referred to in subsection (a).*

23 *(2) AGREEMENTS WITH NON-FEDERAL ENTI-*
 24 *TIES.—To carry out paragraph (1) and subject to*
 25 *paragraph (3), the Secretary shall permit the direc-*

1 *tors of the National Laboratories to execute agree-*
2 *ments with a non-Federal entity, including a non-*
3 *Federal entity already receiving Federal funding that*
4 *will be used to support activities under agreements*
5 *executed pursuant to paragraph (1), provided that*
6 *such funding is solely used to carry out the purposes*
7 *of the Federal award.*

8 (3) *RESTRICTION.—The requirements of chapter*
9 *18 of title 35, United States Code (commonly known*
10 *as the “Bayh-Dole Act”) shall apply if—*

11 (A) *the agreement is a funding agreement*
12 *(as that term is defined in section 201 of that*
13 *title); and*

14 (B) *at least 1 of the parties to the funding*
15 *agreement is eligible to receive rights under that*
16 *chapter.*

17 (d) *SUBMISSION TO SECRETARY.—Each affected direc-*
18 *tor of a National Laboratory shall submit to the Secretary,*
19 *with respect to each agreement entered into under this sec-*
20 *tion—*

21 (1) *a summary of information relating to the*
22 *relevant project;*

23 (2) *the total estimated costs of the project;*

24 (3) *estimated commencement and completion*
25 *dates of the project; and*

1 (4) *other documentation determined to be appro-*
2 *priate by the Secretary.*

3 (e) *CERTIFICATION.—The Secretary shall require the*
4 *contractor of the affected National Laboratory to certify*
5 *that each activity carried out under a project for which an*
6 *agreement is entered into under this section—*

7 (1) *is not in direct competition with the private*
8 *sector; and*

9 (2) *does not present, or minimizes, any apparent*
10 *conflict of interest, and avoids or neutralizes any ac-*
11 *tual conflict of interest, as a result of the agreement*
12 *under this section.*

13 (f) *EXTENSION.—The pilot program referred to in sub-*
14 *section (a) shall be extended until October 31, 2017.*

15 (g) *REPORTS.—*

16 (1) *OVERALL ASSESSMENT.—Not later than 60*
17 *days after the date described in subsection (f), the*
18 *Secretary, in coordination with directors of the Na-*
19 *tional Laboratories, shall submit to the Committee on*
20 *Science, Space, and Technology of the House of Rep-*
21 *resentatives and the Committee on Energy and Nat-*
22 *ural Resources of the Senate a report that—*

23 (A) *assesses the overall effectiveness of the*
24 *pilot program referred to in subsection (a);*

1 (B) identifies opportunities to improve the
2 effectiveness of the pilot program;

3 (C) assesses the potential for program ac-
4 tivities to interfere with the responsibilities of the
5 National Laboratories to the Department; and

6 (D) provides a recommendation regarding
7 the future of the pilot program.

8 (2) *TRANSPARENCY.*—The Secretary, in coordi-
9 nation with directors of the National Laboratories,
10 shall submit to the Committee on Science, Space, and
11 Technology of the House of Representatives and the
12 Committee on Energy and Natural Resources of the
13 Senate an annual report that accounts for all
14 incidences of, and provides a justification for, non-
15 Federal entities using funds derived from a Federal
16 contract or award to carry out agreements pursuant
17 to this section.

18 **SEC. 202. PUBLIC-PRIVATE PARTNERSHIPS FOR COMMERCIALIZATION.**
19

20 (a) *IN GENERAL.*—Subject to subsections (b) and (c),
21 the Secretary shall delegate to directors of the National Lab-
22 oratories signature authority with respect to any agreement
23 described in subsection (b) the total cost of which (including
24 the National Laboratory contributions and project recipient
25 cost share) is less than \$1,000,000.

1 (b) *AGREEMENTS.*—*Subsection (a) applies to—*

2 (1) *a cooperative research and development*
3 *agreement;*

4 (2) *a non-Federal work-for-others agreement; and*

5 (3) *any other agreement determined to be appro-*
6 *priate by the Secretary, in collaboration with the di-*
7 *rectors of the National Laboratories.*

8 (c) *ADMINISTRATION.*—

9 (1) *ACCOUNTABILITY.*—*The director of the af-*
10 *ected National Laboratory and the affected contractor*
11 *shall carry out an agreement under this section in ac-*
12 *cordance with applicable policies of the Department,*
13 *including by ensuring that the agreement does not*
14 *compromise any national security, economic, or envi-*
15 *ronmental interest of the United States.*

16 (2) *CERTIFICATION.*—*The director of the affected*
17 *National Laboratory and the affected contractor shall*
18 *certify that each activity carried out under a project*
19 *for which an agreement is entered into under this sec-*
20 *tion does not present, or minimizes, any apparent*
21 *conflict of interest, and avoids or neutralizes any ac-*
22 *tual conflict of interest, as a result of the agreement*
23 *under this section.*

24 (3) *AVAILABILITY OF RECORDS.*—*On entering an*
25 *agreement under this section, the director of a Na-*

1 *tional Laboratory shall submit to the Secretary for*
 2 *monitoring and review all records of the National*
 3 *Laboratory relating to the agreement.*

4 (4) *RATES.*—*The director of a National Labora-*
 5 *tory may charge higher rates for services performed*
 6 *under a partnership agreement entered into pursuant*
 7 *to this section, regardless of the full cost of recovery,*
 8 *if such funds are used exclusively to support further*
 9 *research and development activities at the respective*
 10 *National Laboratory.*

11 (d) *EXCEPTION.*—*This section does not apply to any*
 12 *agreement with a majority foreign-owned company.*

13 (e) *CONFORMING AMENDMENT.*—*Section 12 of the Ste-*
 14 *venson-Wydler Technology Innovation Act of 1980 (15*
 15 *U.S.C. 3710a) is amended—*

16 (1) *in subsection (a)—*

17 (A) *by redesignating paragraphs (1) and*
 18 (2) *as subparagraphs (A) and (B), respectively,*
 19 *and indenting the subparagraphs appropriately;*

20 (B) *by striking “Each Federal agency” and*
 21 *inserting the following:*

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

24 (C) *by adding at the end the following:*

1 “(2) *EXCEPTION.*—*Notwithstanding paragraph*
 2 *(1), in accordance with section 202(a) of the Depart-*
 3 *ment of Energy Laboratory Modernization and Tech-*
 4 *nology Transfer Act of 2015, approval by the Sec-*
 5 *retary of Energy shall not be required for any tech-*
 6 *nology transfer agreement proposed to be entered into*
 7 *by a National Laboratory of the Department of En-*
 8 *ergy, the total cost of which (including the National*
 9 *Laboratory contributions and project recipient cost*
 10 *share) is less than \$1,000,000.”; and*

11 *(2) in subsection (b), by striking “subsection*
 12 *(a)(1)” each place it appears and inserting “sub-*
 13 *section (a)(1)(A)”.*

14 **SEC. 203. INCLUSION OF EARLY-STAGE TECHNOLOGY DEM-**
 15 **ONSTRATION IN AUTHORIZED TECHNOLOGY**
 16 **TRANSFER ACTIVITIES.**

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

19 *(1) redesignating subsection (g) as subsection (h);*
 20 *and*

21 *(2) inserting after subsection (f) the following:*

22 “(g) *EARLY-STAGE TECHNOLOGY DEMONSTRATION.*—
 23 *The Secretary shall permit the directors of the National*
 24 *Laboratories to use funds authorized to support technology*
 25 *transfer within the Department to carry out early-stage and*

1 *pre-commercial technology demonstration activities to re-*
 2 *move technology barriers that limit private sector interest*
 3 *and demonstrate potential commercial applications of any*
 4 *research and technologies arising from National Laboratory*
 5 *activities.”.*

6 **SEC. 204. FUNDING COMPETITIVENESS FOR INSTITUTIONS**
 7 **OF HIGHER EDUCATION AND OTHER NON-**
 8 **PROFIT INSTITUTIONS.**

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

11 *(1) in paragraph (1), by striking “Except as*
 12 *provided in paragraphs (2) and (3)” and inserting*
 13 *“Except as provided in paragraphs (2), (3), and (4)”;*
 14 *and*

15 *(2) by adding at the end the following:*

16 *“(4) EXEMPTION FOR INSTITUTIONS OF HIGHER*
 17 *EDUCATION AND OTHER NONPROFIT INSTITUTIONS.—*

18 *“(A) IN GENERAL.—Paragraph (1) shall*
 19 *not apply to a research or development activity*
 20 *performed by an institution of higher education*
 21 *or nonprofit institution (as defined in section 4*
 22 *of the Stevenson-Wydler Technology Innovation*
 23 *Act of 1980 (15 U.S.C. 3703)).*

24 *“(B) TERMINATION DATE.—The exemption*
 25 *under subparagraph (A) shall apply during the*

1 6-year period beginning on the date of enactment
2 of this paragraph.”.

3 **SEC. 205. PARTICIPATION IN THE INNOVATION CORPS PRO-**
4 **GRAM.**

5 *The Secretary may enter into an agreement with the*
6 *Director of the National Science Foundation to enable re-*
7 *searchers funded by the Department to participate in the*
8 *National Science Foundation Innovation Corps program.*

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 of*
14 *this Act, the Comptroller General of the United States shall*
15 *submit to Congress a report—*

16 *(1) describing the results of the projects developed*
17 *under sections 201, 202, and 203, including informa-*
18 *tion regarding—*

19 *(A) partnerships initiated as a result of*
20 *those projects and the potential linkages pre-*
21 *sented by those partnerships with respect to na-*
22 *tional priorities and other taxpayer-funded re-*
23 *search; and*

24 *(B) whether the activities carried out under*
25 *those projects result in—*

- 1 *(i) fiscal savings;*
2 *(ii) expansion of National Laboratory*
3 *capabilities;*
4 *(iii) increased efficiency of technology*
5 *transfers; or*
6 *(iv) an increase in general efficiency of*
7 *the National Laboratory system; and*
8 *(2) assess the scale, scope, efficacy, and impact*
9 *of the Department's efforts to promote technology*
10 *transfer and private sector engagement at the Na-*
11 *tional Laboratories, and make recommendations on*
12 *how the Department can improve these activities.*

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