

Suspend the Rules and Pass the Bill, H.R. 1158, With An Amendment

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

114TH CONGRESS
1ST SESSION

H. R. 1158

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

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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Department of Energy Laboratory Modernization and
4 Technology Transfer Act of 2015”.

5 (b) TABLE OF CONTENTS.—The table of contents of
6 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. Technology transfer and transitions assessment.
- Sec. 102. Sense of Congress.
- Sec. 103. 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 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.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) DEPARTMENT.—The term “Department”
10 means the Department of Energy.

11 (2) NATIONAL LABORATORY.—The term “Na-
12 tional Laboratory” means a Department of Energy
13 nonmilitary national laboratory, including—

14 (A) Ames Laboratory;

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

10 Not later than 1 year after the date of enactment
11 of this Act, and annually thereafter, the Secretary shall
12 transmit to the Committee on Science, Space, and Tech-
13 nology of the House of Representatives and the Committee
14 on Energy and Natural Resources of the Senate a report
15 which shall include—

16 (1) an assessment of the Department's current
17 ability to carry out the goals of section 1001 of the
18 Energy Policy Act of 2005 (42 U.S.C. 16391), in-
19 cluding an assessment of the role and effectiveness
20 of the Director of the Office of Technology Transi-
21 tions; and

22 (2) recommended departmental policy changes
23 and legislative changes to section 1001 of the En-
24 ergy Policy Act of 2005 (42 U.S.C. 16391) to im-
25 prove the Department's ability to successfully trans-
26 fer new energy technologies to the private sector.

1 **SEC. 102. SENSE OF CONGRESS.**

2 It is the sense of the Congress that the Secretary
3 should encourage the National Laboratories and federally
4 funded research and development centers to inform small
5 businesses of the opportunities and resources that exist
6 pursuant to this Act.

7 **SEC. 103. NUCLEAR ENERGY INNOVATION.**

8 Not later than 180 days after the date of enactment
9 of this Act, the Secretary, in consultation with the Na-
10 tional Laboratories, relevant Federal agencies, and other
11 stakeholders, shall transmit to the Committee on Science,
12 Space, and Technology of the House of Representatives
13 and the Committee on Energy and Natural Resources of
14 the Senate a report assessing the Department's capabili-
15 ties to authorize, host, and oversee privately funded fusion
16 and non-light water reactor prototypes and related dem-
17 onstration facilities at Department-owned sites. For pur-
18 poses of this report, the Secretary shall consider the De-
19 partment's capabilities to facilitate privately-funded proto-
20 types up to 20 megawatts thermal output. The report shall
21 address the following:

22 (1) The Department's safety review and over-
23 sight capabilities.

24 (2) Potential sites capable of hosting research,
25 development, and demonstration of prototype reac-

1 tors and related facilities for the purpose of reducing
2 technical risk.

3 (3) The Department's and National Labora-
4 tories' existing physical and technical capabilities
5 relevant to research, development, and oversight.

6 (4) The efficacy of the Department's available
7 contractual mechanisms, including cooperative re-
8 search and development agreements, work for others
9 agreements, and agreements for commercializing
10 technology.

11 (5) Potential cost structures related to physical
12 security, decommissioning, liability, and other long-
13 term project costs.

14 (6) Other challenges or considerations identified
15 by the Secretary, including issues related to poten-
16 tial cases of demonstration reactors up to 2
17 gigawatts of thermal output.

18 **TITLE II—CROSS-SECTOR PART-**
19 **NEERSHIPS AND GRANT COM-**
20 **PETITIVENESS**

21 **SEC. 201. AGREEMENTS FOR COMMERCIALIZING TECH-**
22 **NOLOGY PILOT PROGRAM.**

23 (a) IN GENERAL.—The Secretary shall carry out the
24 Agreements for Commercializing Technology pilot pro-

1 gram of the Department, as announced by the Secretary
2 on December 8, 2011, in accordance with this section.

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

11 (c) ELIGIBILITY.—

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

15 (2) AGREEMENTS WITH NON-FEDERAL ENTI-
16 TIES.—To carry out paragraph (1) and subject to
17 paragraph (3), the Secretary shall permit the direc-
18 tors of the National Laboratories to execute agree-
19 ments with a non-Federal entity, including a non-
20 Federal entity already receiving Federal funding
21 that will be used to support activities under agree-
22 ments executed pursuant to paragraph (1), provided
23 that such funding is solely used to carry out the
24 purposes of the Federal award.

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

4 (A) the agreement is a funding agreement
5 (as that term is defined in section 201 of that
6 title); and

7 (B) at least 1 of the parties to the funding
8 agreement is eligible to receive rights under
9 that chapter.

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

14 (1) a summary of information relating to the
15 relevant project;

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

17 (3) estimated commencement and completion
18 dates of the project; and

19 (4) other documentation determined to be ap-
20 propriate by the Secretary.

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

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

3 (2) does not present, or minimizes, any appar-
4 ent conflict of interest, and avoids or neutralizes any
5 actual conflict of interest, as a result of the agree-
6 ment under this section.

7 (f) EXTENSION.—The pilot program referred to in
8 subsection (a) shall be extended until October 31, 2017.

9 (g) REPORTS.—

10 (1) OVERALL ASSESSMENT.—Not later than 60
11 days after the date described in subsection (f), the
12 Secretary, in coordination with directors of the Na-
13 tional Laboratories, shall submit to the Committee
14 on Science, Space, and Technology of the House of
15 Representatives and the Committee on Energy and
16 Natural Resources of the Senate a report that—

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

19 (B) identifies opportunities to improve the
20 effectiveness of the pilot program;

21 (C) assesses the potential for program ac-
22 tivities to interfere with the responsibilities of
23 the National Laboratories to the Department;
24 and

1 (D) provides a recommendation regarding
2 the future of the pilot program.

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

13 **SEC. 202. PUBLIC-PRIVATE PARTNERSHIPS FOR COMMER-**
14 **IALIZATION.**

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 if such an agreement falls within the scope of—

22 (1) a strategic plan for the National Laboratory
23 that has been approved by the Department; or

1 (2) the most recent Congressionally approved
2 budget for Department activities to be carried out by
3 the National Laboratory.

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

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

7 (2) a non-Federal work-for-others agreement;
8 and

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

12 (c) ADMINISTRATION.—

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

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

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

4 (3) AVAILABILITY OF RECORDS.—Within 30
5 days of entering an agreement under this section,
6 the director of a National Laboratory shall submit
7 to the Secretary for monitoring and review all
8 records of the National Laboratory relating to the
9 agreement.

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

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

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

22 (1) in subsection (a)—

23 (A) by redesignating paragraphs (1) and
24 (2) as subparagraphs (A) and (B), respectively,
25 and indenting the subparagraphs appropriately;

1 (B) by striking “Each Federal agency”
2 and inserting the following:

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

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

6 “(2) EXCEPTION.—Notwithstanding paragraph
7 (1), in accordance with section 202(a) of the Depart-
8 ment of Energy Laboratory Modernization and
9 Technology Transfer Act of 2015, approval by the
10 Secretary of Energy shall not be required for any
11 technology transfer agreement proposed to be en-
12 tered into by a National Laboratory of the Depart-
13 ment of Energy, the total cost of which (including
14 the National Laboratory contributions and project
15 recipient cost share) is less than \$1,000,000.”; and
16 (2) in subsection (b), by striking “subsection
17 (a)(1)” each place it appears and inserting “sub-
18 section (a)(1)(A)”.

19 **SEC. 203. INCLUSION OF EARLY-STAGE TECHNOLOGY DEM-**
20 **ONSTRATION IN AUTHORIZED TECHNOLOGY**
21 **TRANSFER ACTIVITIES.**

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

24 (1) redesignating subsection (g) as subsection
25 (h); and

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

2 “(g) EARLY-STAGE TECHNOLOGY DEMONSTRA-
3 TION.—The Secretary shall permit the directors of the Na-
4 tional Laboratories to use funds authorized to support
5 technology transfer within the Department to carry out
6 early-stage and pre-commercial technology demonstration
7 activities to remove technology barriers that limit private
8 sector interest and demonstrate potential commercial ap-
9 plications of any research and technologies arising from
10 National Laboratory activities.”.

11 **SEC. 204. FUNDING COMPETITIVENESS FOR INSTITUTIONS**
12 **OF HIGHER EDUCATION AND OTHER NON-**
13 **PROFIT INSTITUTIONS.**

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

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

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

21 “(4) EXEMPTION FOR INSTITUTIONS OF HIGH-
22 ER EDUCATION AND OTHER NONPROFIT INSTITU-
23 TIONS.—

24 “(A) IN GENERAL.—Paragraph (1) shall
25 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 **SEC. 205. PARTICIPATION IN THE INNOVATION CORPS PRO-**
10 **GRAM.**

11 The Secretary may enter into an agreement with the
12 Director of the National Science Foundation to enable re-
13 searchers funded by the Department to participate in the
14 National Science Foundation Innovation Corps program.

15 **TITLE III—ASSESSMENT OF**
16 **IMPACT**

17 **SEC. 301. REPORT BY GOVERNMENT ACCOUNTABILITY OF-**
18 **FICE.**

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

22 (1) describing the results of the projects devel-
23 oped under sections 201, 202, and 203, including in-
24 formation regarding—

1 (A) partnerships initiated as a result of
2 those projects and the potential linkages pre-
3 sented by those partnerships with respect to na-
4 tional priorities and other taxpayer-funded re-
5 search; and

6 (B) whether the activities carried out
7 under those projects result in—

8 (i) fiscal savings;

9 (ii) expansion of National Laboratory
10 capabilities;

11 (iii) increased efficiency of technology
12 transfers; or

13 (iv) an increase in general efficiency
14 of the National Laboratory system; and

15 (2) assess the scale, scope, efficacy, and impact
16 of the Department's efforts to promote technology
17 transfer and private sector engagement at the Na-
18 tional Laboratories, and make recommendations on
19 how the Department can improve these activities.