

Suspend the Rules and Pass the Bill, H.R. 5049, with an Amendment

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

114TH CONGRESS
2^D SESSION

H. R. 5049

To provide for improved management and oversight of major multi-user research facilities funded by the National Science Foundation, to ensure transparency and accountability of construction and management costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2016

Mr. LOUDERMILK (for himself and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on Science, Space, and Technology

A BILL

To provide for improved management and oversight of major multi-user research facilities funded by the National Science Foundation, to ensure transparency and accountability of construction and management costs, 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.**

2 This Act may be cited as the “NSF Major Research
3 Facility Reform Act of 2016”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **DIRECTOR.**—The term “Director” means
7 the Director of the Foundation.

8 (2) **FOUNDATION.**—The term “Foundation”
9 means the National Science Foundation established
10 under section 2 of the National Science Foundation
11 Act of 1950 (42 U.S.C. 1861).

12 (3) **MAJOR MULTI-USER RESEARCH FACILITY.**—
13 The term “major multi-user research facility” means
14 a science and engineering infrastructure construction
15 project that exceeds the lesser of 10 percent of a Di-
16 rectorate’s annual budget or \$100,000,000 in total
17 project cost that is funded in the major research
18 equipment and facilities construction account, or any
19 successor thereto.

20 **SEC. 3. MANAGEMENT AND OVERSIGHT OF LARGE FACILI-**
21 **TIES.**

22 (a) **LARGE FACILITIES OFFICE.**—The Director shall
23 maintain a Large Facilities Office. The functions of the
24 Large Facilities Office shall be to support the research
25 directorates in the development, implementation, and as-

1 assessment of major multi-user research facilities, including
2 by—

3 (1) serving as the Foundation's primary re-
4 source for all policy or process issues related to the
5 development and implementation of major multi-user
6 research facilities;

7 (2) serving as a Foundation-wide resource on
8 project management, including providing expert as-
9 sistance on nonscientific and nontechnical aspects of
10 project planning, budgeting, implementation, man-
11 agement, and oversight;

12 (3) coordinating and collaborating with research
13 directorates to share best management practices and
14 lessons learned from prior projects; and

15 (4) assessing projects during preconstruction
16 and construction phases for cost and schedule risk.

17 (b) OVERSIGHT OF LARGE FACILITIES.—The Direc-
18 tor shall appoint a senior agency official as head of the
19 Large Facilities Office whose responsibility is oversight of
20 the development, construction, and transfer to operations
21 of major multi-user research facilities across the Founda-
22 tion.

23 (c) POLICIES FOR LARGE FACILITY COSTS.—

24 (1) IN GENERAL.—The Director shall ensure
25 that the Foundation's polices for developing and

1 maintaining major multi-user research facility con-
2 struction costs are consistent with the best practices
3 described in the March 2009 Government Account-
4 ability Office Report GAO-09-3SP, or any successor
5 report thereto, the Uniform Guidance in 2 C.F.R.
6 part 200, and the Federal Acquisition Regulation as
7 appropriate.

8 (2) COST PROPOSAL ANALYSIS.—

9 (A) GENERAL REQUIREMENT.—The Direc-
10 tor shall ensure that an external cost proposal
11 analysis is conducted for any major multi-user
12 research facility.

13 (B) RESOLUTION OF ISSUES FOUND.—The
14 Director, or a senior agency official within the
15 Office of the Director designated by the Direc-
16 tor, shall certify in writing that all issues identi-
17 fied during the cost analysis, including any
18 findings of unjustified or questionable cost
19 items, are resolved before the Foundation may
20 execute a construction agreement with respect
21 to the project.

22 (C) TRANSMITTAL TO CONGRESS.—The
23 Director shall transmit each certification made
24 under subparagraph (B) to the Committee on
25 Science, Space, and Technology of the House of

1 Representatives, the Committee on Commerce,
2 Science, and Transportation of the Senate, the
3 Committee on Appropriations of the House of
4 Representatives, and the Committee on Appro-
5 priations of the Senate.

6 (3) INCURRED COST AUDITS.—The Director
7 shall ensure that an incurred cost audit is conducted
8 at least biennially on any major multi-user research
9 facility, in accordance with Government Auditing
10 Standards as established in Government Account-
11 ability Office Report GAO-12-331G, or any suc-
12 cessor report thereto, with the first incurred cost
13 audit to commence no later than 12 months after
14 execution of the construction agreement.

15 (4) CONTINGENCIES.—

16 (A) IN GENERAL.—Except as provided for
17 in subparagraph (C)(ii), the Foundation shall—

18 (i) provide oversight for contingency
19 in accordance with Cost Principles Uni-
20 form Guidance in 2 C.F.R. part 200.433,
21 or any successor thereto, and the Federal
22 Acquisition Regulation as appropriate, ex-
23 cept as provided in this paragraph; and

24 (ii) not make any award which pro-
25 vides for contributions to a contingency re-

1 serve held or managed by the awardee, as
2 defined in 2 C.F.R. part 200.433(c).

3 (B) UPDATING POLICY MANUAL.—The
4 Foundation shall update its Large Facilities
5 Manual and any other applicable guidance for
6 contingencies on major multi-user research fa-
7 cilities with regard to estimating, monitoring,
8 and accounting for contingency.

9 (C) FOUNDATION REQUIREMENTS.—The
10 policy updated under subparagraph (B) shall
11 require that the Foundation—

12 (i) may only include contingency
13 amounts in an award in accordance with
14 Cost Principles Uniform Guidance in 2
15 C.F.R. part 200.433, or any successor
16 thereto, and the Federal Acquisition Regu-
17 lation as appropriate; and

18 (ii) shall retain control over funds
19 budgeted for contingency, but may dis-
20 burse budgeted contingency funds incre-
21 mentally to the awardee to ensure project
22 stability and continuity.

23 (D) AWARDEE REQUIREMENTS.—The pol-
24 icy updated under subparagraph (B) shall re-
25 quire that an awardee shall—

1 (i) provide verifiable documentation to
2 support any amounts proposed for contin-
3 gencies; and

4 (ii) support requests for the release of
5 contingency funds with evidence of a bona
6 fide need and that the amounts allocated
7 to the performance baseline are reasonable
8 and allowable.

9 (E) CURRENT AWARDEES.—The Founda-
10 tion shall work with awardees for whom awards
11 with contingency provisions have been made be-
12 fore the date of enactment of this Act—

13 (i) to determine if any of their use of
14 contingency funds represents out-of-scope
15 changes for which Foundation’s prior writ-
16 ten approval was not obtained; and

17 (ii) if out-of-scope changes are found,
18 to identify any financial action that may be
19 appropriate.

20 (5) MANAGEMENT FEES.—

21 (A) DEFINITION.—In this paragraph, the
22 term “management fee” means a portion of an
23 award made by the Foundation for the purpose
24 of covering ordinary and legitimate business ex-
25 penses necessary to maintain operational sta-

1 bility which are not otherwise allowable under
2 Cost Principles Uniform Guidance in 2 C.F.R.
3 part 200, Subpart E, or any successor regula-
4 tion thereto.

5 (B) LIMITATION.—The Foundation may
6 provide a management fee under an award only
7 if the awardee provides justification as to the
8 need for such funds. In such cases, the Founda-
9 tion shall take into account the awardee's over-
10 all financial circumstances when determining
11 the amount of the fee if justified.

12 (C) FINANCIAL INFORMATION.—The
13 Foundation shall require award applicants to
14 provide income and financial information cov-
15 ering a period of no less than 3 prior years (or
16 in the case of an entity established less than 3
17 years prior to the entity's application date, the
18 period beginning on the date of establishment
19 and ending on the application date), including
20 cash on hand and net asset information, in sup-
21 port of a request for management fees. The
22 Foundation shall also require awardees to re-
23 port to the Foundation annually any sources of
24 non-Federal funds received in excess of \$50,000
25 during the award period.

1 (D) EXPENSE REPORTING.—The Founda-
2 tion shall require awardees to track and report
3 to the Foundation annually all expenses reim-
4 bursed or otherwise paid for with management
5 fee funds, in accordance with Federal account-
6 ing practices as established in Government Ac-
7 countability Office Report GAO–12–331G, or
8 any successor report thereto.

9 (E) AUDITS.—The Inspector General of
10 the Foundation may audit any Foundation
11 award for compliance with this paragraph.

12 (F) PROHIBITED USES.—An awardee may
13 not use management fees for—

14 (i) costs allowable under Cost Prin-
15 ciples Uniform Guidance in 2 C.F.R. part
16 200, Subpart E, or any successor regula-
17 tion thereto;

18 (ii) alcoholic beverages;

19 (iii) tickets to concerts, sporting, or
20 other entertainment events;

21 (iv) vacation or other travel for non-
22 business purposes;

23 (v) charitable contributions, except for
24 a charitable contribution of direct benefit

1 to the project or activity supported by the
2 management fee;

3 (vi) social or sporting club member-
4 ships;

5 (vii) meals or entertainment for non-
6 business purposes;

7 (viii) luxury or personal items;

8 (ix) lobbying, as described in the Uni-
9 form Guidance at 2 C.F.R. 200.450; or

10 (x) any other purpose the Foundation
11 determines is inappropriate.

12 (G) REVIEW.—The Foundation shall re-
13 view management fee usage for each Founda-
14 tion award on at least an annual basis for com-
15 pliance with this paragraph and the Founda-
16 tion's Large Facilities Manual.

17 (6) REPORT.—Not later than 12 months after
18 the date of enactment of this Act, the Director shall
19 submit to Congress a report describing the Founda-
20 tion's policies for developing and managing major
21 multi-user research facility construction costs, in-
22 cluding a description of any aspects of the policies
23 that diverge from the best practices recommended in
24 Government Accountability Office Report GAO-09-

1 3SP, or any successor report thereto, and the Uni-
2 form Guidance in 2 C.F.R. part 200.

3 (7) NONCOMPLIANCE.—The Director shall en-
4 sure that the Foundation shall take the enforcement
5 actions specified in 45 C.F.R. 92.43 for noncompli-
6 ance with this section.

7 **SEC. 4. WHISTLEBLOWER EDUCATION.**

8 (a) IN GENERAL.—The Foundation shall be subject
9 to section 4712 of title 41, United States Code.

10 (b) EDUCATION AND TRAINING.—The Foundation
11 shall provide education and training for Foundation man-
12 agers and staff on the requirements of such section 4712,
13 and provide information on such section to all awardees,
14 contractors, and employees of such awardees and contrac-
15 tors.