

114TH CONGRESS  
1ST SESSION

# S. 1187

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

MAY 4, 2015

Mr. COONS (for himself, Mr. RUBIO, Mr. DURBIN, and Mr. KIRK) 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. Technology transfer and transitions assessment.

TITLE II—CROSS-SECTOR PARTNERSHIPS AND GRANT  
 COMPETITIVENESS

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

TITLE III—ASSESSMENT OF IMPACT

- Sec. 301. Report by Government Accountability Office.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

5 (2) NATIONAL LABORATORY.—

6 (A) IN GENERAL.—The term “National  
 7 Laboratory” means a nonmilitary national lab-  
 8 oratory owned by the Department.

9 (B) INCLUSIONS.—The term “National  
 10 Laboratory” includes—

11 (i) Ames Laboratory;

12 (ii) Argonne National Laboratory;

13 (iii) Brookhaven National Laboratory;

14 (iv) Fermi National Accelerator Lab-  
 15 oratory;

- 1 (v) Idaho National Laboratory;
- 2 (vi) Lawrence Berkeley National Lab-
- 3 oratory;
- 4 (vii) National Energy Technology
- 5 Laboratory;
- 6 (viii) National Renewable Energy
- 7 Laboratory;
- 8 (ix) Oak Ridge National Laboratory;
- 9 (x) Pacific Northwest National Lab-
- 10 oratory;
- 11 (xi) Princeton Plasma Physics Lab-
- 12 oratory;
- 13 (xii) Savannah River National Lab-
- 14 oratory;
- 15 (xiii) Stanford Linear Accelerator
- 16 Center;
- 17 (xiv) Thomas Jefferson National Ac-
- 18 celerator Facility; and
- 19 (xv) any laboratory operated by the
- 20 National Nuclear Security Administration,
- 21 with respect to the civilian energy activities
- 22 conducted at the laboratory.

23 (3) SECRETARY.—The term “Secretary” means

24 the Secretary of Energy.

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

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

5 **TITLE I—INNOVATION MANAGE-**  
6 **MENT AT DEPARTMENT OF**  
7 **ENERGY**

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

9 (a) IN GENERAL.—Section 202(b) of the Department  
10 of Energy Organization Act (42 U.S.C. 7132(b)) is  
11 amended—

12 (1) by striking “Under Secretary for Science”  
13 each place it appears and inserting “Under Sec-  
14 retary for Science and Energy”; and

15 (2) in paragraph (4)—

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

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

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

23 “(H) establish appropriate linkages be-  
24 tween offices under the jurisdiction of the  
25 Under Secretary; and

1           “(I) perform such functions and duties as  
2           the Secretary shall prescribe, consistent with  
3           this section.”.

4           (b) CONFORMING AMENDMENTS.—

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

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

15   **SEC. 102. TECHNOLOGY TRANSFER AND TRANSITIONS AS-**  
16                           **SESSMENT.**

17          Not later than 1 year after the date of enactment  
18          of this Act, and annually thereafter, the Secretary shall  
19          submit to the Committee on Energy and Natural Re-  
20          sources of the Senate and the Committee on Science,  
21          Space, and Technology of the House of Representatives  
22          a report that includes—

23                (1) an assessment of the ability of the Depart-  
24                ment to carry out the goals of section 1001 of the  
25                Energy Policy Act of 2005 (42 U.S.C. 16391), in-

1 including an assessment of the role and effectiveness  
2 of the Director of the Office of Technology Transi-  
3 tions; and

4 (2) recommendations for policy changes for the  
5 Department and legislative changes to section 1001  
6 of the Energy Policy Act of 2005 (42 U.S.C. 16391)  
7 to improve the ability of the Department to success-  
8 fully transfer new energy technologies to the private  
9 sector.

10 **TITLE II—CROSS-SECTOR PART-**  
11 **NEERSHIPS AND GRANT COM-**  
12 **PETITIVENESS**

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

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

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

1 demnification, payment structures, performance guaran-  
2 tees, and multiparty collaborations.

3 (c) ELIGIBILITY.—

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

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

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

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

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

1 (d) SUBMISSION TO SECRETARY.—Each affected di-  
2 rector of a National Laboratory shall submit to the Sec-  
3 retary, with respect to each agreement entered into under  
4 this section—

5 (1) a summary of information relating to the  
6 relevant project;

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

8 (3) estimated commencement and completion  
9 dates of the project; and

10 (4) other documentation determined to be ap-  
11 propriate by the Secretary.

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

16 (1) is not in direct competition with the private  
17 sector; and

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

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

25 (g) REPORTS.—

1           (1) INITIAL REPORT.—Not later than 60 days  
2 after the date described in subsection (f), the Sec-  
3 retary, in coordination with directors of the National  
4 Laboratories, shall submit to the Committee on En-  
5 ergy and Natural Resources of the Senate and the  
6 Committee on Science, Space, and Technology of the  
7 House of Representatives a report that—

8           (A) assesses the overall effectiveness of the  
9 pilot program referred to in subsection (a);

10           (B) identifies opportunities to improve the  
11 effectiveness of the pilot program;

12           (C) assesses the potential for program ac-  
13 tivities to interfere with the responsibilities of  
14 the National Laboratories to the Department;  
15 and

16           (D) provides a recommendation regarding  
17 the future of the pilot program.

18           (2) ANNUAL REPORTS.—Annually, the Sec-  
19 retary, in coordination with the directors of the Na-  
20 tional Laboratories, shall submit to the Committee  
21 on Energy and Natural Resources of the Senate and  
22 the Committee on Science, Space, and Technology of  
23 the House of Representatives a report that accounts  
24 for all incidences of, and provides a justification for,  
25 non-Federal entities using funds derived from a

1 Federal contract or award to carry out agreements  
2 entered into under this section.

3 **SEC. 202. PUBLIC-PRIVATE PARTNERSHIPS FOR COMMER-**  
4 **CIALIZATION.**

5 (a) IN GENERAL.—Subject to subsections (b)  
6 through (d), the Secretary shall delegate to directors of  
7 the National Laboratories signature authority with respect  
8 to any agreement described in subsection (b) the total cost  
9 of which (including the National Laboratory contributions  
10 and project recipient cost share) is less than \$1,000,000.

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

12 (1) a cooperative research and development  
13 agreement;

14 (2) a non-Federal work-for-others agreement;  
15 and

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

19 (c) LIMITATION.—Subsection (a) does not apply to  
20 an agreement with a majority-foreign-owned company.

21 (d) ADMINISTRATION.—

22 (1) ACCOUNTABILITY.—The director of the af-  
23 fected National Laboratory and the affected con-  
24 tractor shall carry out an agreement under this sec-  
25 tion in accordance with applicable policies of the De-

1       partment, including by ensuring that the agreement  
2       does not compromise any national security, eco-  
3       nomic, or environmental interest of the United  
4       States.

5           (2) CERTIFICATION.—The director of the af-  
6       fected National Laboratory and the affected con-  
7       tractor shall certify that each activity carried out  
8       under a project for which an agreement is entered  
9       into under this section does not present, or mini-  
10      mizes, any apparent conflict of interest, and avoids  
11      or neutralizes any actual conflict of interest, as a re-  
12      sult of the agreement under this section.

13          (3) AVAILABILITY OF RECORDS.—On entering  
14      an agreement under this section, the director of a  
15      National Laboratory shall submit to the Secretary  
16      for monitoring and review all records of the National  
17      Laboratory relating to the agreement.

18          (4) RATES.—The director of a National Lab-  
19      oratory may charge higher rates for services per-  
20      formed under a partnership agreement entered into  
21      pursuant to this section, regardless of the full cost  
22      of recovery, if the funds are exclusively used to sup-  
23      port further research and development activities at  
24      the applicable National Laboratory.

1 (e) CONFORMING AMENDMENT.—Section 12 of the  
2 Stevenson-Wydler Technology Innovation Act of 1980 (15  
3 U.S.C. 3710a) is amended—

4 (1) in subsection (a)—

5 (A) by redesignating paragraphs (1) and  
6 (2) as subparagraphs (A) and (B), respectively,  
7 and indenting the subparagraphs appropriately;

8 (B) by striking “Each Federal agency”  
9 and inserting the following:

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

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

13 “(2) EXCEPTION.—Notwithstanding paragraph  
14 (1), in accordance with section 202(a) of the Amer-  
15 ica INNOVATES Act, approval by the Secretary of  
16 Energy shall not be required for any technology  
17 transfer agreement proposed to be entered into by a  
18 National Laboratory of the Department of Energy,  
19 the total cost of which (including the National Lab-  
20 oratory contributions and project recipient cost  
21 share) is less than \$1,000,000.”; and

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

1 **SEC. 203. INCLUSION OF EARLY-STAGE TECHNOLOGY DEM-**  
2 **ONSTRATION IN AUTHORIZED TECHNOLOGY**  
3 **TRANSFER ACTIVITIES.**

4 Section 1001 of the Energy Policy Act of 2005 (42  
5 U.S.C. 16391) is amended—

6 (1) by redesignating subsection (g) as sub-  
7 section (h); and

8 (2) by inserting after subsection (f) the fol-  
9 lowing:

10 “(g) EARLY-STAGE TECHNOLOGY DEMONSTRA-  
11 TION.—The Secretary shall permit the directors of the Na-  
12 tional Laboratories to use funds authorized to support  
13 technology transfer within the Department to carry out  
14 early-stage and precommercial technology demonstration  
15 activities to remove technology barriers that limit private  
16 sector interest and demonstrate potential commercial ap-  
17 plications of any research and technologies arising from  
18 National Laboratory activities.”.

19 **SEC. 204. INFORMATION AND RESOURCES FOR STARTUPS**  
20 **AND SMALL BUSINESSES.**

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

23 “(tt) INFORMATION.—In carrying out the SBIR and  
24 STTR programs of the Department of Energy, the Sec-  
25 retary of Energy shall provide to small business concerns  
26 seeking funding under the programs information con-

cerning resources that are available to small business concerns at National Laboratories and federally funded research and development centers.”.

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

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

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

(2) by adding at the end the following:

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

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

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

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

3 **TITLE III—ASSESSMENT OF**  
4 **IMPACT**

5 **SEC. 301. REPORT BY GOVERNMENT ACCOUNTABILITY OF-**  
6 **FICE.**

7 Not later than 3 years after the date of enactment  
8 of this Act, the Comptroller General of the United States  
9 shall submit to Congress a report—

10 (1) describing the results of the projects devel-  
11 oped under sections 201, 202, and 203, including in-  
12 formation regarding—

13 (A) partnerships initiated as a result of  
14 those projects and the potential linkages pre-  
15 sented by those partnerships with respect to na-  
16 tional priorities and other taxpayer-funded re-  
17 search; and

18 (B) whether the activities carried out  
19 under those projects result in—

20 (i) fiscal savings;

21 (ii) expansion of National Laboratory  
22 capabilities;

23 (iii) increased efficiency of technology  
24 transfers; or

- 1                   (iv) an increase in general efficiency  
2                   of the National Laboratory system;  
3               (2) assessing the scale, scope, efficacy, and im-  
4               pact of the efforts of the Department to promote  
5               technology transfer and private sector engagement  
6               at the National Laboratories; and  
7               (3) making recommendations on ways in which  
8               the Department could improve the activities de-  
9               scribed under paragraph (1).

○