

## Calendar No. 316

112TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 112-147

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### DEPARTMENT OF ENERGY ADMINISTRATIVE IMPROVEMENT ACT

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FEBRUARY 7, 2012.—Ordered to be printed

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Mr. BINGAMAN, from the Committee on Energy and Natural  
Resources, submitted the following

### R E P O R T

[To accompany S. 1160]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1160) to improve the administration of the Department of Energy, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Department of Energy Administrative Improvement Act of 2011”.

**SEC. 2. DEFINITIONS.**

In this Act:

- (1) DEPARTMENT.—The term “Department” means the Department of Energy.
- (2) SECRETARY.—The term “Secretary” means the Secretary of Energy.

**SEC. 3. FUTURE-YEARS DEPARTMENT OF ENERGY PROGRAM.**

(a) IN GENERAL.—Part C of title VI of the Department of Energy Organization Act (42 U.S.C. 7251 et seq.) is amended by adding at the end the following:

**“SEC. 664. FUTURE-YEARS DEPARTMENT OF ENERGY PROGRAM.**

“(a) IN GENERAL.—At or about the time the budget of the President is submitted to Congress for each year under section 1105(a) of title 31, United States Code, the Secretary shall submit to Congress a future-years Department of Energy program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in the budget.

“(b) FISCAL YEAR.—Any future-years Department of Energy program submitted under subsection (a) shall cover—

- “(1) the fiscal year with respect to which the budget is submitted; and
- “(2) at least the 4 succeeding fiscal years.

“(c) CONSISTENT AMOUNTS.—

“(1) IN GENERAL.—The Secretary shall ensure that amounts described in paragraph (2)(A) for any fiscal year are consistent with amounts described in paragraph (2)(B) for that fiscal year.

“(2) AMOUNTS.—Amounts referred to in paragraph (1) are the following:

“(A) The amounts specified in program and budget information submitted to Congress by the Secretary in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31, United States Code, for any fiscal year, as indicated in the future-years Department of Energy program submitted pursuant to subsection (a).

“(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Energy included pursuant to section 1105(a)(5) of title 31, United States Code, in the budget submitted to Congress under that section for any fiscal year.

“(d) MANAGEMENT CONTINGENCIES.—Subject to subsection (c), nothing in this section prohibits the inclusion in the future-years Department of Energy programs of amounts for management contingencies.”

(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Department of Energy Organization Act (42 U.S.C. 7101) is amended by adding at the end of the items relating to part C of title VI the following:

“Sec. 664. Future-Years Department of Energy program.”

#### SEC. 4. OTHER TRANSACTIONS AUTHORITY.

(a) IN GENERAL.—Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) is amended by striking subsection (g) and inserting the following:

“(g) AUTHORITY TO ENTER INTO OTHER TRANSACTIONS.—

“(1) IN GENERAL.—In addition to any other authority granted to the Secretary to enter into procurement contracts, leases, cooperative agreements, grants, and certain arrangements, the Secretary may enter into other transactions with public agencies, private organizations, or other persons on such terms as the Secretary considers appropriate to further functions vested in the Secretary, including research, development, or demonstration projects.

“(2) ADVANCE PAYMENTS.—Notwithstanding any other provision of law, the Secretary may exercise authority provided under paragraph (1) without regard to section 3324 of title 31, United States Code.

“(3) RELATIONSHIP TO OTHER LAW.—The authority of the Secretary under paragraph (1) shall not be subject to—

“(A) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); or

“(B) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

“(4) PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, disclosure of information described in subparagraph (B) is not required, and may not be compelled, under section 552 of title 5, United States Code, during the 5-year period beginning on the date on which the information is received by the Department.

“(B) AWARD INFORMATION.—The information described in this subparagraph is information in the records of the Department that—

“(i) was submitted—

“(I) to the Department as part of a competitive or noncompetitive process with the potential to result in an award to the person submitting the information; and

“(II) in conjunction with a transaction entered into by the Secretary pursuant to paragraph (1); and

“(ii) is—

“(I) a proposal, proposal abstract, and supporting documents;

“(II) a business plan submitted on a confidential basis; or

“(III) technical information submitted on a confidential basis.

“(5) REQUIREMENTS.—

“(A) SELECTION PROCEDURES.—In entering into transactions under paragraph (1), the Secretary shall use such competitive, merit-based selection procedures as the Secretary determines in writing to be practicable.

“(B) DETERMINATION.—Before entering into a transaction under paragraph (1), the Secretary shall determine in writing that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

“(C) COST SHARING.—A transaction under paragraph (1) shall be subject to cost sharing in accordance with section 988 of the Energy Policy Act of 2005 (42 U.S.C. 16352).

“(D) LIMITATION ON DELEGATION.—The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate and may not be redelegated to any other person.

“(6) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of the Department of Energy Administrative Improvement Act of 2011 and annually thereafter, the Secretary shall submit to Congress an annual report on the transactions entered into by the Secretary pursuant to the authorities provided under this subsection.

“(7) REPORT.—

“(A) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this paragraph, the term ‘nontraditional Government contractor’ has the meaning given the term ‘nontraditional defense contractor’ in section 845(f) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

“(B) REPORT.—Not later than 2 years after the date of enactment of this subparagraph, and 2 years thereafter, the Comptroller General of the United States shall submit to Congress a report describing—

“(i) the use by the Department of authorities under this section, including the ability to attract nontraditional Government contractors; and

“(ii) whether additional safeguards are necessary to carry out the authorities.”.

(b) IMPLEMENTATION.—

(1) IN GENERAL.—The final rule of the Department entitled “Assistance Regulations” (71 Fed. Reg. 27158 (May 9, 2006)) shall be applicable to transactions under section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) (as amended by subsection (a)).

(2) REGULATIONS.—The Secretary may revise, supplement, or replace such regulations as the Secretary determines necessary to implement the amendment made by subsection (a).

#### SEC. 5. PROTECTION OF RESULTS.

(a) IN GENERAL.—Subject to subsection (b) and notwithstanding any other provision of law, during a period of not more than 5 years after the development of information in any transaction authorized to be entered into by the Department, the Secretary may provide appropriate protections against the dissemination of the information, including exemption from subchapter II of chapter 5 of title 5, United States Code.

(b) APPLICABLE INFORMATION.—This section applies to information that—

(1) results from a transaction entered into by the Secretary relating to research, development, demonstration, or commercial application; and

(2) is of a character that would be protected from disclosure under section 552(b)(4) of title 5, United States Code.

#### SEC. 6. EMPLOYMENT OF PERSONNEL.

(a) IN GENERAL.—Subject to subsections (b) through (d), the Secretary may appoint, without regard to the provisions of chapter 33 of title 5, United States Code, governing appointments in the competitive service, exceptionally well qualified individuals to scientific, engineering, or other critical technical positions.

(b) LIMITATIONS.—

(1) NUMBER OF POSITIONS.—The number of critical positions authorized by subsection (a) may not exceed 120 at any 1 time in the Department.

(2) TERM.—The term of an appointment under subsection (a) may not exceed 4 years.

(3) PRIOR EMPLOYMENT.—An individual appointed under subsection (a) shall not have been a Department employee during the 2-year period ending on the date of appointment.

(4) PAY.—

(A) IN GENERAL.—The Secretary shall have the authority to fix the basic pay of an individual appointed under subsection (a) at a rate to be determined by the Secretary up to level I of the Executive Schedule without regard to the civil service laws.

(B) TOTAL ANNUAL COMPENSATION.—The total annual compensation for any individual appointed under subsection (a) may not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3, United States Code.

(5) **ADVERSE ACTIONS.**—An individual appointed under subsection (a) may not be considered to be an employee for purposes of subchapter II of chapter 75 of title 5, United States Code.

(c) **REQUIREMENTS.**—

(1) **IN GENERAL.**—The Secretary shall ensure that—

(A) the exercise of the authority granted under subsection (a) is consistent with the merit principles of section 2301 of title 5, United States Code; and

(B) the Department notifies diverse professional associations and institutions of higher education, including those serving the interests of women and racial or ethnic minorities that are underrepresented in scientific, engineering, and mathematical fields, of position openings as appropriate.

(2) **REPORT.**—Not later than 2 years after the date of enactment of this Act, the Secretary and the Director of the Office of Personnel Management shall submit to Congress a report on the use of the authority provided under this section that includes, at a minimum, a description or analysis of—

(A) the ability to attract exceptionally well qualified scientists, engineers, and technical personnel;

(B) the amount of total compensation paid each employee hired under the authority each calendar year; and

(C) whether additional safeguards or measures are necessary to carry out the authority and, if so, what action, if any, has been taken to implement the safeguards or measures.

(d) **TERMINATION OF EFFECTIVENESS.**—The authority provided by this section terminates effective on the date that is 4 years after the date of enactment of this Act.

**SEC. 7. REEMPLOYMENT OF CIVILIAN RETIREES.**

(a) **IN GENERAL.**—The Secretary may waive the application of section 8344 or 8468 of title 5, United States Code, on a case-by-case basis, for the employment of an annuitant in a position if the employment of the individual is necessary to carry out a critical function of the Department for which the Department has encountered exceptional difficulty in recruiting or retaining suitably qualified candidates.

(b) **LIMITATION.**—An annuitant employed under the authority granted by subsection (a) shall not be considered an employee for purposes of subchapter III of chapter 83 and chapter 84 of title 5, United States Code.

(c) **LIMITATION ON TERM.**—The term of employment of any individual hired under subsection (a) may not exceed an initial term of 2 years, with an additional 2-year appointment under exceptional circumstances.

(d) **TERMINATION OF EFFECTIVENESS.**—The authority provided by this section terminates effective on the date that is 4 years after the date of enactment of this Act.

**SEC. 8. DEFINITION OF NATIONAL LABORATORY.**

Section 2(3) of the Energy Policy Act of 2005 (42 U.S.C. 15801(3)) is amended by striking subparagraph (P) and inserting the following:

“(P) SLAC National Accelerator Laboratory.”.

**PURPOSE**

The purpose of S. 1160 is to improve the administration of the Department of Energy through a variety of measures intended to improve the Department’s long-term budget planning, expand its authority to enter into non-traditional transactions, and enhance its ability to hire qualified scientists and engineers to perform critical functions.

**SUMMARY OF MAJOR PROVISIONS**

Section 3 of S. 1160 improves the Department of Energy’s long-term budget planning by requiring the Secretary of Energy to submit to Congress each year, in conjunction with the Department’s annual budget request, a “future years Department of Energy program,” consisting of estimated expenditures and proposed appropriations for both the fiscal year covered by the annual budget request and for four or more succeeding fiscal years.

Section 4 makes permanent the Department’s temporary authority to enter into so-called “other transactions,” outside of traditional

Federal procurement requirements, and expands that authority from research, development, and demonstration projects to any function vested in the Secretary of Energy.

Section 5 affirms that the Department may protect from public disclosure certain commercial and financial information it obtains from private entities conducting research and development activities for the Department.

Section 6 enhances the Secretary's ability to hire exceptionally well qualified individuals to fill up to 120 critical positions outside of the competitive service and to pay them at Executive Schedule rates of pay.

Section 7 further enhances the Secretary's hiring authority by authorizing him to waive the federal annuity offset, on a case-by-case basis, to enable the Department to reemploy federal retirees to fill critical positions the Department has had exceptional difficulty filling.

#### BACKGROUND AND NEED

The Department of Energy was established in 1977 to ensure the coordinated and effective administration of Federal energy policy and programs. As the President's Council of Advisors on Science and Technology has recently affirmed, ensuring a "clean, secure, safe and affordable energy future" remains one of the "preeminent challenges facing the United States. . . ."<sup>1</sup> To meet this challenge, the Department needs the proper tools to effectively and efficiently plan, implement, and staff its energy programs.

#### FUTURE-YEARS PROGRAM

Like other executive departments, the Department of Energy is funded through annual appropriations acts. Its programs, however, necessarily span many years. Better tools are needed to help both the Department and Congress assess future funding needs and establish priorities among competing programs over the long term.

The Department of Defense has used long-term capital planning to assist its policy makers in managing defense spending since 1962. The military services and other Defense Department components must annually develop budget projections for their programs for both the budget year for which funds are being requested and for at least four succeeding years, and submit them to the Office of the Secretary of Defense. In 1987, Congress statutorily directed the Secretary of Defense to submit these projections, known as the "future-years defense program," to Congress in conjunction with the President's budget. 10 U.S.C. § 221. In addition, in 2002, Congress directed the Department of Homeland Security to develop a "Future Years Homeland Security Program" modeled after the future-years defense program. 6 U.S.C. § 454. The Government Accountability Office has also recommended executive departments use long-term capital plans to help establish long-term budget priorities.<sup>2</sup>

<sup>1</sup>President's Council on Advisors on Science and Technology, *Accelerating the Pace of Change in Energy Technologies Through an Integrated Federal Energy Policy* at vii (Nov. 2010).

<sup>2</sup>GAO, *Executive Guide: Leading Practices in Capital Decision-Making*, GAO/AIMD-99-32 at 46-47 (Dec. 1998).

## OTHER TRANSACTIONS AUTHORITY

The Department of Energy carries out energy research and development through contracts, grants, or cooperative agreements with universities and other educational institutions, nonprofit organizations, and other private companies. Section 646(a) of the Department of Energy Organization Act generally authorizes the Department of Energy to enter into and perform contracts, cooperative agreements, and similar transactions to carry out its functions. 42 U.S.C. § 7256(a). But the use of these traditional instruments are subject to the Federal Acquisition Regulation and numerous other statutory and regulatory procurement requirements, which deter many non-government entities from working with the Department.

To address this situation, section 1007 of the Energy Policy Act of 2005 added a new subsection (g) to section 646 of the Department of Energy Organization Act, which gives the Secretary of Energy authority to enter into “other transactions,” that is, transactions other than traditional contracts, grants, and cooperative agreements, to perform energy research, development, and demonstration projects. 42 U.S.C. § 7256(g).

Although Congress has never defined “other transactions authority,” the authority has a long history. It was first given to the National Aeronautics and Space Administration in 1958,<sup>3</sup> and has since been given to the Department of Defense,<sup>4</sup> the Federal Aviation Administration,<sup>5</sup> the Department of Transportation,<sup>6</sup> the Department of Homeland Security,<sup>7</sup> the Transportation Security Administration,<sup>8</sup> the National Institutes of Health,<sup>9</sup> the Advanced Research Projects Agency-Energy,<sup>10</sup> and the head of any executive agency that engages in research and development projects that have the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.<sup>11</sup>

Congress originally granted the Secretary of Energy other transactions authority only until September 30, 2010. The National Defense Authorization Act for Fiscal Year 2011 extended the Secretary’s authority until September 30, 2015, at which time it will expire unless Congress extends it again.<sup>12</sup>

## PROTECTION OF CERTAIN INFORMATION

As already noted, the Department of Energy relies heavily upon educational institutions, nonprofit organizations, and private companies to conduct the research, development, and demonstration projects needed to develop new energy technologies. In awarding and administering contracts, grants, cooperative agreements, and

<sup>3</sup>NASA’s other transactions authority, which was conferred by section 203(b)(5) of the National Aeronautics and Space Act of 1958, was subsequently repealed by Public Law 111–314 in 2010. 42 U.S.C. § 2473 note.

<sup>4</sup>10 U.S.C. § 2371.

<sup>5</sup>49 U.S.C. § 106(l)(6).

<sup>6</sup>The Department of Transportation’s other transactions authority, which was conferred by section 5102 of Public Law 105–178 in 1998, was subsequently repealed by Public Law 109–59 in 2005. 23 U.S.C. § 502 note.

<sup>7</sup>6 U.S.C. § 391(a)(1).

<sup>8</sup>49 U.S.C. § 114(m)(1).

<sup>9</sup>Department of Health and Human Services Appropriations Act, 2004, Public Law 108–199 § 221(a).

<sup>10</sup>42 U.S.C. § 16538(f).

<sup>11</sup>41 U.S.C. § 1904(a)(1).

<sup>12</sup>42 U.S.C. § 7256(g).

other transactions with these entities, the Department must collect various classes of commercial and financial information from those entities, which could, if released by the Department, result in commercial or financial harm to the entity providing it.

Congress recognized the tension between the interests of the Government in collecting commercial and financial information from private entities and the interests of those entities in keeping their information confidential when it enacted the Freedom of Information Act. Although the Act adopts a policy of broad disclosure, it establishes nine specific exemptions, including one that shields from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). Applying this exemption, the courts have noted that it serves the dual purpose of encouraging cooperation with the Government by persons having information useful to officials, and protecting “persons who submit financial or commercial data to government agencies from the competitive disadvantages which would result from its publication.”<sup>13</sup>

In spite of the commercial information exemption afforded by the Freedom of Information Act, some entities that must provide information to the Department are still uneasy, and it may bear repeating that the Secretary is authorized to protect commercial or financial information from disclosure.

#### CRITICAL HIRING AUTHORITY

The Department of Energy must be able to recruit and retain the best and brightest scientists and engineers if it is to develop the innovative energy technologies needed to secure America’s future. Recognizing this, in 1977, Congress gave the Secretary authority to appoint up to 511 scientific, engineering, profession, and administrative personnel without regard to the civil service laws, and to pay them up to the maximum amount then provided under the general pay schedule.<sup>14</sup> 42 U.S.C. § 7231(b) and (d). The Secretary’s authority with respect to 311 of these positions (under 42 U.S.C. § 7231(b)) expired in 1981. His authority with respect to the remaining 200 positions (under 42 U.S.C. § 7231(d)) is still in effect.

In addition, in 2007, Congress gave the Director of the Advanced Research Projects Agency-Energy authority to appoint up to 120 scientific, engineering, and professional personnel without regard to the civil service laws and to pay them up to Level II of the Executive Schedule. 42 U.S.C. § 16538(g)(3).

Except as provided in these two provisions, the Department’s ability to recruit exceptionally well qualified individuals to fill critical scientific, engineering, and technical positions is restricted by the civil service laws.

<sup>13</sup>*National Parks and Conservation Association v. Morton*, 498 F.2d 765, 768 (D.C. Cir. 1974).

<sup>14</sup>The Department of Energy Organization Act refers to “the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code.” 42 U.S.C. 7231 (b) and (d). Section 101(c)(1) of the Federal Employees Pay Comparability Act of 1990 (section 529 of Public Law 101-509), however, provides that any reference to the rate of pay for grade GS-18 “shall be considered a reference to the maximum rate payable under section 5376” of title 5. Section 5376, in turn, provides that the maximum rate of pay shall not be greater than the rate of basic pay payable for level III of the Executive Schedule. 5 U.S.C. 5376(b)(1)(B). The rate of basic pay for Level III of the Executive Schedule for 2011 and 2012 is \$165,300.

## REHIRING CIVILIAN RETIREES

The civil service laws generally discourage retired federal employees receiving a federal retirement annuity from returning to work with a federal agency by requiring the agency to deduct from the employee's pay a sum equal to the amount of the employee's annuity payment. 5 U.S.C. 8344 and 8468. The Federal Employees Pay Comparability Act of 1990 authorized the Office of Personnel Management to waive the annuity offset requirement, "on a case-by-case basis[,] for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee." 5 U.S.C. § 8344(i)(1)(A) and § 8468(f)(1)(A). In addition, it authorized the Office of Personnel Management to delegate authority to agency heads to grant waivers, "on a case-by-case basis, for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances." 5 U.S.C. § 8344(i)(1)(B) and § 8468(f)(1)(B). The Office of Personnel Management has adopted regulations that provide for the possibility of granting waivers on the grounds of "other unusual circumstances" that do not rise to the level of a true emergency, but the requesting agency must provide justification describing the unusual circumstances. 5 C.F.R. 553.201(f).

## NEED FOR LEGISLATION

S. 1160 is needed to improve the Department's long-term budget planning, to extend its other transactions authority, to affirm its authority to protect certain commercial and financial information from public disclosure, and to give the Department additional flexibility to recruit exceptionally well qualified individuals for critical scientific, engineering, or technical positions and rehire civilian retirees.

## LEGISLATIVE HISTORY

S. 1160 was introduced by Senator Bingaman, for himself and Senator Murkowski, on June 8, 2011. The Committee on Energy and Natural Resources held a hearing on the bill on July 12, 2011. The Committee ordered the bill favorably reported with an amendment in the nature of a substitute at its business meeting on December 15, 2011.

Similar legislation was contained within the American Clean Energy Leadership Act of 2009 (S. 1462), an original bill reported by the Committee on Energy and Natural Resources during the 111th Congress. S. Rept. 111-48. Sections 436 (direct hire authority), 437 (critical pay authority), 438 (reemployment of civilian retirees), 471 (other transactions authority), 472 (definition of national laboratory), and 473 (protection of results) of S. 1462 were incorporated in S. 1160, as sections 6, 7, 8, 4, 9, and 5, respectively, as the bill was originally introduced. The Senate took no further action on S. 1462 after it was reported.

Legislation calling for the Secretary of Energy to submit "future-years energy programs," similar to those required by section 3 of S. 1160 was also reported by the Committee on Appropriations as section 304 of Energy and Water Development and Related Agencies Appropriations Act, 2012 (H.R. 2354; S. Rept. 112-75), which



was enacted as part of the Consolidated Appropriations Act, 2012, Public Law 112–74.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on December 15, 2011, by a voice vote of a quorum present, recommends that the Senate pass S. 1160, if amended as described herein.

#### COMMITTEE AMENDMENT

The Committee adopted an amendment in the nature of a substitute during its consideration of S. 1160. The substitute eliminates the two sections on direct hiring and critical pay authorities (sections 6 and 7 in the bill as introduced) and replaces them with a single new section authorizing the Secretary to appoint exceptionally well qualified individuals to scientific, engineering, or other critical technical positions (section 6 of the committee amendment). As introduced, the bill would have authorized the Secretary to appoint an unspecified number of highly qualified personnel into the competitive service without regard to the competitive hiring provisions of the civil service laws and, in addition, to appoint up to 40 employees to “critical positions” and to pay them up to the amount payable to the Vice President (currently \$230,700 per year). The amendment eliminates the direct hiring authority and authorizes the Secretary to appoint up to 120 exceptionally well qualified individuals in the excepted service,<sup>15</sup> and to pay them up to the amount payable to the Vice President. The substitute limits to four years both the duration of any appointment made under the new authority and the Secretary’s authority to appoint and compensate employees under the new authority. The substitute also adds provisions requiring that the Secretary exercise the authority consistent with the merit principles of the civil service laws, seek a diverse personnel pool, and report to Congress on his use of the authority. In addition, the substitute clarifies section 5 to remove any implication that the provision extended to information obtained from Federal agents or employees, renumbers and clarifies the section on the reemployment of civilian retirees, and renumbers the final section.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* provides a short title.

*Section 2* defines key terms.

*Section 3* adds a new section 664 to the Department of Energy Organization Act. The new section 664 requires the Secretary of Energy to submit to Congress, annually, in connection with the President’s annual budget, a “future-years Department of Energy program” covering both the fiscal year for which the budget is submitted and at least the next 4 years.

*Section 4(a)* amends the Secretary of Energy’s “other transactions authority” in section 646(g) of the Department of Energy Organization Act by striking the current provision and replacing it with new

<sup>15</sup> As used in the civil service laws, the term “competitive service” refers to positions filled the Office of Personnel Management’s competitive hiring process; the term “excepted service” refers to positions filled outside the competitive service.

text. Under current law, the Secretary may enter into other transactions “subject to the same terms and conditions as the Secretary of Defense under section 2371 of title 10, United States Code,” except as otherwise provided. The new provision prescribes the terms and conditions governing the Secretary’s use of the other transactions authority directly, rather than by reference to the Secretary of Defense’s authority.

Paragraph (1) of the new text expands the Secretary’s authority to enter into other transactions. Under current law, the Secretary may use the authority only to carry out research, development, and demonstration projects. The new provision authorizes the Secretary to enter into other transactions to further any function vested in the Secretary.

Paragraph (2) expressly authorizes the Secretary to enter into other transactions without regard to the Advance Payments Act, which otherwise prohibits payment for goods or services before they are received. Current law waives the Advance Payments Act indirectly: section 2371(c) of title 10 of the United States Code permits the Secretary of Defense to enter into other transactions without regard to the Advance Payments Act, and section 646(g)(1) authorizes the Secretary of Energy to enter into other transactions subject to the same terms and conditions as the Secretary of Defense under section 2371. Paragraph (2) waives the Advance Payments Act directly.

Paragraph (3) reenacts section 646(g)(3) of current law, which waives certain provisions of law vesting title to inventions, patents, and discoveries resulting from research sponsored by the Department in the United States.

Paragraph (4) affirms that the Secretary may protect from disclosure certain confidential business information submitted in conjunction with a transaction authorized under subsection (1). Paragraph (4) confers directly authority the Secretary already may exercise indirectly by way of section 2371(i) of title 10.

Paragraph (5)(A) requires the Secretary to use such competitive, merit-based selection procedures as he determines to be practicable, and reenacts section 646(g)(4)(A) of current law.

Paragraph (5)(B) requires the Secretary to determine that the use of a standard contract, grant, or cooperative agreement is neither feasible nor appropriate before entering into a transaction under paragraph (1), and generally reenacts section 646(g)(4)(B) of current law.

Paragraph (5)(C) subjects transactions under paragraph (1) to the cost sharing requirements of section 988 of the Energy Policy Act of 2005, which requires 20 percent of the cost of research and development projects and 50 percent of the cost of demonstration and commercial application projects to come from non-federal sources.

Paragraph (5)(D) reenacts section 646(g)(9) of current law, which permits the Secretary to delegate the authority to enter into transactions under paragraph (1) only to officers appointed by the President and confirmed by the Senate. Paragraph 5(D) adds the further restriction that this authority may not be redelegated to others.

Paragraph (6) requires the Secretary to report to Congress annually on his use of the other transactions authority. The Secretary

must currently submit annual reports to Congress by way of section 646(g)(7) and 10 U.S.C. 2371(h).

Paragraph (7) requires the Comptroller General to submit biennial reports to Congress on the Secretary's use of the other transactions authority.

Finally, section 4(a) makes the Secretary's other transactions authority permanent by repealing, and not reenacting, section 646(g)(10), which would otherwise terminate the Secretary's current authority on September 30, 2015.

Section 4(b) provides that the policies and procedures adopted by the Department to implement the other transactions authority under current law remain applicable to other transactions entered into under the law as amended.<sup>16</sup>

*Section 5* affirms the Secretary's authority to withhold from public disclosure for up to five years information of the kind protected from disclosure under exemption 4 of the Freedom of Information Act that the Department receives from a non-federal source in connection with a transaction relating to research, development, demonstration, or commercial application. Exemption 4 protects "trade secrets and commercial or financial information obtain from a person [that is] privileged or confidential." 5 U.S.C. 552(b)(4). Section 5, which applies to information received in connection with any transaction entered into by the Secretary relating to research, development, demonstration, or commercial application, supplements section 646(g)(4), as amended by section 4(a) of S. 1160, which only protects information submitted to the Department in connection with a transaction entered into by the Secretary under the other transactions authority in section 646(g).

*Section 6(a)* authorizes the Secretary to appoint exceptionally well qualified individuals to scientific, engineering, or other critical technical positions in the excepted service, without regard to the competitive service requirements of the civil service laws.

Subsection (b)(1) limits the number of critical positions that may be filled under section 6 to 120 at any one time.

Subsection (b)(2) limits the term of an appointment under section 6 to not more than four years.

Subsection (b)(3) provides that no one employed by the Department within the preceding two years may be appointed under section 6.

Subsection (b)(4)(A) authorizes the Secretary to fix the basic pay of employees appointed under section 6 at a rate up to level I of the Executive Schedule (currently \$199,700).

Subsection (b)(4)(B) caps the total annual compensation for employees appointed under section 6 at the highest total annual compensation payable to the Vice President (currently \$230,700).

Subsection (b)(5) makes employees appointed under section 6 ineligible for civil service protections against removal, suspension, reduction in pay or grade, and furloughs.

Subsection (c) requires the Secretary to exercise the authority under section 6 consistent with civil service merit principles, to seek a diverse personnel pool, and to report to Congress on the use

<sup>16</sup>The Department's implementing regulations were published at 71 Fed. Reg. 27158 (May 9, 2006), and are codified at 10 C.F.R. Part 603.

of the authority under section 6 within two years of the date of enactment.

Subsection (d) terminates the Secretary’s authority under the section four years after the date of enactment.

Section 7(a) authorizes the Secretary to waive the requirement that the salary of any civilian retiree reemployed by the Department be offset by the amount of the retiree’s retirement annuity if the employment of the retiree is necessary to carry out a critical function of the Department for which the Department has encountered exceptional difficulty in recruiting or retaining suitably qualified candidates.

Subsection (b) makes retirees employed under section 7(a) ineligible for retirement coverage under the Civil Service Retirement and Federal Employees Retirement Systems.

Subsection (c) limits the term of employment for any retiree rehired under section 7(a) to an initial term of two years, with an additional two-year appointment under exceptional circumstances.

Subsection (d) terminates the Secretary’s authority to waive the annuity offset requirement four years after the date of enactment.

Section 8 amends the definition of “national laboratory” in section 2(3) of the Energy Policy Act of 2005, 42 U.S.C. § 15801(3), to reflect the fact that the Stanford Linear Accelerator Center was renamed the SLAC National Accelerator Laboratory in 2008.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

*S. 1160—Department of Energy Administrative Improvement Act of 2011*

Summary: S. 1160 would make several changes related to administrative functions of the Department of Energy (DOE). Assuming appropriation of necessary funds, CBO estimates that implementing S. 1160 would cost \$30 million over the 2012–2017 period. The bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1160 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1160 is shown in the following table. The costs of this legislation fall within budget function 270 (energy).

	By fiscal year, in millions of dollars—						
	2012	2013	2014	2015	2016	2017	2012–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level .....	2	4	6	6	6	6	30
Estimated Outlays .....	2	4	6	6	6	6	30

Basis of estimate: CBO estimates that increased costs under S. 1160 would stem primarily from a provision that would authorize the Secretary of Energy to hire up to 120 highly skilled individuals and to pay them higher salaries than the Secretary otherwise could offer under current law. According to DOE, that provision would permit the agency to spend an average of about \$50,000 more for

compensation and benefits for such individuals. Based on information from DOE about the anticipated use of that authority, CBO estimates that increased costs under this provision would total \$2 million in 2012 and \$30 million over the 2012–2017 period.

S. 1160 also would require DOE to prepare annual reports to the Congress detailing long-term funding needs, expand and make permanent the agency's authority to enter into certain types of transactions, specify procedures related to the disclosure of certain information, and waive a requirement to reduce certain employees' salaries by the amount of any income they receive from federal annuities. Based on information from DOE, CBO estimates that any increased costs under those provisions, which would be subject to appropriation, would total less than \$500,000 annually.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 1160 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Megan Carroll; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1160.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1160.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 1160, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of Energy at the Committee's July 12, 2011, hearing is set forth below:

STATEMENT OF STEVEN G. CHALK, DEPUTY ASSISTANT SECRETARY FOR RENEWABLE ENERGY, OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY, DEPARTMENT OF ENERGY

Chairman Bingaman, Ranking Member Murkowski and Members of the Committee, thank you for the opportunity to discuss the Department of Energy's (DOE's) solar and

geothermal energy programs. Today, I am pleased to discuss the Department's perspective and answer questions related to the Department of Energy Administrative Improvement Act (S. 1160), the 10 Million Solar Roofs Act of 2011 (S. 1108) and the Geothermal Exploration and Technology Act of 2011 (S. 1142). However, the Administration is still reviewing these bills and we do not have a position on any of them at this time.

#### SOLAR TECHNOLOGY

We thank the committee and the sponsors of this legislation for your strong leadership on solar technologies over the years. The Department has set an ambitious goal for solar energy with the SunShot Initiative (SunShot)—to reduce the total costs of solar energy systems by about 75 percent so that they are cost competitive with other forms of energy without subsidies before the end of the decade. In 2012, under SunShot, the Department will support solar research across the development pipeline, from basic photovoltaic (PV) cell technologies to manufacturing scale-up to total system development.

Reducing the total installed cost for utility-scale solar electricity to roughly 6 cents per kilowatt hour without subsidies will result in rapid, large-scale adoption of solar electricity across the United States. Reaching this goal will help re-establish American technological leadership, improve the nation's energy security, and strengthen U.S. economic competitiveness in the global clean energy race.

SunShot takes a unique approach to developing solar energy. Historically, solar investments focused on achieving incremental efficiency improvements to solar cells and arrays. SunShot focuses on reducing the installed cost of the system as a whole, including non-technical barriers. In addition to investing in improvements in cell technologies and manufacturing, the SunShot Initiative also focuses on steps to reduce installation and permitting costs, which account for 40 percent of the total installed system price of solar electricity.<sup>1</sup> This includes efforts to streamline and digitize local permitting processes and to develop codes and standards that ensure high performance over the approximately 20-year lifetime of residential solar products. Decreasing the installed cost of solar is one of the key goals of SunShot.

As the United States is the world's largest consumer of electricity and, at the same time, has the largest solar resource of any industrialized country, SunShot is well positioned to help the Nation realize the significant benefits from the wide-scale use of solar energy. SunShot underscores solar energy's benefits to the United States and will have multiple positive impacts for the country, including:

- Achieving solar energy cost parity with baseload energy rates. Attaining a total installed system cost of utility solar equivalent to the wholesale cost of elec-

<sup>1</sup> [http://www1.eere.energy.gov/solar/sunshot/pdfs/dpw\\_white\\_paper.pdf](http://www1.eere.energy.gov/solar/sunshot/pdfs/dpw_white_paper.pdf).

tricity from fossil fuels (\$0.06 per kWh) would likely result in rapid and large-scale adoption of solar electricity across the United States

- Increasing solar photovoltaic market share. As recently as 1995, the United States manufactured 43 percent of the world's PV materials, whereas today our manufacturers are only responsible for 6 percent.<sup>2</sup> Expanding the use of solar will help boost the U.S. solar manufacturing industry while driving innovation and providing long lasting, domestic jobs to support global PV demand that will represent a multibillion dollar industry.
- Reducing greenhouse gas emissions—Solar technologies have the potential to significantly reduce the amount of conventional fossil-based electricity generation necessary, which in turn would reduce the amount of greenhouse gases emitted into the atmosphere.

Recently, as part of ongoing Market Transformation activities, DOE announced a Funding Opportunity Announcement (FOA) which we are calling the “Race to the Rooftop” to help standardize, streamline and digitize the permitting process, while improving interconnection and net metering standards, increasing access to financing, and updating planning and zoning codes. This national competition engaging teams of local and state governments along with utilities, installers, and nongovernment organizations, will help standardize processes, cut upfront fees and paperwork, and reduce the overall costs associated with permitting and installation, making it easier and cheaper for homeowners, businesses, and their local communities to deploy solar energy. The standardization and uniformity of local permitting efforts under the “Race to the Rooftop” are similar to the challenge grant provision in the 10 Million Solar Roofs Act, which calls for applicants to develop best practices for solar permitting.

The proposed legislation, S. 1108, employs a bottom-up approach so that local teams can identify approaches best-suited for them. A bottom-up approach, coupled with a preference for applicants that have partnered with states, public utility commissions, or other stakeholders, could allow for local and regional variability while still increasing the speed and scale of installation across large geographic areas. This approach could also allow states to expand existing state programs that have been effective in promoting rooftop solar installations.

#### GEOHERMAL TECHNOLOGY

The Department is committed to developing and deploying a portfolio of innovative technologies for clean, domestic geothermal power generation. Geothermal energy is a baseload energy resource with a small environmental footprint and emits little to no greenhouse gases.

<sup>2</sup>PV News (2/1993, 3/2001, 3/2006) and Navigant Consulting (2/2011).

Despite geothermal's enormous potential, in 2010, only 15 MW of new geothermal power generation was added to the grid in the United States. There are two principal barriers facing the geothermal industry: the high cost and risk of exploration and most of the identified hydrothermal resources have already been developed.

Drilling costs represent approximately 42 percent of geothermal project development costs, and financing costs are significantly higher for exploratory drilling than for plant construction.<sup>3</sup> Removing the obstacles to exploratory drilling is vitally important to increasing our geothermal power generation capacity. In many cases, geothermal resources have no surface expression, leaving our nation's hydrothermal potential—estimated at 30 GWe by the U.S. Geological Survey—untapped and inaccessible. Exploratory drilling could also identify resources for enhanced geothermal systems (EGS), which have the potential to produce 16,000 GWe of power in a wide range of geographic areas throughout the U.S.<sup>4</sup>

Under the American Recovery and Reinvestment Act of 2009 (Recovery Act), DOE invested \$97.3 million in 24 hydrothermal exploration projects, at which 34 exploration wells are planned. It is expected that from these wells, 400 MW of new resources will be confirmed by 2014.

DOE is also funding seven EGS demonstrations. At Desert Peak, Nevada, the initial stages of reservoir stimulation were successfully completed—a critical milestone in creating an enhanced geothermal reservoir.

DOE supports projects in low temperature geothermal resources as well. For example, DOE is working with industry to develop and field test a variable phase turbine which has the potential to generate 30 percent more power from low temperature geothermal resources than current power conversion technologies, at a lower cost.

DOE's National Geothermal Data System (NGDS) effort is a distributed information system for data sharing in its second year of development, which will enable the availability of comprehensive and accurate data to facilitate geothermal development. The NGDS is scheduled to be fully operational in August 2014, at which time it will make geothermal data from major geothermal centers, DOE-funded geothermal projects and state geological surveys or universities publicly available.<sup>5</sup>

Geothermal heat pumps (GHPs) for building applications also face barriers impeding greater marketplace adoption: high initial cost associated with the installation of the ground loop heat-exchanger, lack of consumer knowledge

<sup>3</sup> [http://www.nrel.gov/applying\\_technologies/pdfs/46022.pdf](http://www.nrel.gov/applying_technologies/pdfs/46022.pdf).

<sup>4</sup> Augustine, Young, and Anderson, *Updated U.S. Geothermal Supply Curve*, National Renewable Energy Laboratory and U.S. Department of Energy, February, 2010, <http://www.nrel.gov/docs/fy10osti/47458.pdf>.

<sup>5</sup> NGDS data sources include: DOE Geothermal Data Repository (Boise State University); Energy & Geoscience Institute (University of Utah); Geo-Heat Center (Oregon Institute of Technology); Stanford Geothermal Program (Stanford University); Great Basin Science Sample and Records Library (University of Nevada, Reno); SMU Geothermal Laboratory (Southern Methodist University); and state geological surveys represented by Arizona Geological Survey and the American Association of State Geologists (AASG).



in GHP benefits, and limitations in GHP design and business planning infrastructure. DOE is developing a roadmap that will serve to strategically direct activities in geothermal heat pumps.

Through the Recovery Act, DOE currently funds 26 projects deploying geothermal heat pumps. \$24M of the \$58M Recovery Act funds allocated to GHPs have been spent in 15 states in both new and retrofit applications. Two projects are completed and several more are already providing data for performance analysis. The Recovery Act projects incorporate innovative business and financial strategies and/or GHP technologies and applications designed to overcome the initial cost premium that has prevented GHPs from being directly cost-competitive with other HVAC technologies, and from gaining wider marketplace acceptance.

DOE currently has projects in many of the areas identified for further RD&D and commercial application in S. 1142, including district heating and cooling at large institutions, use of hot water in shaft mines, combined GHP-solar PV and desiccant projects, and use of carbon dioxide as a refrigerant fluid for heat exchange.

The Department is also addressing other obstacles to geothermal development such as delays in the siting and permitting process which increase overall project costs and could further strain economics. Currently, it takes approximately seven years for a new geothermal project to move from exploration to power generation.

While the Administration is still reviewing the bill, there are serious technical concerns that would need to be addressed. Any new program should be consistent with applicable laws, and structured to mitigate risks and costs to the taxpayer.

S. 1160—DEPARTMENT OF ENERGY ADMINISTRATIVE  
IMPROVEMENT ACT

S. 1160 proposes a variety of changes intended to improve the administration of the Department of Energy. The Department is still reviewing this bill and does not have a position on it at this time. However, I will address Sections 4, 6, and 7 as they relate to the Department's current authority.

*Section 4*

Section 4 of S. 1160 concerns the administration of the Department's "Other Transactions" (OT) Authority. Section 4 is similar in many respects to DOE's current OT Authority, which is codified at Section 646(g) of the DOE Organization Act (42 U.S.C. 7256(g)). However, there are some important differences.

Currently, the Department has two kinds of OT Authority: Research OT Authority and Prototype OT Authority. Research OT Authority is used to carry out a public purpose of support or stimulation (e.g., RD&D projects). By contrast, Prototype OT Authority is used for the pre-acqui-

sition development of technology prototypes. Such prototypes are used to evaluate the technical or manufacturing feasibility or utility to DOE's mission of a particular technology, process, concept, end item, or system.

Section 4 provides DOE with permanent and independent OT Authority similar to the authority Congress provided the Defense Department in 1991. However, the precise scope of DOE's OT Authority is left undefined in S. 1160.

Additionally, Section 4 of S. 1160 requires the Secretary to determine that "the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate" before the Department's OT Authority can be used. Section 4 restricts the delegation of this authority to officials "appointed by the President and confirmed by the Senate."

#### *Section 6 and 7*

Section 6 of S. 1160 provides the Secretary with direct hire authority for "highly qualified scientists, engineers, or critical technical personnel" for two years following the enactment of the Act. Similarly, Section 7 provides the Secretary with special hiring and pay authority for persons with "expertise in an extremely high level in a scientific or technical field." The Secretary's authority under Section 7 is permanent, but not more than 40 persons may be hired under this authority at any time.

Sections 6 and 7 are analogous to Sections 621(b) and (d) of the DOE Organization Act (42 U.S.C. § 7231(b)-(d)). Section 621(b), which expired after four years, allowed the Secretary to appoint 311 scientific, engineering, and administrative personnel without regard to civil service laws and to fix their compensation at "super grades" (formerly GS-18, now Executive Level IV). Section 621(d), which is still in effect, authorizes the Secretary to appoint 200 scientific, engineering, professional, and administrative staff without regard to civil service laws, but subject to a GS-18 pay cap (now Executive Level IV).

Additionally, Congress granted the Department's ARPA-E program special hiring authority. The Director of ARPA-E has the authority to make appointments of scientific, engineering, and professional personnel "without regard to the civil service laws," "fix the basic pay of such personnel" up to Level II of the Executive Schedule, and provide "additional payments" up to a certain cap.

#### CONCLUSION

In conclusion, I would like to again thank this Committee for its leadership in supporting both solar and geothermal energy technologies.

It is important to tap valuable assets like solar and geothermal energy to continue growing our economy to expand the Nation's clean energy portfolio and energy security.

I would be pleased to address any questions the Committee might have.

**CHANGES IN EXISTING LAW**

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1160, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**DEPARTMENT OF ENERGY ORGANIZATION ACT**

Public Law 95-91—August 4, 1977

An Act To establish a Department of Energy in the executive branch by the reorganization of energy functions with the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes.

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**TABLE OF CONTENTS**

\* \* \* \* \*

**TITLE VI—ADMINISTRATIVE PROVISIONS**

\* \* \* \* \*

**PART C—GENERAL ADMINISTRATIVE PROVISIONS**

\* \* \* \* \*

**SEC. 663. ANNUAL ASSESSMENT AND REPORT ON VULNERABILITY OF FACILITIES TO TERRORIST ATTACK.**

**SEC. 664. FUTURE-YEARS DEPARTMENT OF ENERGY PROGRAM.**

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**TITLE VI—ADMINISTRATIVE PROVISIONS**

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**PART C—GENERAL ADMINISTRATIVE PROVISIONS**

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**CONTRACTS**

SEC. 646. (a) The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

\* \* \* \* \*

[(g)(1) In addition to authority granted to the Secretary under any other provision of law, the Secretary may exercise the same authority to enter into transactions (other than contracts, coopera-

tive agreements, and grants), subject to the same terms and conditions as the Secretary of Defense under section 2371 of title 10, United States Code (other than subsections (b) and (f) of that section).

[(2) In applying section 2371 of title 10, United States Code, to the Secretary under paragraph (1)—

[(A) the term “basic” shall be replaced by the term “research”;

[(B) the term “applied” shall be replaced by the term “development”; and

[(C) the terms “advanced research projects” and “advanced research” shall be replaced by the term “demonstration projects”.

[(3) The authority of the Secretary under paragraph (1) shall not be subject to—

[(A) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); or

[(B) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

[(4)(A) The Secretary shall use such competitive, merit-based selection procedures in entering into transactions under paragraph (1), as the Secretary determines in writing to be practicable.

[(B) A transaction under paragraph (1) shall relate to a research, development, or demonstration project only if the Secretary determines in writing that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

[(5) The Secretary may protect from disclosure, for up to 5 years after the date on which the information is developed, any information developed pursuant to a transaction under paragraph (1) that would be protected from disclosure under section 552(b)(4) of title 5, United States Code, if obtained from a person other than a Federal agency.

[(6)(A) Not later than 90 days after the date of enactment of this subsection, the Secretary shall issue guidelines for transactions under paragraph (1).

[(B) The guidelines shall be published in the Federal Register for public comment in accordance with rulemaking procedures of the Department.

[(C) The Secretary shall not have authority to carry out transactions under paragraph (1) until the guidelines for transaction required under subparagraph (a) are final.

[(7) The annual report of the head of an executive agency under section 2371(h) of title 10, United States Code, shall be submitted to Congress.

[(8)(A) In this paragraph, the term “nontraditional Government contractor” has the meaning given the term “nontraditional defense contractor” in section 845(f) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

[(B) Not later than 1 year after the date on which the final guidelines are published under paragraph (6), the Comptroller General of the United States shall submit to Congress a report describing—

[(i) the use by the Department of authorities under this section, including the ability to attract nontraditional Government contractors; and

[(ii) whether additional safeguards are necessary to carry out the authorities.

[(9) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate.

[(10) Notwithstanding any other provision of law, the authority to enter into transactions under paragraph (1) shall terminate on September 20, 2015.]

(g) *AUTHORITY TO ENTER INTO OTHER TRANSACTIONS.*—

(1) *IN GENERAL.*—*In addition to any other authority granted to the Secretary to enter into procurement contracts, leases, cooperative agreements, grants, and certain arrangements, the Secretary may enter into other transactions with public agencies, private organizations, or other persons on such terms as the Secretary considers appropriate to further functions vested in the Secretary, including research, development, or demonstration projects.*

(2) *ADVANCE PAYMENTS.*—*Notwithstanding any provision of law, the Secretary may exercise authority provided under paragraph (1) without regard to section 3324 of title 31, United States Code.*

(3) *RELATIONSHIP TO OTHER LAW.*—*The authority of the Secretary under paragraph (1) shall not be subject to—*

*(A) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); or*

*(B) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).*

(4) *PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE.*—

*(A) IN GENERAL.*—*Notwithstanding any other provision of law, disclosure of information described in subparagraph (B) is not required, and may not be compelled, under section 552 of title 5, United States Code, during the 5-year period beginning on the date on which the information is received by the Department.*

*(B) AWARD INFORMATION.*—*The information described in this subparagraph is information in the records of the Department that—*

*(i) was submitted—*

*(I) to the Department as part of a competitive or noncompetitive process with the potential to result in an award to the person submitting the information; and*

*(II) in conjunction with a transaction entered into by the Secretary pursuant to paragraph (1); and*

*(ii) is—*

*(I) a proposal, proposal abstract, and supporting documents;*

*(II) a business plan submitted on a confidential basis; or*

(III) technical information submitted on a confidential basis.

(5) REQUIREMENTS.—

(A) SELECTION PROCEDURES.—In entering into transactions under paragraph (1), the Secretary shall use such competitive, merit-based selection procedures as the Secretary determines in writing to be practicable.

(B) DETERMINATION.—Before entering into a transaction under paragraph (1), the Secretary shall determine in writing that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

(C) COST SHARING.—A transaction under paragraph (1) shall be subject to cost sharing in accordance with section 988 of the Energy Policy Act of 2005 (42 U.S.C. 16532).

(D) LIMITATION ON DELEGATION.—The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate and may not be redelegated to any other person.

(6) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of the Department of Energy Administrative Improvement Act of 2011 and annually thereafter, the Secretary shall submit to Congress an annual report on the transactions entered into by the Secretary pursuant to the authority provided under this subsection.

(7) REPORT.—

(A) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this paragraph, the term “nontraditional Government contractor” has the meaning given the term “nontraditional defense contractor” in section 845(f) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

(B) REPORT.—Not later than 2 years after the date of enactment of this subparagraph, and 2 years thereafter, the Comptroller General of the United States shall submit to Congress a report describing—

(i) the use by the Department of authorities under this section, including the ability to attract nontraditional Government contractors; and

(ii) whether additional safeguards are necessary to carry out the authorities.

\* \* \* \* \*

**SEC. 664. FUTURE-YEARS DEPARTMENT OF ENERGY PROGRAM.**

(a) IN GENERAL.—At or about the time the budget of the President is submitted to Congress for each year under section 1105(a) of title 31, United States Code, the Secretary shall submit to Congress a future-years Department of Energy program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in the budget.

(b) FISCAL YEAR.—Any future-years Department of Energy program submitted under subsection (a) shall cover—

(1) the fiscal year with respect to which the budget is submitted; and

(2) at least the 4 succeeding fiscal years.

(c) *CONSISTENT AMOUNTS.*—

(1) *IN GENERAL.*—*The Secretary shall ensure that amounts described in paragraph (2)(A) for any fiscal year are consistent with amounts described in paragraph (2)(B) for that fiscal year.*

(2) *AMOUNTS.*—*Amounts referred to in paragraph (1) are the following:*

(A) *The amounts specified in program and budget information submitted to Congress by the Secretary in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31, United States Code, for any fiscal year, as indicated in the future-years Department of Energy program submitted pursuant to subsection (a).*

(B) *The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Energy included pursuant to section 1105(a)(5) of title 31, United States Code, in the budget submitted to Congress under that section for any fiscal year.*

(d) *MANAGEMENT CONTINGENCIES.*—*Subject to subsection (c), nothing in this section prohibits the inclusion in the future-years Department of Energy programs of amounts for management contingencies.*

\* \* \* \* \*

**THE ENERGY POLICY ACT OF 2005**

Public Law 109–58—August 8, 2005

AN ACT To ensure jobs for our future with secure, affordable, and reliable energy.

\* \* \* \* \*

**SEC. 2. DEFINITIONS.**

Except as otherwise provided, in this Act:

\* \* \* \* \*

(3) **NATIONAL LABORATORY.**—The term “National Laboratory” means any of the following laboratories owned by the Department:

\* \* \* \* \*

**[(P) Stanford Linear Accelerator Center.]**  
*(P) SLAC National Accelerator Laboratory.*

\* \* \* \* \*

