

Calendar No. 475

118TH CONGRESS
2D SESSION**S. 1956**

To improve the commercialization of Federal research by domestic
manufacturers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 13, 2023

Ms. BALDWIN (for herself and Mr. VANCE) introduced the following bill; which
was read twice and referred to the Committee on Commerce, Science, and
Transportation

AUGUST 1, 2024

Reported by Ms. CANTWELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To improve the commercialization of Federal research by
domestic manufacturers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “*Invent Here, Make*
5 *Here Act of 2023*”.

1 **SEC. 2. IMPROVEMENT OF COMMERCIALIZATION OF FED-**
2 **ERAL RESEARCH BY DOMESTIC MANUFAC-**
3 **TURERS.**

4 Section 2 of the National Institute of Standards and
5 Technology Act (15 U.S.C. 272) is amended by adding
6 at the end the following:

7 “(f) COMMERCIALIZATION OF FEDERAL RESEARCH
8 BY DOMESTIC MANUFACTURERS.—In order for the Insti-
9 tute to meet the need described in section 1(a)(1) and
10 most effectively carry out the activities under subsection
11 (e)(1) of this section, the Director shall—

12 “(1) coordinate with the Manufacturing USA
13 Network established under section 34(e)(1) to iden-
14 tify domestic manufacturers that can develop com-
15 mercial products based on research conducted by
16 Federal agencies;

17 “(2) work with the Administrator of the Small
18 Business Administration to identify domestic inves-
19 tors to support the development of commercial prod-
20 ucts based on research conducted by Federal agen-
21 cies; and

22 “(3) coordinate with the Director of the Made
23 in America Office at the Office of Management and
24 Budget to use the procedures described in section
25 204(e)(2)(A)(i) of title 35, United States Code, to
26 identify appropriate domestic manufacturers and in-

1 vestors to commercialize products based on Federal
2 research and manufacture such products in the
3 United States.”.

4 **SEC. 3. STUDY AND COMPREHENSIVE REVIEW OF COMMER-**
5 **CIALIZATION OF FEDERAL RESEARCH BY DO-**
6 **MESTIC MANUFACTURERS.**

7 Not later than 540 days after the date of enactment
8 of this Act, the Director of the National Institute of
9 Standards and Technology shall—

10 (1) complete a study and comprehensive review
11 of the commercialization of Federal research by do-
12 mestic manufacturers that—

13 (A) addresses—

14 (i) what barriers currently (as of the
15 date on which the study is completed) exist
16 for domestic manufacturers to commer-
17 cialize Federal research; and

18 (ii) what role investment and the
19 availability of investors plays in the en-
20 couragement or discouragement of the
21 commercialization of Federal research by
22 domestic manufacturers; and

23 (B) provides recommendations for modi-
24 fications to the comprehensive strategic plan de-
25 veloped and implemented pursuant to section

1 107 of the American Innovation and Competi-
 2 tiveness Act (15 U.S.C. 272 note) to ensure
 3 that Federal science, engineering, and tech-
 4 nology research is being transferred to domestic
 5 manufacturers to modernize manufacturing
 6 processes in accordance with section 2(b)(1) of
 7 the National Institute of Standards and Tech-
 8 nology Act (15 U.S.C. 272(b)(1)); and
 9 (2) submit to the Committee on Commerce,
 10 Science, and Transportation of the Senate and the
 11 Committee on Science, Space, and Technology of the
 12 House of Representatives a report on the findings of
 13 the Director with respect to the study and review
 14 completed under paragraph (1).

15 **SEC. 4. PREFERENCE FOR UNITED STATES INDUSTRY.**

16 Section 204 of title 35, United States Code, is
 17 amended to read as follows:

18 **“§ 204. Preference for United States industry**

19 “(a) DEFINITIONS.—In this section:

20 “(1) COUNTRY OF CONCERN.—The term ‘coun-
 21 try of concern’ means a country that—

22 “(A) is a covered nation, as that term is
 23 defined in section 4872(d) of title 10; or

1 “(B) the Secretary of Commerce deter-
2 mines is engaged in conduct that is detrimental
3 to the national security of the United States.

4 “(2) MANUFACTURED SUBSTANTIALLY IN THE
5 UNITED STATES.—The term ‘manufactured substan-
6 tially in the United States’ means manufactured
7 substantially from all articles, materials, or supplies
8 mined, produced, or manufactured in the United
9 States.

10 “(3) RELEVANT CONGRESSIONAL COMMIT-
11 TEES.—The term ‘relevant congressional commit-
12 tees’ means—

13 “(A) the Committee on Commerce,
14 Science, and Transportation of the Senate; and

15 “(B) the Committee on Science, Space,
16 and Technology of the House of Representa-
17 tives.

18 “(b) GENERAL PREFERENCE.—Notwithstanding any
19 other provision of this chapter, and subject to subsection
20 (e), no small business firm or nonprofit organization which
21 receives title to any subject invention and no assignee of
22 any such small business firm or nonprofit organization
23 shall grant to any person the exclusive right to use or sell
24 any subject invention unless such person agrees that any
25 products embodying the subject invention or produced

1 through the use of the subject invention will be manufac-
2 tured substantially in the United States.

3 “(c) WAIVERS.—

4 “(1) IN GENERAL.—In individual cases, subject
5 to paragraph (2), the requirement for an agreement
6 described in subsection (b) may be waived by the
7 Federal agency under whose funding agreement the
8 applicable subject invention was made upon a show-
9 ing by the small business firm, nonprofit organiza-
10 tion, or assignee that reasonable but unsuccessful ef-
11 forts have been made to grant licenses on similar
12 terms to potential licensees that would be likely to
13 manufacture substantially in the United States or
14 that under the circumstances domestic manufacture
15 is not commercially feasible.

16 “(2) CONDITIONS ON WAIVERS.—

17 “(A) BEFORE GRANT OF WAIVER.—Before
18 granting a waiver under paragraph (1), a Fed-
19 eral agency shall—

20 “(i) comply with the procedures devel-
21 oped and implemented pursuant to section
22 70923(b)(2) of the Build America, Buy
23 America Act (subtitle A of title IX of divi-
24 sion G of Public Law 117-58); and

1 “(ii) in carrying out clause (i), pre-
 2 serve the confidentiality or trade sensitive
 3 nature of information included in the ap-
 4 plicable application for a license.

5 “(B) PROHIBITION ON GRANTING CERTAIN
 6 WAIVERS.—A Federal agency may not grant a
 7 waiver under paragraph (1) if, as a result of
 8 the waiver, products embodying the applicable
 9 subject invention, or produced through the use
 10 of the applicable subject invention, will be man-
 11 ufactured substantially in a country of concern.

12 “(3) ANNUAL REPORT TO CONGRESSIONAL
 13 COMMITTEES.—Not later than 1 year after the date
 14 of enactment of the Invent Here, Make Here Act of
 15 2023, and annually thereafter, each Federal agency
 16 that, during the preceding year, has received a re-
 17 quest for a waiver under this subsection shall submit
 18 to the relevant congressional committees a report re-
 19 garding the decision of the Federal agency to grant
 20 or deny each such request.”.

21 **SEC. 5. AMENDMENTS TO THE DIRECTORATE FOR TECH-**
 22 **NOLOGY, INNOVATION, AND PARTNERSHIPS.**

23 Subtitle G of title III of the Research and Develop-
 24 ment, Competition, and Innovation Act (42 U.S.C. 19101
 25 et seq.) is amended—

1 (1) in section 10382—

2 (A) in paragraph (2), by striking “and”
3 after the semicolon;

4 (B) in paragraph (3), by striking the pe-
5 riod at the end and inserting “; and”; and

6 (C) by adding at the end the following:

7 “(4) ensure that products developed through re-
8 search funded by the Directorate will be manufac-
9 tured in the United States.”;

10 (2) in section 10383—

11 (A) in paragraph (2), in the matter pre-
12 ceeding subparagraph (A), by striking “prod-
13 ucts,” and inserting “products that will be
14 manufactured in the United States,”;

15 (B) in paragraph (4)(C), by inserting
16 “producing,” after “capable of”;

17 (C) in paragraph (6), by striking “and”
18 after the semicolon;

19 (D) in paragraph (7), by striking the pe-
20 riod at the end and inserting “; and”; and

21 (E) by adding at the end the following:

22 “(8) develop industrial capacity to produce in-
23 novations competitively in the United States for the
24 global marketplace.”;

25 (3) in section 10384—

1 (A) in paragraph (1), by striking “and”
2 after the semicolon;

3 (B) in paragraph (2), by striking the pe-
4 riod at the end and inserting “; and”; and

5 (C) by adding at the end the following:

6 “(3) maximizes economic benefits by ensuring
7 that innovations developed from research awards are
8 produced in the United States.”;

9 (4) in section 10385—

10 (A) in subsection (b)(1), by striking “and
11 commercialization” and inserting “commer-
12 cialization, and domestic production”; and

13 (B) in subsection (c)(2), by striking “and
14 commercialization” and inserting “commer-
15 cialization, and domestic production”;

16 (5) in section 10386(b)(2), by inserting “with
17 domestic manufacturing operations” after “private
18 sector”;

19 (6) in section 10389(a), by striking “and com-
20 mercialization” and inserting “commercialization,
21 and domestic production”;

22 (7) in section 10391(a), by striking “and com-
23 mercialization” and inserting “commercialization,
24 and domestic production”; and

1 (8) in section 10394(f)(5), by striking “and, as
2 appropriate, commercializing” and inserting “, com-
3 mercializing, and producing”.

4 **SECTION 1. SHORT TITLE.**

5 *This Act may be cited as the “Invent Here, Make Here*
6 *Act of 2024”.*

7 **SEC. 2. IMPROVEMENT OF COMMERCIALIZATION OF FED-**
8 **ERAL RESEARCH BY DOMESTIC MANUFAC-**
9 **TURERS.**

10 *Section 2 of the National Institute of Standards and*
11 *Technology Act (15 U.S.C. 272) is amended by adding at*
12 *the end the following:*

13 “(f) **COMMERCIALIZATION OF FEDERAL RESEARCH BY**
14 **DOMESTIC MANUFACTURERS.**—*In order for the Institute to*
15 *meet the need described in section 1(a)(1) and most effec-*
16 *tively carry out the activities under subsection (c)(1) of this*
17 *section, the Director shall—*

18 “(1) *coordinate with the Secretary of Defense, the*
19 *Secretary of Energy, the Director of the National*
20 *Science Foundation, and industry organizations to*
21 *identify domestic manufacturers that can develop*
22 *commercial products based on completed research con-*
23 *ducted by Federal agencies;*

24 “(2) *work with the Administrator of the Small*
25 *Business Administration to identify domestic inves-*

1 *tors to support the development of commercial prod-*
2 *ucts based on research conducted by Federal agencies;*
3 *and*

4 *“(3) maintain a publicly accessible and search-*
5 *able database of domestic manufacturers and their ca-*
6 *pabilities with respect to commercialization of feder-*
7 *ally funded research.”.*

8 **SEC. 3. STUDY AND COMPREHENSIVE REVIEW OF COMMER-**
9 **CIALIZATION OF FEDERAL RESEARCH BY DO-**
10 **MESTIC MANUFACTURERS.**

11 *Not later than 540 days after the date of enactment*
12 *of this Act, the Director of the National Institute of Stand-*
13 *ards and Technology shall—*

14 *(1) complete a study and comprehensive review*
15 *of the commercialization of Federal research by do-*
16 *mestic manufacturers that—*

17 *(A) addresses—*

18 *(i) what barriers currently (as of the*
19 *date on which the study is completed) exist*
20 *for domestic manufacturers to commer-*
21 *cialize Federal research; and*

22 *(ii) what role investment and the*
23 *availability of investors plays in the en-*
24 *couragement or discouragement of the com-*

1 *mercialization of Federal research by do-*
2 *mestic manufacturers; and*

3 *(B) provides recommendations for modifica-*
4 *tions to the comprehensive strategic plan devel-*
5 *oped and implemented pursuant to section 107*
6 *of the American Innovation and Competitiveness*
7 *Act (15 U.S.C. 272 note) to ensure that Federal*
8 *science, engineering, and technology research is*
9 *being transferred to domestic manufacturers to*
10 *modernize manufacturing processes in accord-*
11 *ance with section 2(b)(1) of the National Insti-*
12 *tute of Standards and Technology Act (15 U.S.C.*
13 *272(b)(1)); and*

14 *(2) submit to the Committee on Commerce,*
15 *Science, and Transportation of the Senate, the Com-*
16 *mittee on the Judiciary of the Senate, the Committee*
17 *on Science, Space, and Technology of the House of*
18 *Representatives, and the Committee on the Judiciary*
19 *of the House of Representatives a report on the find-*
20 *ings of the Director with respect to the study and re-*
21 *view completed under paragraph (1).*

22 **SEC. 4. PREFERENCE FOR UNITED STATES INDUSTRY.**

23 *Section 204 of title 35, United States Code, is amended*
24 *to read as follows:*

1 **“§ 204. Preference for United States industry**

2 “(a) *DEFINITIONS.—In this section:*

3 “(1) *COUNTRY OF CONCERN.—The term ‘country*
4 *of concern’ has the meaning given the term ‘covered*
5 *nation’ in section 4872(d) of title 10.*

6 “(2) *RELEVANT CONGRESSIONAL COMMITTEES.—*
7 *The term ‘relevant congressional committees’ means—*

8 “(A) *the Committee on Commerce, Science,*
9 *and Transportation of the Senate;*

10 “(B) *the Committee on the Judiciary of the*
11 *Senate;*

12 “(C) *the Committee on Science, Space, and*
13 *Technology of the House of Representatives; and*

14 “(D) *the Committee on the Judiciary of the*
15 *House of Representatives.*

16 “(b) *GENERAL PREFERENCE.—Notwithstanding any*
17 *other provision of this chapter, and subject to subsection*
18 *(c), no small business firm or nonprofit organization which*
19 *receives title to any subject invention and no assignee of*
20 *any such small business firm or nonprofit organization*
21 *shall grant to any person the exclusive right to use or sell*
22 *any subject invention in the United States unless such per-*
23 *son agrees that any products embodying the subject inven-*
24 *tion or produced through the use of the subject invention*
25 *will be manufactured substantially in the United States.*

26 “(c) *WAIVERS.—*

1 “(1) *IN GENERAL.*—*In individual cases, subject*
2 *to paragraphs (2) and (3), the Federal agency under*
3 *whose funding agreement the applicable subject inven-*
4 *tion was made may waive the requirement for an*
5 *agreement described in subsection (b) upon a showing*
6 *by the applicable small business firm, nonprofit orga-*
7 *nization, or assignee that reasonable but unsuccessful*
8 *efforts have been made to grant licenses on similar*
9 *terms to potential licensees that would be likely to*
10 *manufacture substantially in the United States or*
11 *that under the circumstances domestic manufacture is*
12 *not commercially feasible.*

13 “(2) *REVIEW TIMELINE.*—*Not later than 90 days*
14 *after the date on which a Federal agency receives a*
15 *request for a waiver described in paragraph (1) and*
16 *with respect to which paragraph (3) does not apply,*
17 *the Federal agency shall issue a decision regarding*
18 *whether to grant the request.*

19 “(3) *PROHIBITION ON GRANTING CERTAIN WAIV-*
20 *ERS WITHOUT PRESIDENTIAL AUTHORIZATION.*—*If*
21 *granting a waiver under paragraph (1) would result*
22 *in products embodying the applicable subject inven-*
23 *tion or produced through the use of the applicable*
24 *subject invention being manufactured substantially in*
25 *a country of concern, the applicable Federal agency*

1 *may not grant the waiver without the written author-*
2 *ization of the President (or a designee of the Presi-*
3 *dent).*

4 *“(4) ANNUAL REPORT TO CONGRESSIONAL COM-*
5 *MITTEES.—*

6 *“(A) IN GENERAL.—Not later than 1 year*
7 *after the date of enactment of the Invent Here,*
8 *Make Here Act of 2024, and annually thereafter,*
9 *each Federal agency with respect to which, dur-*
10 *ing the preceding year, a nonprofit organization*
11 *or small business firm that is a party to a fund-*
12 *ing agreement with the Federal agency elected to*
13 *retain title under section 202 to the subject in-*
14 *vention that was the subject of that funding*
15 *agreement shall submit to the relevant congres-*
16 *sional committees a report that includes the in-*
17 *formation described in subparagraph (B).*

18 *“(B) CONTENTS.—Each report required*
19 *under subparagraph (A) shall include, for the pe-*
20 *riod covered by the report—*

21 *“(i) with respect to each request re-*
22 *ceived by the applicable Federal agency for*
23 *a waiver under this subsection, information*
24 *regarding—*

1 “(I) the subject invention that is
2 the subject of the request;

3 “(II) the efforts made by the enti-
4 ty seeking the waiver to grant the ex-
5 clusive right to use or sell the applica-
6 ble subject invention to a person that
7 would agree that any products embody-
8 ing the subject invention or produced
9 through the use of the subject invention
10 would be manufactured substantially
11 in the United States; and

12 “(III) in which markets the prod-
13 ucts embodying the applicable subject
14 invention or produced through the use
15 of the applicable subject invention will
16 be sold; and

17 “(ii) with respect to a small business
18 firm or nonprofit organization that is based
19 in the United States and has elected to re-
20 tain title to a subject invention pursuant to
21 section 202, whether that firm or organiza-
22 tion intends to manufacture that subject in-
23 vention in a foreign country for a foreign
24 market.

1 “(C) *PRESERVATION OF CONFIDEN-*
2 *TIALITY.—Each Federal agency that is required*
3 *to submit a report under this paragraph shall*
4 *preserve the confidentiality or trade sensitive na-*
5 *ture of all information included in each such re-*
6 *port.”.*

7 **SEC. 5. AMENDMENTS TO THE DIRECTORATE FOR TECH-**
8 **NOLOGY, INNOVATION, AND PARTNERSHIPS.**

9 *Subtitle G of title III of the Research and Develop-*
10 *ment, Competition, and Innovation Act (42 U.S.C. 19101*
11 *et seq.) is amended—*

12 (1) *in section 10382—*

13 (A) *in paragraph (2), by striking “and”*
14 *after the semicolon;*

15 (B) *in paragraph (3), by striking the period*
16 *at the end and inserting “; and”; and*

17 (C) *by adding at the end the following:*

18 “(4) *strongly encourage that products developed*
19 *through research funded by the Directorate will be*
20 *manufactured in the United States.”;*

21 (2) *in section 10383—*

22 (A) *in paragraph (2), in the matter pre-*
23 *ceding subparagraph (A), by striking “prod-*
24 *ucts,” and inserting “products that will be man-*
25 *ufactured in the United States,”;*

1 (B) in paragraph (4)(C), by inserting “pro-
2 ducing,” after “capable of”;

3 (C) in paragraph (6), by striking “and”
4 after the semicolon;

5 (D) in paragraph (7), by striking the pe-
6 riod at the end and inserting “; and”; and

7 (E) by adding at the end the following:

8 “(8) develop industrial capacity to produce inno-
9 vations competitively in the United States for the
10 global marketplace.”;

11 (3) in section 10384—

12 (A) in paragraph (1), by striking “and”
13 after the semicolon;

14 (B) in paragraph (2), by striking the period
15 at the end and inserting “; and”; and

16 (C) by adding at the end the following:

17 “(3) maximizes economic benefits by ensuring
18 that innovations developed from research awards are
19 produced in the United States.”;

20 (4) in section 10385—

21 (A) in subsection (b)(1), by striking “and
22 commercialization” and inserting “commer-
23 cialization, and domestic production”; and

1 (B) in subsection (c)(2), by striking “and
2 commercialization” and inserting “commer-
3 cialization, and domestic production”;

4 (5) in section 10386(b)(2), by inserting “with
5 domestic manufacturing operations” after “private
6 sector”;

7 (6) in section 10389(a), by striking “and com-
8 mercialization” and inserting “commercialization,
9 and domestic production”;

10 (7) in section 10391(a), by striking “and com-
11 mercialization” and inserting “commercialization,
12 and domestic production”; and

13 (8) in section 10394(f)(5), by striking “and, as
14 appropriate, commercializing” and inserting “, com-
15 mercializing, and producing”.

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A BILL

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