

Suspend the Rules and Pass the Bill, H.R. 5120, with an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

113TH CONGRESS
2^D SESSION

H. R. 5120

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

Text

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2014

Mr. HULTGREN (for himself, Mr. KILMER, Mr. SMITH of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. LUMMIS, Mr. SWALWELL of California, Mr. NUNNELEE, and Mr. FATTAH) introduced the following bill; which was referred to the Committee on Science, Space, and Technology

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 “Department of Energy Laboratory Modernization and
6 Technology Transfer Act of 2014”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 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 assessment.
- Sec. 103. Sense of Congress.

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. 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.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) DEPARTMENT.—The term “Department”
6 means the Department of Energy.

7 (2) NATIONAL LABORATORIES.—The term “Na-
8 tional Laboratory” means a Department of Energy
9 nonmilitary national laboratory, including—

- 10 (A) Ames Laboratory;
- 11 (B) Argonne National Laboratory;
- 12 (C) Brookhaven National Laboratory;
- 13 (D) Fermi National Accelerator Labora-
14 tory;

- 1 (E) Idaho National Laboratory;
- 2 (F) Lawrence Berkeley National Labora-
- 3 tory;
- 4 (G) National Energy Technology Labora-
- 5 tory;
- 6 (H) National Renewable Energy Labora-
- 7 tory;
- 8 (I) Oak Ridge National Laboratory;
- 9 (J) Pacific Northwest National Labora-
- 10 tory;
- 11 (K) Princeton Plasma Physics Laboratory;
- 12 (L) Savannah River National Laboratory;
- 13 (M) Stanford Linear Accelerator Center;
- 14 (N) Thomas Jefferson National Accel-
- 15 erator Facility; and
- 16 (O) any laboratory operated by the Na-
- 17 tional Nuclear Security Administration, but
- 18 only with respect to the civilian energy activities
- 19 thereof.
- 20 (3) SECRETARY.—The term “Secretary” means
- 21 the Secretary of Energy.

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

23 Nothing in this Act or an amendment made by this

24 Act abrogates or otherwise affects the primary responsibil-

25 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. TECHNOLOGY TRANSFER ASSESSMENT.**

12 Not later than 180 days after the date of enactment
13 of this Act, the Secretary shall transmit to the Committee
14 on Science, Space, and Technology of the House of Rep-
15 resentatives and the Committee on Energy and Natural
16 Resources of the Senate a report which shall include—

17 (1) an assessment of the Department’s current
18 ability to carry out the goals of section 1001 of the
19 Energy Policy Act of 2005 (42 U.S.C. 16391), in-
20 cluding an assessment of the role and effectiveness
21 of the Technology Transfer Coordinator position;
22 and

23 (2) recommended departmental policy changes
24 and legislative changes to section 1001 of the En-
25 ergy Policy Act of 2005 (42 U.S.C. 16391) to im-

1 prove the Department's ability to successfully trans-
2 fer new energy technologies to the private sector.

3 **SEC. 103. SENSE OF CONGRESS.**

4 It is the sense of the Congress that—

5 (1) the establishment of the independent Com-
6 mission to Review the Effectiveness of the National
7 Energy Laboratories under section 319 of title III of
8 division D of the Consolidated Appropriations Act,
9 2014, is an important step towards developing a co-
10 ordinated strategy for the National Laboratories in
11 the 21st century;

12 (2) Congress looks forward to—

13 (A) receiving the findings and conclusions
14 of the Commission; and

15 (B) engaging with the Administration—

16 (i) in strengthening the mission of the
17 National Laboratories; and

18 (ii) to reform and modernize the oper-
19 ations and management of the National
20 Laboratories; and

21 (3) the Secretary should encourage the National
22 Laboratories and federally funded research and de-
23 velopment centers to inform small businesses of the
24 opportunities and resources that exist pursuant to
25 this Act.

1 **TITLE II—CROSS-SECTOR PART-**
2 **NERSHIPS AND GRANT COM-**
3 **PETITIVENESS**

4 **SEC. 201. AGREEMENTS FOR COMMERCIALIZING TECH-**
5 **NOLOGY PILOT PROGRAM.**

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

10 (b) TERMS.—Each agreement entered into pursuant
11 to the pilot program referred to in subsection (a) shall
12 provide to the contractor of the applicable National Lab-
13 oratory, to the maximum extent determined to be appro-
14 priate by the Secretary, increased authority to negotiate
15 contract terms, such as intellectual property rights, pay-
16 ment structures, performance guarantees, and multiparty
17 collaborations.

18 (c) ELIGIBILITY.—

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

22 (2) AGREEMENTS WITH NON-FEDERAL ENTI-
23 TIES.—To carry out paragraph (1) and subject to
24 paragraph (3), the Secretary shall permit the direc-
25 tors of the National Laboratories to execute agree-

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

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

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

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

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

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

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

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

1 (4) other documentation determined to be ap-
2 propriate 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
6 an 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 appar-
10 ent conflict of interest, and avoids or neutralizes any
11 actual conflict of interest, as a result of the agree-
12 ment under this section.

13 (f) EXTENSION.—The pilot program referred to in
14 subsection (a) shall be extended for a term of 2 years after
15 the date of enactment of this Act.

16 (g) REPORTS.—

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

24 (A) assesses the overall effectiveness of the
25 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
5 the National Laboratories to the Department;
6 and

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

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

19 **SEC. 202. PUBLIC-PRIVATE PARTNERSHIPS FOR COMMER-**
20 **CIALIZATION.**

21 (a) **IN GENERAL.**—Subject to subsections (b) and (c),
22 the Secretary shall delegate to directors of the National
23 Laboratories signature authority with respect to any
24 agreement described in subsection (b) the total cost of

1 which (including the National Laboratory contributions
2 and project recipient cost share) is less than \$1,000,000.

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

4 (1) a cooperative research and development
5 agreement;

6 (2) a non-Federal work-for-others agreement;

7 and

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

11 (c) ADMINISTRATION.—

12 (1) ACCOUNTABILITY.—The director of the af-
13 fected National Laboratory and the affected con-
14 tractor shall carry out an agreement under this sec-
15 tion in accordance with applicable policies of the De-
16 partment, including by ensuring that the agreement
17 does not compromise any national security, eco-
18 nomic, or environmental interest of the United
19 States.

20 (2) CERTIFICATION.—The director of the af-
21 fected National Laboratory and the affected con-
22 tractor shall certify that each activity carried out
23 under a project for which an agreement is entered
24 into under this section does not present, or mini-
25 mizes, any apparent conflict of interest, and avoids

1 or neutralizes any actual conflict of interest, as a re-
2 sult of the agreement under this section.

3 (3) AVAILABILITY OF RECORDS.—On entering
4 an agreement under this section, the director of a
5 National Laboratory shall submit to the Secretary
6 for monitoring and review all records of the National
7 Laboratory relating to the agreement.

8 (4) RATES.—The director of a National Lab-
9 oratory may charge higher rates for services per-
10 formed under a partnership agreement entered into
11 pursuant to this section, regardless of the full cost
12 of recovery, if such funds are used exclusively to
13 support further research and development activities
14 at the respective National Laboratory.

15 (d) CONFORMING AMENDMENT.—Section 12 of the
16 Stevenson-Wydler Technology Innovation Act of 1980 (15
17 U.S.C. 3710a) is amended—

18 (1) in subsection (a)—

19 (A) by redesignating paragraphs (1) and
20 (2) as subparagraphs (A) and (B), respectively,
21 and indenting the subparagraphs appropriately;

22 (B) by striking “Each Federal agency”
23 and inserting the following:

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

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

2 “(2) EXCEPTION.—Notwithstanding paragraph
3 (1), in accordance with section 202(a) of the Depart-
4 ment of Energy Laboratory Modernization and
5 Technology Transfer Act of 2014, approval by the
6 Secretary of Energy shall not be required for any
7 technology transfer agreement proposed to be en-
8 tered into by a National Laboratory of the Depart-
9 ment of Energy, the total cost of which (including
10 the National Laboratory contributions and project
11 recipient cost share) is less than \$1,000,000.”; and
12 (2) in subsection (b), by striking “subsection
13 (a)(1)” each place it appears and inserting “sub-
14 section (a)(1)(A)”.

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

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

20 (1) redesignating subsection (g) as subsection
21 (h); and

22 (2) inserting after subsection (f) the following:

23 “(g) EARLY-STAGE TECHNOLOGY DEMONSTRA-
24 TION.—The Secretary shall permit the directors of the Na-
25 tional Laboratories to use funds authorized to support

1 technology transfer within the Department to carry out
2 early-stage and pre-commercial technology demonstration
3 activities to remove technology barriers that limit private
4 sector interest and demonstrate potential commercial ap-
5 plications of any research and technologies arising from
6 National Laboratory activities.”.

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

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

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

16 (2) by adding at the end the following:

17 “(4) EXEMPTION FOR INSTITUTIONS OF HIGH-
18 ER EDUCATION AND OTHER NONPROFIT INSTITU-
19 TIONS.—

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

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

5 **SEC. 205. PARTICIPATION IN THE INNOVATION CORPS PRO-**
6 **GRAM.**

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

11 **TITLE III—ASSESSMENT OF**
12 **IMPACT**

13 **SEC. 301. REPORT BY GOVERNMENT ACCOUNTABILITY OF-**
14 **FICE.**

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

18 (1) describing the results of the projects devel-
19 oped under sections 201, 202, and 203, including in-
20 formation regarding—

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

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