

PUBLIC LAW 101-189 [H.R. 2461]; November 29, 1989

NATIONAL DEFENSE AUTHORIZATION ACT FOR
FISCAL YEARS 1990 AND 1991

For Legislative History of Act, see p. 838.

An Act to authorize appropriations for fiscal years 1990 and 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

National
Defense
Authorization
Act for Fiscal
Years 1990
and 1991.
Arms and
munitions.
Uniformed
services.
Contracts.

SECTION 1. SHORT TITLE

This Act may be cited as the "National Defense Authorization Act for Fiscal Years 1990 and 1991".

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS

(a) ORGANIZATION OF ACT INTO DIVISIONS.—This Act is organized into three divisions as follows:

- (1) Division A—Department of Defense Authorizations.
- (2) Division B—Military Construction Authorizations.
- (3) Division C—Department of Energy National Security Authorizations and Other Authorizations.

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY
AUTHORIZATIONS AND OTHER AUTHORIZATIONS

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

PART A—NATIONAL SECURITY PROGRAMS AUTHORIZATIONS

- Sec. 3101. Operating expenses.
Sec. 3102. Plant and capital equipment.
Sec. 3103. Funding limitations.

PART B—RECURRING GENERAL PROVISIONS

- Sec. 3121. Reprogramming.
Sec. 3122. Limits on general plant projects.
Sec. 3123. Limits on construction projects.
Sec. 3124. Fund transfer authority.
Sec. 3125. Authority for construction design.
Sec. 3126. Authority for emergency construction design.
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Sec. 3128. Availability of funds.

PART C—TECHNOLOGY TRANSFER

- Sec. 3131. Short title.
Sec. 3132. Findings and purposes.
Sec. 3133. Authority to enter into cooperative research and development agreements.

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PART D—ENVIRONMENT, SAFETY, AND MANAGEMENT

- Sec. 3141. Defense waste cleanup technology program.
Sec. 3142. Executive management training in the Department of Energy.
Sec. 3143. Major Department of Energy national security programs.
Sec. 3144. Five-year budget plan requirement.

PART E—MISCELLANEOUS PROVISIONS

- Sec. 3151. Prohibition and report on bonuses to contractors operating defense nuclear facilities.
Sec. 3152. Preference for Rocky Flats workers.
Sec. 3153. Authorization and funding for Rocky Flats agreement.
Sec. 3154. Moratorium on incineration of radioactive waste at Los Alamos National Laboratory.
Sec. 3155. Production of the 155-millimeter artillery-fired, atomic projectile.
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PART C—TECHNOLOGY TRANSFER

SEC. 3131. SHORT TITLE

This part may be cited as the "National Competitiveness Technology Transfer Act of 1989".

SEC. 3132. FINDINGS AND PURPOSES

(a) FINDINGS.—Congress finds that—

(1) technology advancement is a key component in the growth of the United States industrial economy, and a strong industrial base is an essential element of the security of this country;

(2) there is a need to enhance United States competitiveness in both domestic and international markets;

(3) innovation and the rapid application of commercially valuable technology are assuming a more significant role in near-term marketplace success;

(4) the Federal laboratories and other facilities have outstanding capabilities in a variety of advanced technologies and skilled scientists, engineers, and technicians who could contribute substantially to the posture of United States industry in international competition;

(5) improved opportunities for cooperative research and development agreements between contractor-managers of certain Federal laboratories and the private sector in the United States,

consistent with the program missions at those facilities, particularly the national security functions involved in atomic energy defense activities, would contribute to our national well-being; and

(6) more effective cooperation between those laboratories and the private sector in the United States is required to provide speed and certainty in the technology transfer process.

(b) **PURPOSES.**—The purposes of this part are to—

(1) enhance United States national security by promoting technology transfer between Government-owned, contractor-operated laboratories and the private sector in the United States; and

(2) enhance collaboration between universities, the private sector, and Government-owned, contractor-operated laboratories in order to foster the development of technologies in areas of significant economic potential.

SEC. 3133. AUTHORITY TO ENTER INTO COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS

(a) **TECHNOLOGY TRANSFER ACTIVITIES.**—Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) is amended—

(1) in subsection (a)—

(A) by inserting “, and, to the extent provided in an agency-approved joint work statement, the director of any of its Government-owned, contractor-operated laboratories” after “Government-operated Federal laboratories”;

(B) by striking “for Government-owned” and inserting in lieu thereof “(in the case of a Government-owned, contractor-operated laboratory, subject to subsection (c) of this section) for” in paragraph (2); and

(C) by striking “of Federal employees” in paragraph (2);

(2) in subsection (b)—

(A) by inserting “, and, to the extent provided in an agency-approved joint work statement, a Government-owned, contractor-operated laboratory,” after “Government-operated Federal laboratory”;

(B) by striking “a Federal” in paragraph (2) and inserting in lieu thereof “a laboratory”; and

(C) by inserting after paragraph (5) the following:

“A Government-owned, contractor-operated laboratory that enters into a cooperative research and development agreement under subsection (a)(1) may use or obligate royalties or other income accruing to such laboratory under such agreement with respect to any invention only (i) for payments to inventors; (ii) for the purposes described in section 14(a)(1)(B) (i), (ii), and (iv); and (iii) for scientific research and development consistent with the research and development mission and objectives of the laboratory.”;

(3) in subsection (c)(3)(A), by striking “employee standards of conduct” and inserting in lieu thereof “standards of conduct for its employees”;

(4) in subsection (c)(5)(A), by inserting “presented by the director of a Government-operated laboratory” after “any such agreement”;

(5) in subsection (c)(5)(B), by inserting “by the director of a Government-operated laboratory” after “an agreement presented”;

(6) in subsection (c)(5), by adding at the end the following new subparagraph:

"(CXi) Any agency which has contracted with a non-Federal entity to operate a laboratory shall review and approve, request specific modifications to, or disapprove a joint work statement that is submitted by the director of such laboratory within 90 days after such submission. In any case where an agency has requested specific modifications to a joint work statement, the agency shall approve or disapprove any resubmission of such joint work statement within 30 days after such resubmission, or 90 days after the original submission, whichever occurs later. No agreement may be entered into by a Government-owned, contractor-operated laboratory under this section before both approval of the agreement under clause (iv) and approval under this clause of a joint work statement.

"(ii) In any case in which an agency which has contracted with a non-Federal entity to operate a laboratory disapproves or requests the modification of a joint work statement submitted under this section, the agency shall promptly transmit a written explanation of such disapproval or modification to the director of the laboratory concerned.

"(iii) Any agency which has contracted with a non-Federal entity to operate a laboratory or laboratories shall develop and provide to such laboratory or laboratories one or more model cooperative research and development agreements, for the purposes of standardizing practices and procedures, resolving common legal issues, and enabling review of cooperative research and development agreements to be carried out in a routine and prompt manner.

"(iv) An agency which has contracted with a non-Federal entity to operate a laboratory shall review each agreement under this section. Within 30 days after the presentation, by the director of the laboratory, of such agreement, the agency shall, on the basis of such review, approve or request specific modification to such agreement. Such agreement shall not take effect before approval under this clause.

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"(v) If an agency fails to complete a review under clause (iv) within the 30-day period specified therein, the agency shall submit to the Congress, within 10 days after the end of that 30-day period, a report on the reasons for such failure. The agency shall, at the end of each successive 30-day period thereafter during which such failure continues, submit to the Congress another report on the reasons for the continuing failure. Nothing in this clause relieves the agency of the requirement to complete a review under clause (iv).

"(vi) In any case in which an agency which has contracted with a non-Federal entity to operate a laboratory requests the modification of an agreement presented under this section, the agency shall promptly transmit a written explanation of such modification to the director of the laboratory concerned."

(7) in subsection (c), by adding at the end the following new paragraph:

Classified
information.

"(7)(A) No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, United States Code, which is obtained in the conduct of research or as a result of activities under this Act from a non-Federal party participating in a cooperative research and development agreement shall be disclosed.

"(B) The director, or in the case of a contractor-operated laboratory, the agency, for a period of up to 5 years after development of

information that results from research and development activities conducted under this Act and that would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a non-Federal party participating in a cooperative research and development agreement, may provide appropriate protections against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5, United States Code."; and

(8) in subsection (d)—

(A) by striking "and" at the end of paragraph (1);

(B) by amending paragraph (2) to read as follows:

"(2) the term 'laboratory' means—

"(A) a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government;

"(B) a group of Government-owned, contractor-operated facilities under a common contract, when a substantial purpose of the contract is the performance of research and development for the Federal Government; and

"(C) a Government-owned, contractor-operated facility that is not under a common contract described in subparagraph (B), and the primary purpose of which is the performance of research and development for the Federal Government,

but such term does not include any facility covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program; and"; and

(C) by adding at the end the following new paragraph:

~~"(3) the term 'joint work statement' means a proposal prepared for a Federal agency by the director of a Government-owned, contractor-operated laboratory describing the purpose and scope of a proposed cooperative research and development agreement, and assigning rights and responsibilities among the agency, the laboratory, and any other party or parties to the proposed agreement."~~

(b) **PRINCIPLES.**—Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) is amended by adding at the end the following new subsection:

"(g) **PRINCIPLES.**—In implementing this section, each agency which has contracted with a non-Federal entity to operate a laboratory shall be guided by the following principles:

"(1) The implementation shall advance program missions at the laboratory, including any national security mission.

"(2) Classified information and unclassified sensitive information protected by law, regulation, or Executive order shall be appropriately safeguarded."

(c) **TECHNICAL AMENDMENTS.**—Section 14 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c) is amended—

(1) in subsection (a)(1), by inserting "by Government-operated Federal laboratories" after "entered into"; and by striking "11" and inserting in lieu thereof "12";

(2) in subsection (a)(1)(B)(ii), by inserting ", including payments to inventors and developers of sensitive or classified technology, regardless of whether the technology has commercial applications" after "that laboratory"; and

15 USC 3710a
note.

(3) in subsection (a)(1)(B)(iv), by striking "Government-operated".

(d) **CONTRACT PROVISIONS.**—(1) Not later than 150 days after the date of enactment of this Act, each agency which has contracted with a non-Federal entity to operate a Government-owned laboratory shall propose for inclusion in that laboratory's operating contract, to the extent not already included, appropriate contract provisions that—

(A) establish technology transfer, including cooperative research and development agreements, as a mission for the laboratory under section 11(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980;

(B) describe the respective obligations and responsibilities of the agency and the laboratory with respect to this part and section 12 of the Stevenson-Wydler Technology Innovation Act of 1980;

(C) require that, except as provided in paragraph (2), no employee of the laboratory shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a cooperative research and development agreement if, to such employee's knowledge—

(i) such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the laboratory) in which such employee serves as an officer, director, trustee, partner, or employee—

(I) holds a financial interest in any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement; or

(II) receives a gift or gratuity from any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement; or

(ii) a financial interest in any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment;

(D) require that each employee of the laboratory who negotiates or approves a cooperative research and development agreement shall certify to the agency that the circumstances described in subparagraph (C)(i) and (ii) do not apply to such employee;

(E) require the laboratory to widely disseminate information on opportunities to participate with the laboratory in technology transfer, including cooperative research and development agreements; and

(F) provides for an accounting of all royalty or other income received under cooperative research and development agreements.

(2) The requirements described in paragraph (1)(C) and (D) shall not apply in a case where the negotiating or approving employee advises the agency that reviewed the applicable joint work statement under section 12(c)(5)(C)(i) of the Stevenson-Wydler Technology Innovation Act of 1980 in advance of the matter in which he is to participate and the nature of any financial interest described in

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paragraph (1)(C), and where the agency employee determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the laboratory employee's service in that matter.

(3) Not later than 180 days after the date of enactment of this Act, each agency which has contracted with a non-Federal entity to operate a Government-owned laboratory shall submit a report to the Congress which includes a copy of each contract provision amended pursuant to this subsection.

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(4) No Government-owned, contractor-operated laboratory may enter into a cooperative research and development agreement under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 unless—

(A) that laboratory's operating contract contains the provisions described in paragraph (1)(A) through (F); or

(B) such laboratory agrees in a separate writing to be bound by the provisions described in paragraph (1)(A) through (F).

(5) Any contract for a Government-owned, contractor-operated laboratory entered into after the expiration of 180 days after the date of enactment of this Act shall contain the provisions described in paragraph (1)(A) through (F).

(e) TECHNOLOGY TRANSFER FUNDING AND REPORT.—Section 11(b) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(b)) is amended—

(1) by striking "after September 30, 1981,";

(2) by striking "not less than 0.5 percent of the agency's research and development budget" and inserting in lieu thereof "sufficient funding, either as a separate line item or from the agency's research and development budget,";

(3) by striking "The agency head may waive" and all that follows through "waives such requirement, the" and inserting in lieu thereof "The"; and

(4) by striking "reasons for the waiver and alternate plans for conducting the technology transfer function at the agency." and inserting in lieu thereof "agency's technology transfer program for the preceding year and the agency's plans for conducting its technology transfer function for the upcoming year, including plans for securing intellectual property rights in laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry."

SEC. 3157. DEFENSE PROGRAM MISSIONS

Section 91 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2121(a)) is amended—

(1) by striking out "and" at the end of clause (1);

(2) by striking out the period at the end of clause (2) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following new clauses:

"(3) provide for safe storage, processing, transportation, and disposal of hazardous waste (including radioactive waste) resulting from nuclear materials production, weapons production and surveillance programs, and naval nuclear propulsion programs;

"(4) carry out research on and development of technologies needed for the effective negotiation and verification of international agreements on control of special nuclear materials and nuclear weapons; and

"(5) under applicable law (other than this paragraph) and consistent with other missions of the Department of Energy, make transfers of federally owned or originated technology to State and local governments, private industry, and universities or other nonprofit organizations so that the prospects for commercialization of such technology are enhanced."

**CHAPTER 23—DEVELOPMENT AND CONTROL
OF ATOMIC ENERGY**

SUBCHAPTER I—GENERAL PROVISIONS

**SUBCHAPTER VIII—MILITARY APPLICATION
OF ATOMIC ENERGY**

2121. Authority of Commission.
- (a) Research and development; production of atomic weapons.
 - (b) Material for Department of Defense use.
 - (c) Sale, lease, or loan to other Nations of materials for military applications.
2122. Prohibitions governing atomic weapons.

**SUBCHAPTER VIII—MILITARY
APPLICATION OF ATOMIC ENERGY**

§ 2121. Authority of Commission

- (a) Research and development; production of atomic weapons

The Commission is authorized to—

- (1) conduct experiments and do research and development work in the military application of atomic energy; and
- (2) engage in the production of atomic weapons, or atomic weapon parts, except that such activities shall be carried on only to the extent that the express consent and direction of the President of the United States has been obtained, which consent and direction shall be obtained at least once each year.