(MARKUP VEHICLE)

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5132

OFFERED BY MRS. LLOYD

Strike 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 Laboratory Competitiveness Act of 1988".

SEC. 2. FINDINGS.

The Congress finds that--

(1) domestic competitiveness can be greatly improved through scientific collaboration between United State industry and the Department of Energy laboratories;

(2) the Department of Energy laboratories must be perceived, within the constraints of national security relative to defense laboratories, as easily accessible in order for industry to seriously consider the laboratories as partners for collaborative research and development ventures;

(3) the Secretary of Energy should delegate increased management authority for technology transfer to the Managers of Operations Offices in order to ensure timely consideration of proposed cooperative research and development agreements;

(4) the Secretary of Energy retains full responsibility, oversight and control over Managers of Operations Offices who may be delegated increased management authority under this Act;

(5) the Department of Energy policy of disseminating

computer software generated in its research programs has at times benefited foreign companies more than domestic companies;

(6) there should be a simple, timely review procedure concerning proposed agreements to utilize or further develop computer software and other technology generated under Department of Energy research and development contracts, or developed with Department of Energy funding;

(7) the existing policy with respect to ownership of the products of research and development at the Department of Energy laboratories operated by universities and nonprofit contractors should be uniformly extended to all Department of Energy laboratories contractors, consistent with existing legislative and executive branch directives.

(8) the Department of Energy laboratories have demonstrated successes in technology transfer, but the effort can be significantly enhanced if--

(A) industry becomes more aware of the laboratories' research and development projects and capabilities;

(B) technology transfer is considered a part of the laboratories' missions;

(C) the laboratories develop a better understanding of the potential needs of industry;

(D) industry collaborates with the laboratories early enough in the research and development process to detect any commercial potential in the products of

research and development; and

(E) laboratories involved in national security work take special care to propose technology transfer activities that will not compromise classified data or involve, without express government approval, private entities in nuclear weapons and naval reactor research; and

(9) the Department of Energy laboratories should examine and implement new and innovative methods of communicating with private industry regarding the availability of laboratory user facilities and engaging in cooperative research and development opportunities.

SEC. 3. DEFINITIONS.

Section 9(m) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908(m)) is amended--

(1) by striking "and" at the end of a paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(3) by inserting at the end of thereof the following:

"(6) the term 'collaborative party' means a person who has entered into a cooperative research and development agreement with a Director of a laboratory pursuant to this section;

"(7) the term 'computer software' means recorded information, regardless of the form or media in which it may be recorded, including computer programs or documentation thereof;

"(8) the term 'cooperative research and development agreement' means any contract between a laboratory manager or operator and any Federal or non-Federal parties under which the laboratory manager or operator provides personnel services, facilities, equipment, or other resources toward the conduct of research and development efforts which would further the purposes for which the funds, used by the laboratory, were appropriated;

"(9) the term 'Director of a laboratory' means the Department of Energy employee, or the Department of Energy contractor's employee, located at the laboratory and heading the employees managing and operating any laboratory;

"(10) the term 'laboratory manager or operator' means (A) the contractor who has signed a laboratory management and operating contract with the Department of Energy (but only with respect to activities relating to such management or operation) or, (B) the Department of Energy, if the laboratory is Government owned and operated.

"(11) the term 'laboratory' means a facility or group of facilities owned or leased by the Department of Energy for energy research, development, or demonstration;

"(12) the term 'Manager of an Operations Office' means the employee responsible for heading a Department of Energy field office, which has responsibility for overseeing, or interacting with, one or more laboratories;

"(13) the term 'property' means any invention, improvement, computer software, technical data, innovation,

or prototype developed or made as a result of the research and development activities conducted by a laboratory manager or operator, but does not include real property or such personal property that is not of an innovative nature and is used for the conduct of activities under the laboratory management and operating contract;

"(14) the term 'technical data' means recorded information of an engineering or scientific nature regardless of the form or the media in which it may be recorded.".

SEC. 4. TECHNOLOGY TRANSFER AT THE LABORATORIES.

Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908) is further amended by adding at the end the following new subsections:

"(o) GENERAL AUTHORITY.--(1) The Secretary of Energy shall promulgate through regulation, order, or directive--

"(A) model cooperative research and development agreements which are not subject to further approval under paragraph (2);

"(B) generic terms and conditions, which when included in negotiated (nonmodel) cooperative research and development agreements are not subject to further approval under paragraph (2); and

"(C) authority for any Director of a laboratory to enter into a cooperative research and development agreement which requires less than a specified level of Department of Energy funding, such level to be established by the Secretary.

"(2) The Secretary of Energy shall delegate to each Manager

of an Operations Office authority, subject to the guidance and direction of the Secretary, to approve negotiated (nongeneric) terms and conditions of cooperative research and development agreements recommended by a Director of a laboratory under such manager's oversight.

"(3)(A) Subject to paragraph (B), each Director of a laboratory may enter into model agreements promulgated by the Secretary under paragraph (1)(A), or other agreements under paragraph (1)(C), after programmatic approval of the activities under the agreement by the Manager of an Operations Office, or may negotiate cooperative research and development agreements subject to approval pursuant to paragraph (2).

"(B) Every cooperative research and development agreement concerning, in whole or in part, nuclear weapons or naval nuclear propulsion shall be subject to the approval of the Manager of an Operations Office having oversight over the laboratory involved.

"(C) Any agreement described in subparagraphs (A) or (B) may provide for the disposition or use of property assigned or licensed to the laboratory manager or operator by third parties, or any property voluntarily assigned by such laboratory manager or operator's employees.

"(D) The Department of Energy shall have no rights in property developed or made by collaborative parties, at private or non-Department of Energy expense and independent of such agreement, during the term of any cooperative research and development agreement, unless such rights are specifically granted to the Department of Energy in such agreement, or are authorized

for national security purposes under the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.).

"(4) Each Director of a laboratory shall, in negotiating cooperative research and development agreements, and in granting licenses or assignments to third parties (or in granting authority for such third parties to grant licenses or assignments with respect to property subject to this Act) give preference to persons located in the United States who agree that any products embodying such property or produced through the use of such property will be manufactured substantially in the United States. Exclusive rights to use any such property shall be subject to the requirements of section 204 of title 35, United States Code.

"(5) The authorities and responsibilities delegated to a Manager of an Operations Office under this section shall, when the laboratory is managed or operated by Department of Energy employees, be delegated to the Director of the laboratory.

"(p) SPECIFIC AUTHORITY.--Each Director of a laboratory may negotiate and include provisions in any cooperative research and development agreement entered into pursuant to this section permitting the laboratory manager or operator--

"(1) to accept, retain, and use funds, personnel, services, and property from collaborative parties, and provide personnel, services, and property to collaborative parties;

"(2) to grant, or agree in advance to grant, to a collaborative party licenses or assignments, or options to property made, in whole or in part, by an employee of a

laboratory manager or operator under the cooperative research and development agreement; and

"(3) to the extent consistent with Department of Energy regulations, orders, and directives pertaining to conflict of interest, and to the extent consistent with laboratory programs and agreements in technology transfer, to permit employees or former employees of a laboratory manager or operator to participate in efforts to transfer to the private sector any property such employees or former employees developed or made while in the service of such laboratory manager or operator.

"(q) APPROVAL OF AGREEMENTS.--The Manager of an Operations Office may disapprove or require the modification of a cooperative research and development agreement pursuant to this section within 30 days after receipt of such agreement and recommendation from the Director of a laboratory. Such Manager shall set forth in writing the reasons for any such requirement of modification or disapproval, and shall make available to the appropriate Director of a laboratory a copy of such reasons. Such agreement shall be deemed binding on all parties upon--

"(1) approval of such Manager,

"(2) concurrence of such Manager that such agreement has been appropriately modified;

"(3) the expiration of 30 days after receipt by such manager of a modified agreement if the Manager does not disapprove such modification; or

"(4) if no modification is required or such Manager does

not disapprove such agreement, upon the expiration of 30 days after the receipt by such Manager of such agreement and recommendation.

"(r) LIMIT ON AGGREGATE AMOUNT OF AGREEMENTS.--A laboratory manager or operator may not spend more than 20 percent of funds received from the Department of Energy in any fiscal year for cooperative research and development agreements entered into by the Director of a laboratory under this section, unless such expenditure is approved by the responsible Manager of an Operations Office.

"(s) RECORDS OF AGREEMENTS.--The Secretary of Energy shall, during the term of a cooperative research and development agreement, withhold from disclosure to the public any part of such agreement which contains proprietary information required under the agreement to be protected against public disclosure.

"(t) AGREEMENT CONSIDERATIONS.--A Director of a laboratory, in deciding what cooperative research and development agreements to recommend, and the Manager of an Operations Office, in deciding whether to approve such agreements, shall comply with section 11(c)(4) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)(4)).

"(u) DISPOSITION OF TITLE.--(1) Title of all property developed or made by a laboratory manager or operator shall vest in accordance with the following:

"(A) For property wholly developed or made under a cooperative research and development agreement, or under a contract providing for full reimbursement of Department of

Energy expenses, title shall vest in accordance with the terms of such agreement or contract.

"(B) For property, other than property described in subparagraph (A), developed or made at a laboratory managed or operated by Department of Energy employees, title shall vest in the United States, except that title shall vest in the developer or maker of the property in the same manner as inventions vest in an inventor under section 14 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710d).

"(C) For property, other than property described in subparagraph (A) or (B), developed or made by a laboratory manager or operator, title shall vest in the laboratory manager or operator in the same manner and subject to the same conditions as title to inventions are vested in small business and nonprofit contractors under section 202 of title 35, United States Code, except that the Secretary may, until such time as the funding agreement is modified, utilize the authority under section 202 to restrict or retain title to property.

"(2) No laboratory manager or operator who has received title to property under this section shall utilize any royalties, or other direct profits, from the transfer of such property out of the laboratory, for the benefit of such laboratory manager or operator, except as is authorized under section 202 of title 35, United States Code, or under sections 12 and 13 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C.

3710b and 3710c), or as may be approved by the appropriate Manager of an Operations Office. All rights and obligations with respect to property owned by a laboratory manager or operator pursuant to this Act shall transfer to the laboratory manager or operator who replaces such owner upon consummation of a replacement laboratory management and operating contract and initiation by the new laboratory manager or operator of activities under such contract.

"(3) Whenever a laboratory manager or operator develops property to which the Department of Energy has determined to restrict or retain title pursuant to paragraph (1)(C), a request by a laboratory manager or operator for any or all of the Government's rights in such property shall be considered in the same manner as title to inventions is considered under section 3131 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended (title I of division C of Public Law 99-661; 100 Stat. 4061), subject to the following:

"(A) The Director of a laboratory shall, in the request, report on the matters to be considered under section 3131(b).

"(B) The Secretary of Energy shall delegate the authorities and duties under section 3131, subject to the guidance and direction of the Secretary, to the Manager of an Operations Office having oversight over the requesting laboratory manager or operator. Such Manager shall set forth in writing the reasons for denial of any such request, which shall be available to the requesting laboratory manager or operator.

"(C) The Manager may not use export control statutes or regulations as a basis for refusing a laboratory manager or operator's request for title.

"(D) Any report to Congress submitted under section 3131 shall also be forwarded to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

"(4)(A) When a laboratory manager or operator receives ownership rights under this section such ownership rights shall be subject to a royalty free license under which the United States, and its contractors, may use and reproduce such property for United States governmental purposes other than for public dissemination of such property.

"(B) When a collaborative party is to receive ownership rights to property produced under a cooperative research and development agreement, the Director of a laboratory and the collaborative party may negotiate, on the basis of fairness and equity, whether or not the United States and its contractors are to receive a royalty free license as described in subparagraph (A) for such property.

"(v) PROTECTION OF PROPERTY.--(1) Any computer software technical data, or documentation thereof which is obtained or generated by a laboratory manager or operator shall be held in confidence and shall not be subject to public disclosure for a period of up to two years as determined by the Secretary if the Director of a laboratory (with the concurrence of the appropriate Manager of an Operations Office) determines that there is a

reasonable expectation that disclosure of the technical data, computer software or documentation thereof could substantially inhibit its commercial application.

"(2) Technical data, computer software, or documentation thereof described in paragraph (1) may be held in confidence and not subject to public disclosure for a period specified in such agreement, not to exceed 7 years, if such data or software is obtained or generated under a cooperative research and development agreement.

"(3) Nothing in this section shall restrict or limit the ability of the United States, including any laboratory, to utilize property owned, pursuant to this Act, by any laboratory manager or operator, whether such property was produced under a cooperative research and development agreement or otherwise.

"(w) Laboratory Mission and Performance.--(1)(A) All contracts to operate a laboratory shall contain terms and conditions consistent with this section. Such contracts shall include a provision making technology transfer a mission of the laboratories.

"(B) The Secretary of Energy shall include technology transfer as a factor in evaluating the performance of laboratory managers or operators.

"(2) The Secretary of Energy shall issue within 180 days after the date of enactment of this subsection a standard contract clause to implement this section in the contract for the management or operation of any laboratory.

"(x) MARCH-IN RIGHTS.--The Secretary of Energy may require

the licensing to third parties of all property owned by the laboratory manager or operator that is subject to the provisions of this Act in the same manner as provided under section 203 of title 35, United States Code.".

SEC. 5. INTERAGENCY COOPERATION.

The Secretary of Energy, in implementing the amendments made by sections 3 and 4, shall explore innovative ways to cooperate with other Government agencies, including the National Institute of Standards and Technology. The Department of Energy, in cooperating with any other Federal agency, shall minimize unnecessary duplication of programs, projects, and research facilities.

SEC. 6. INFORMATION TO CONGRESS.

Nothing in this Act shall diminish the responsibility of the Secretary of Energy to keep the Congress fully and currently informed, or the right of Congress to review and receive information with respect to any agreement, license, or property subject to this Act.

SEC. 7. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 9(a) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908(a)) is amended by striking "shall vest in the United States" and all that follows through the period at the end of that sentence, and inserting in lieu thereof "shall vest in accordance with subsection (u).".

(b) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) is amended by striking "shall be vested in" and all that follows through the period at the end of that sentence, and

inserting in lieu thereof "shall vest in accordance with section 9(u) of the Federal Nonnuclear Energy Research and Development Act of 1974.".