

106TH CONGRESS
1ST SESSION

S. 1756

To enhance the ability of the National Laboratories to meet Department of Energy missions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 1999

Mr. BINGAMAN (for himself and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To enhance the ability of the National Laboratories to meet Department of Energy missions, 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.**

4 This Act may be cited as the “National Laboratories
5 Partnership Improvement Act of 1999.”

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) The National Laboratories play a crucial
9 role in the Department of Energy’s ability to achieve

1 its missions in national security, science, energy, and
2 environment.

3 (2) The National Laboratories must be on the
4 leading edge of advances in science and technology
5 to help the Department to achieve its missions.

6 (3) The private sector is now performing a
7 much larger share of the Nation's research and de-
8 velopment activities, and is on the leading edge of
9 many technologies that could be adapted to meet de-
10 partmental missions.

11 (4) To be able to help the Department to
12 achieve its missions in the most cost effective man-
13 ner, the National Laboratories must take advantage,
14 to the greatest extent practicable, of the scientific
15 and technological expertise that exists in the private
16 sector, as well as at leading universities, through
17 joint research and development projects, personnel
18 exchanges, and other arrangements.

19 (5) The Department needs to strengthen the re-
20 gional technology infrastructure of firms, research
21 and academic institutions, non-profit and govern-
22 mental organizations, and work force around its Na-
23 tional Laboratories to maintain the long-term vital-
24 ity of the laboratories and ensure their continued ac-

1 cess to the widest range of high quality research,
2 technology and personnel.

3 **SEC. 3. DEFINITIONS.**

4 For purposes of this Act, except for sections 8 and
5 9—

6 (1) the term “Department” means the Depart-
7 ment of Energy;

8 (2) the term “departmental mission” means
9 any of the functions vested in the Secretary of En-
10 ergy by the Department of Energy Organization Act
11 (42 U.S.C. 7101 et seq.) or other law;

12 (3) the term “institution of higher education”
13 has the meaning given such term in section 1201(a)
14 of the Higher Education Act of 1965 (20 U.S.C.
15 1141(a));

16 (4) the term “multiprogram National Labora-
17 tory” means any of the following institutions owned
18 by the Department of Energy—

19 (A) Argonne National Laboratory;

20 (B) Brookhaven National Laboratory;

21 (C) Idaho National Engineering and Envi-
22 ronmental Laboratory;

23 (D) Lawrence Berkeley National Labora-
24 tory;

1 (E) Lawrence Livermore National Labora-
2 tory;

3 (F) Los Alamos National Laboratory;

4 (G) Oak Ridge National Laboratory;

5 (H) Pacific Northwest National Labora-
6 tory;

7 (I) Sandia National Laboratory;

8 (5) the term “National Laboratory or facility”
9 means any of the multiprogram National Labora-
10 tories or any of the following institutions owned by
11 the Department of Energy—

12 (A) Ames Laboratory;

13 (B) East Tennessee Technology Park;

14 (C) Environmental Measurement Labora-
15 tory;

16 (D) Federal Energy Technology Center;

17 (E) Fermi National Accelerator Labora-
18 tory;

19 (F) National Renewable Energy Labora-
20 tory;

21 (G) Nevada Test Site;

22 (H) Princeton Plasma Physics Laboratory;

23 (I) Savannah River Technology Center;

24 (J) Stanford Linear Accelerator Center;

1 (K) Thomas Jefferson National Accel-
2 erator Facility;

3 (L) Waste Isolation Pilot Plant; or

4 (M) other similar organization of the De-
5 partment designated by the Secretary that en-
6 gages in technology transfer activities;

7 (6) the term “nonprofit institution” has the
8 meaning given such term in section 4 of the Steven-
9 son-Wylder Technology Innovation Act of 1980 (15
10 U.S.C. 3703(5));

11 (7) the term “Secretary” means the Secretary
12 of Energy;

13 (8) the term “small business concern” has the
14 meaning given such term in section 3 of the Small
15 Business Act (15 U.S.C. 632);

16 (9) the term “technology-related business con-
17 cern” means a for-profit corporation, company, asso-
18 ciation, firm, partnership, or small business concern
19 that—

20 (A) conducts scientific or engineering re-
21 search,

22 (B) develops new technologies,

23 (C) manufactures products based on new
24 technologies, or

25 (D) performs technological services; and

1 (10) the term “technology cluster” means a ge-
2 ographic concentration of—

3 (A) technology-related business concerns;

4 (B) institutions of higher education; or

5 (C) other nonprofit institutions;

6 that reinforce each other’s performance through for-
7 mal or informal relationships.

8 **SEC. 4. REGIONAL TECHNOLOGY INFRASTRUCTURE PRO-**
9 **GRAM.**

10 (a) **ESTABLISHMENT.**—The Secretary shall establish
11 a Regional Technology Infrastructure Program in accord-
12 ance with this section.

13 (b) **PURPOSE.**—The purpose of the program shall be
14 to improve the ability of National Laboratories or facilities
15 to support departmental missions by—

16 (1) stimulating the development of technology
17 clusters in the vicinity of National Laboratories or
18 facilities;

19 (2) improving the ability of National Labora-
20 tories or facilities to leverage commercial research,
21 technology, products, processes, and services; and

22 (3) encouraging the exchange of scientific and
23 technological expertise between National Labora-
24 tories or facilities and—

25 (A) institutions of higher education,

1 (B) technology-related business concerns,
2 (C) nonprofit institutions, and
3 (D) agencies of State, tribal, or local
4 governments—
5 that are located in the vicinity of a National Labora-
6 tory or facility.

7 (c) PROGRAM PHASES.—The Secretary shall conduct
8 the Regional Technology Infrastructure Program in two
9 phases as follows:

10 (1) PILOT PHASE.—No later than six months
11 after the date of enactment of this Act, the Sec-
12 retary shall provide \$1,000,000 to each of the multi-
13 program National Laboratories to conduct Regional
14 Technology Infrastructure Program pilots.

15 (2) FULL IMPLEMENTATION.—Not later than
16 eighteen months after the date of enactment of this
17 Act, the Secretary shall expand or alter the Regional
18 Technology Infrastructure Program to include
19 whichever National Laboratories or facilities the
20 Secretary determines to be appropriate based upon
21 the experience of the program to date and the extent
22 to which the pilot projects under paragraph (1) met
23 the requirements of subsections (e) and (f).

24 (d) PROJECTS.—The Secretary shall authorize the di-
25 rector of each National Laboratory or facility designated

1 under subsection (c) to implement the Regional Tech-
2 nology Infrastructure Program at such National Labora-
3 tory or facility through projects that meet the require-
4 ments of subsections (e) and (f).

5 (e) PROGRAM REQUIREMENTS.—Each project funded
6 under this program shall meet the following requirements:

7 (1) MINIMUM PARTICIPANTS.—Each project
8 shall at a minimum include—

9 (A) a National Laboratory or facility;

10 (B) a business located within the vicinity
11 of the participating National Laboratory or fa-
12 cility; and

13 (C) one or more of the following entities
14 that is located within the vicinity of the partici-
15 pating National Laboratory or facility—

16 (i) an institution of higher education,

17 (ii) a nonprofit institution,

18 (iii) an agency of a State, local, or
19 tribal government, or

20 (iv) an additional business.

21 (2) COST SHARING.—

22 (A) MINIMUM AMOUNT.—Not less than 50
23 percent of the costs of each project funded
24 under this section shall be provided from non-
25 Federal sources.

1 (B) QUALIFIED FUNDING AND RE-
2 SOURCES.—

3 (i) The calculation of costs paid by
4 the non-Federal sources to a project shall
5 include cash, personnel, services, equip-
6 ment, and other resources expended on the
7 project.

8 (ii) Independent research and develop-
9 ment expenses of Government contractors
10 that qualify for reimbursement under sec-
11 tion 31–205–18(e) of the Federal Acquisi-
12 tion Regulations issued pursuant to section
13 25(c)(1) of the Office of Federal Procure-
14 ment Policy Act (41 U.S.C. 421(c)(1))
15 may be credited towards costs paid by non-
16 Federal sources to a project, if the ex-
17 penses meet the other requirements of this
18 section.

19 (iii) No funds or other resources ex-
20 pended either before the start of a project
21 under this program or outside the project’s
22 scope of work shall be credited toward the
23 costs paid by the non-Federal sources to
24 the project.

1 (3) COMPETITIVE SELECTION.—All projects
2 where a party other than the Department or a Na-
3 tional Laboratory or facility receives funding under
4 this program shall be competitively selected using
5 procedures determined to be appropriate by the Sec-
6 retary.

7 (4) ACCOUNTING STANDARDS.—Any partici-
8 pants receiving funding under this program, other
9 than a National Laboratory or facility, may use gen-
10 erally accepted accounting principles for maintaining
11 accounts, books, and records relating to the project.

12 (5) LIMITATIONS.—No Federal funds shall be
13 made available under this program for—

14 (A) construction; or

15 (B) any project for more than five years.

16 (f) CRITERIA.—

17 (1) MANDATORY CRITERIA.—The Secretary
18 shall not authorize the provision of Federal funds
19 for a project under this section unless there is a de-
20 termination by the Director of the National Labora-
21 tory or facility managing the project that the project
22 is likely—

23 (A) to succeed, based on its technical
24 merit, team members, management approach,
25 resources, and project plan; and

1 (B) to improve the participating National
2 Laboratory or facility's ability to achieve tech-
3 nical success in meeting departmental missions,
4 promote the commercial development of techno-
5 logical innovations made at such Laboratory or
6 facility, and use commercial innovations to
7 achieve its missions.

8 (2) ADDITIONAL CRITERIA.—The Secretary
9 shall also require the consideration of the following
10 factors by the Director of the National Laboratory
11 or facility managing projects under this section in
12 providing Federal funds to projects under this
13 section—

14 (A) the potential of the project to promote
15 the development of a commercially sustainable
16 technology cluster, one that will derive most of
17 the demand for its products or services from
18 the private sector, in the vicinity of the partici-
19 pating National Laboratory or facility;

20 (B) the commitment shown by non-Federal
21 organizations to the project, based primarily on
22 the nature and amount of the financial and
23 other resources they will risk on the project;

24 (C) the extent to which the project involves
25 a wide variety and number of institutions of

1 higher education, nonprofit institutions, and
2 technology-related business concerns located in
3 the vicinity of the participating National Lab-
4 oratory or facility that will make substantive
5 contributions to achieving the goals of the
6 project;

7 (D) the extent of participation in the
8 project by agencies of State, tribal, or local gov-
9 ernments that will make substantive contribu-
10 tions to achieving the goals of the project;

11 (E) the extent to which the project focuses
12 on promoting the development of technology-re-
13 lated business concerns that are small business
14 concerns located in the vicinity of the National
15 Laboratory or facility or involves such small
16 business concerns substantively in the project.

17 (3) SAVINGS CLAUSE.—Nothing in this sub-
18 section shall limit the Secretary from requiring the
19 consideration of other factors, as appropriate, in de-
20 termining whether to fund projects under this sec-
21 tion.

22 **SEC. 5. SMALL BUSINESS ADVOCACY AND ASSISTANCE.**

23 (a) ADVOCACY FUNCTION.—The Secretary shall di-
24 rect the Director of each multiprogram National Labora-
25 tory, and may direct the Director of each other National

1 Laboratory or facility the Secretary determines to be ap-
2 propriate, to establish a small business advocacy function
3 that is organizationally independent of the procurement
4 function at the National Laboratory or facility. The mis-
5 sion of the small business advocacy function shall be to
6 increase the participation of small business concerns, par-
7 ticularly those small business concerns located near the
8 laboratory and small business concerns that are owned by
9 women or minorities, in procurements and collaborative
10 research conducted by the National Laboratory or facility.
11 The person or office vested with the small business advo-
12 cacy function shall—

13 (1) report to the Director of the National Lab-
14 oratory or facility on the actual participation of
15 small business concerns in procurements and col-
16 laborative research along with recommendations, if
17 appropriate, on how to improve participation;

18 (2) make available to small business concerns
19 training, mentoring, and clear, up-to-date informa-
20 tion on how to participate in the procurements and
21 collaborative research, including how to submit effec-
22 tive proposals;

23 (3) increase the awareness inside the National
24 Laboratory or facility of the capabilities and oppor-
25 tunities presented by small business concerns; and

1 (4) establish guidelines for the program under
2 subsection (b) and report on the effectiveness of
3 such program to the Director of the National Lab-
4 oratory or facility.

5 (b) **ESTABLISHMENT OF SMALL BUSINESS ASSIST-**
6 **ANCE PROGRAM.**—The Secretary shall direct the Director
7 of each multiprogram National Laboratory, and may di-
8 rect the Director of each other National Laboratory or fa-
9 cility the Secretary determines to be appropriate, to estab-
10 lish a program to provide small business concerns—

11 (1) assistance directed at making them more ef-
12 fective and efficient subcontractors or suppliers to
13 the National Laboratory or facility; or

14 (2) general technical assistance to improve the
15 small business concern's products or services.

16 (c) **USE OF FUNDS.**—None of the funds expended on
17 a program under subsection (b) may be used for direct
18 grants to the small business concerns.

19 **SEC. 6. TECHNOLOGY PARTNERSHIPS OMBUDSMAN.**

20 (a) **APPOINTMENT OF OMBUDSMAN.**—The Secretary
21 shall direct the Director of each multiprogram National
22 Laboratory, and may direct the Director of each other Na-
23 tional Laboratory or facility the Secretary determines to
24 be appropriate, to appoint a technology partnership om-
25 budsman to hear and help resolve complaints from outside

1 organizations regarding each laboratory's policies and ac-
2 tions with respect to technology partnerships (including
3 cooperative research and development agreements), pat-
4 ents, and technology licensing. Each ombudsman shall—

5 (1) be a senior official of the National Labora-
6 tory or facility who is not involved in day-to-day
7 technology partnerships, patents, or technology li-
8 censing; and

9 (2) report to the Director of the National Lab-
10 oratory or facility.

11 (b) DUTIES.—Each ombudsman shall—

12 (1) serve as the focal point for assisting the
13 public and industry in resolving complaints and dis-
14 putes with the laboratory regarding technology part-
15 nerships, patents, and technology licensing;

16 (2) promote the use of collaborative alternative
17 dispute resolution techniques such as mediation to
18 facilitate the speedy and low-cost resolution of com-
19 plaints and disputes, when appropriate; and

20 (3) report, through the Director of the National
21 Laboratory or facility, to the Department annually
22 on the number and nature of complaints and dis-
23 putes raised, along with the ombudsman's assess-
24 ment of their resolution, consistent with the protec-
25 tion of confidential and sensitive information.

1 **SEC. 7. MOBILITY OF TECHNICAL PERSONNEL.**

2 (a) GENERAL POLICY.—Not later than two years
3 after the enactment of this Act, the Secretary shall ensure
4 that each contractor operating a National Laboratory or
5 facility has policies and procedures, including an employee
6 benefits program, that do not create disincentives to the
7 transfer of scientific and technical personnel among the
8 contractor-operated National Laboratory or facilities.

9 (b) EXTENSION.—The Secretary may delay imple-
10 mentation of the policy in subsection (a) if the Secretary—

11 (1) determines that the implementation of the
12 policy within two years would be unnecessarily ex-
13 pensive or disruptive to the operations of the con-
14 tractor-operated National Laboratory or facilities;
15 and

16 (2) recommends to Congress alternative meas-
17 ures to increase the mobility of technical personnel
18 among the contractor-operated National Laboratory
19 or facilities.

20 (c) STUDY OF WIDER MOBILITY.—Not later than
21 two years after the enactment of this Act, the Secretary
22 shall recommend to Congress legislation to reduce any
23 undue disincentives to scientific and technical personnel
24 employed by a contractor-operated National Laboratory or
25 facility taking a job with an institution of higher edu-
26 cation, nonprofit institution, or technology-related busi-

1 ness concern that is located in the vicinity of the National
2 Laboratory or facility.

3 **SEC. 8. OTHER TRANSACTIONS AUTHORITY.**

4 Section 646 of the Department of Energy Organiza-
5 tion Act (42 U.S.C. 7256) is amended by adding at the
6 end the following new subsection:

7 “(g)(1) In addition to other authorities granted to the
8 Secretary to enter into procurement contracts, leases, co-
9 operative agreements, grants, and other similar arrange-
10 ments, the Secretary may enter into other transactions
11 with public agencies, private organizations, or persons on
12 such terms as the Secretary may deem appropriate in fur-
13 therance of functions now or hereafter vested in the Sec-
14 retary, including research, development, or demonstration
15 projects. Such other transactions shall not be subject to
16 the provisions of section 9 of the Federal Nonnuclear En-
17 ergy Research and Development Act of 1974 (42 U.S.C.
18 5908).

19 “(2)(A) The Secretary shall not disclose any trade
20 secret or commercial or financial information submitted
21 by a non-Federal entity under paragraph (1) that is privi-
22 leged and confidential.

23 “(B) The Secretary shall not disclose, for five years
24 after the date the information is received, any other infor-
25 mation submitted by a non-Federal entity under para-

1 graph (1), including any proposal, proposal abstract, docu-
2 ment supporting a proposal, business plan, or technical
3 information that is privileged and confidential.

4 “(C) The Secretary may protect from disclosure, for
5 up to five years, any information developed pursuant to
6 a transaction under paragraph (1) that would be protected
7 from disclosure under section 552(b)(4) of title 5, United
8 States Code, if obtained from a person other than a Fed-
9 eral agency.”.

10 **SEC. 9. AMENDMENTS TO THE STEVENSON-WYDLER ACT.**

11 (a) STRATEGIC PLANS.—Section 12(a) of the Steven-
12 son-Wydler Technology Innovation Act of 1980 (15 U.S.C.
13 3710a(a)) is amended by inserting after “joint work state-
14 ment” the following: “or, if permitted by the agency, in
15 an agency-approved annual strategic plan.”.

16 (b) FEDERAL WAIVERS.—Subsection 12(b) of the
17 Stevenson-Wydler Technology Innovation Act of 1980 (15
18 U.S.C. 3710a(b)) is amended by adding at the end the
19 following:

20 “(6) The director of a government-operated lab-
21 oratory (in the case of a Government operated lab-
22 oratory) or a designated official of the agency (in
23 the case of a contractor-operated laboratory) may
24 waive any license retained by the Government under
25 paragraphs (1)(A), 2, or 3(D) in whole or in part

1 and according to negotiated terms and conditions if
2 the director or designated official, as appropriate,
3 finds that the requirement for the license would sub-
4 stantially inhibit the commercialization of an inven-
5 tion that would otherwise serve an important Fed-
6 eral mission.”.

7 (c) TIME REQUIRED FOR APPROVAL.—Section
8 12(c)(5) of the Stevenson-Wydler Technology Innovation
9 Act of 1980 (15 U.S.C. 3710a(c)(5)) is amended—

10 (1) by striking subparagraph (C);

11 (2) by redesignating subparagraph (D) as sub-
12 paragraph (C);

13 (3) by striking “with a small business firm”
14 and inserting “if” after “statement” in subpara-
15 graph (C)(i) (as redesignated); and

16 (4) by adding after subparagraph (C)(iii) (as
17 redesignated) the following:

18 “(iv) Any agency that has contracted
19 with a non-Federal entity to operate a lab-
20 oratory may develop and provide to such
21 laboratory one or more model cooperative
22 research and development agreements, for
23 the purposes of standardizing practices
24 and procedures, resolving common legal
25 issues, and enabling review of cooperative

1 research and development agreements to
2 be carried out in a routine and prompt
3 manner.

4 “(v) A federal agency may waive the
5 requirements of clause (i) or (ii) under
6 such circumstances as the agency deems
7 appropriate. However, the agency may not
8 take longer than 30 days to review and ap-
9 prove, request modifications to, or dis-
10 approve any proposed agreement or joint
11 work statement that it elects to receive.”.

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