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"The U.S. patent system added the fuel of interest to the fire of genius."—Abraham Lincoln.

PROPOSED LEGISLATION aimed at boosting innovation and incentives and at unifying government patent policy **would give ownership of invention patents resulting from Federally-funded r and d programs to program contractors and grantees.** The bill also provides legal authority—lacking in some Federal agencies—for licensing Federally-owned patents. Introduced by Rep. Ray Thornton (Chairman, House Science, Research, Technology subcommittee) and thirteen co-sponsors, H. R. 8596 is entitled the "Uniform Federal Research and Development Act of 1977."

Commenting on his bill, Rep. Thornton said, "The purpose and principle of the legislation I've introduced is to provide for a uniform Federal policy on inventions and to encourage the concept that an inventor should be allowed to market and make a profit on the results of his innovative genius; and if he does not (market it) the government shall have a right to move in and turn the invention over to someone else who will (commercialize it). In addition, since the government put up the r and d money, it should have free use of any inventions for its own purposes, except profit making." Other primary objectives of the bill include maximizing commercialization of inventions (which rarely are commercialized when the government owns the patents), fostering competition, and attracting the best qualified and competent contractors to Federal r and d programs. Thornton added, "I'm deeply concerned that when the government take the patent rights it essentially destroys the incentives of the patent system. It deprives the inventor opportunity of marketing and making available the benefits of his invention to the public."

Title II of H. R. 8596 establishes an institutional framework for and oversight of uniform patent policy planning, implementation and data analysis in the Office of Science and Technology Policy (OSTP) via the Federal Coordinating Council for Science Engineering and Technology (FCCSET). One of the main objectives here is to promote intramural technology transfer. (Although FCCSET is now a sub-cabinet level working group transferred to the President, the OSTP Director is its chairman, and he can activate FCCSET at his discretion).

Jurisdiction of H. R. 8596 vests jointly in the Science and Technology Committee, (specifically Rep. Thornton's Science, Research and Technology subcommittee) and in the Judiciary Committee (specifically the subcommittee on Courts, Civil Liberties and Administration, chaired by Rep. Robert Kastenmeier). **Hearings will not begin until Congress reconvenes next year,** and the Judiciary subcommittee has indicated that it will not begin hearings until the Science, Research, and Technology subcommittee has finished its hearings. Thus, **H. R. 8596 has a long way to go before it even reaches the full Judiciary Committee, where the probability for opposition is greatest.**

H. R. 8596 has its roots in the burgeoning post World-War-II growth of Federal r and d funding and piecemeal patent policies, which may be inhibiting both innovation and private sector investment to commercialize its inventions resulting from Federal r and d programs. Hearings in the Fall of 1976 preceded the drafting of H. R. 6249—the predecessor of H. R. 8596. These hearings included patent counsels from ERDA, Department of Commerce, HEW, DOD, NASA, and Betsy Ancker-Johnson, then Assistant Secretary for Science and Technology, Department of Commerce. H. R. 6249 was an adaptation of a draft bill formulated by the Interagency Committee on Government Patent policy of the old Federal Council for Science and Technology; this, in turn, was founded on a 1972 Commission on Government Procurement report. H. R. 6249 had only one co-sponsor—Olin E. Teague, Chairman of the Science and Technology Committee. To boost survival chances for the bill, Mr. Thornton acquired 13 co-sponsors, and H. R. 6249 became H. R. 8596—the identical bill except for the addition of co-sponsors.

What are the survival and passage chances for H. R. 8596? Controversy and opposition will be directed at the provision giving title to the inventor. Official Administration posture has been requested from the Office of Management and Budget (OMB) and from OSTP. Both responses are pending. **Rep. Thornton predicts "no trouble" from his committee;** he has a "very fine relationship with members of the Judiciary Committee." However, "they may not be as enthusiastic about the provisions of the bill as I am; so **there's a hurdle to be overcome on the House side."** The Judiciary Committee traditionally has sided with the Department of Justice, which for 30 years has stood for government entitlement to all rights to inventions produced in performance of contracts. Commenting on H. R. 8596, a Judiciary Committee staffer remarked, "It's unfair to take Taxpayer X's money and give it to Taxpayer Y." The Judiciary stance for antitrust and free economy will, indeed, constitute an obstacle that H. R. 8596 must hurdle to survive.

Reaction from the Senate side will be strongly influenced by Senator Russell Long, who firmly believes that, since the government pays for the research, it should own the resulting inventions—uniformly. He helped freeze and kill the last previous attempt at uniform patent legislation introduced by Sen. McClellan in 1965; and in October, Sen. Long's influence wiped out in conference Thornton's House-passed amendment to ERDA's loan guarantee program (part of the ERDA Authorization S. 1811). Similar to H. R. 8596, this amendment would have given title to the government only in the event of default by the contractor.

Whether or not H. R. 8596 can be enacted will also depend heavily on the Administration's posture. OSTP personnel unofficially favor the bill, but no hint has emerged from OMB, which has requested responses from Justice and Commerce. —Fred Wetzler