

117TH CONGRESS
2D SESSION

S. _____

To address the preference for United States industry with respect to patent rights in inventions made with Department of Homeland Security research assistance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To address the preference for United States industry with respect to patent rights in inventions made with Department of Homeland Security research assistance, 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 for Homeland Security Act”.

1 **SEC. 2. PREFERENCE FOR UNITED STATES INDUSTRY.**

2 (a) IN GENERAL.—Section 308 of the Homeland Se-
3 curity Act of 2002 (6 U.S.C. 188) is amended by adding
4 at the end the following:

5 “(d) PREFERENCE FOR UNITED STATES INDUS-
6 TRY.—

7 “(1) DEFINITIONS.—In this subsection:

8 “(A) COUNTRY OF CONCERN.—The term
9 ‘country of concern’ means a country that—

10 “(i) is a covered nation, as that term
11 is defined in section 4872(d) of title 10,
12 United States Code; or

13 “(ii) the Secretary determines is en-
14 gaged in conduct that is detrimental to the
15 national security of the United States.

16 “(B) FUNDING AGREEMENT; NONPROFIT
17 ORGANIZATION; SUBJECT INVENTION.—The
18 terms ‘funding agreement’, ‘nonprofit organiza-
19 tion’, and ‘subject invention’ have the meanings
20 given those terms in section 201 of title 35,
21 United States Code.

22 “(C) RELEVANT CONGRESSIONAL COMMIT-
23 TEES.—The term ‘relevant congressional com-
24 mittees’ means—

1 “(i) the Committee on Homeland Se-
2 curity and Governmental Affairs of the
3 Senate; and

4 “(ii) the Committee on Homeland Se-
5 curity of the House of Representatives.

6 “(2) PREFERENCE.—Subject to the other provi-
7 sions of this subsection, no firm or nonprofit organi-
8 zation which receives title to any subject invention
9 developed under a funding agreement entered into
10 with the Department and no assignee of any such
11 firm or nonprofit organization shall grant to any
12 person the exclusive right to use or sell any subject
13 invention unless such person agrees that any prod-
14 ucts embodying the subject invention or produced
15 through the use of the subject invention will be man-
16 ufactured substantially in the United States.

17 “(3) WAIVERS.—

18 “(A) IN GENERAL.—Subject to subpara-
19 graph (B), in individual cases, the requirement
20 for an agreement described in paragraph (2)
21 may be waived by the Secretary upon a showing
22 by the firm, nonprofit organization, or assignee
23 that reasonable but unsuccessful efforts have
24 been made to grant licenses on similar terms to
25 potential licensees that would be likely to manu-

1 facture substantially in the United States or
2 that under the circumstances domestic manu-
3 facture is not commercially feasible.

4 “(B) CONDITIONS ON WAIVERS GRANTED
5 BY DEPARTMENT.—

6 “(i) BEFORE GRANT OF WAIVER.—Be-
7 fore granting a waiver under subparagraph
8 (A), the Secretary shall—

9 “(I) consult with the relevant
10 congressional committees regarding
11 the decision of the Secretary to grant
12 the waiver; and

13 “(II) comply with the procedures
14 developed and implemented pursuant
15 to section 70923(b)(2) of the Build
16 America, Buy America Act (subtitle A
17 of title IX of division G of Public Law
18 117–58).

19 “(ii) PROHIBITION ON GRANTING CER-
20 TAIN WAIVERS.—The Secretary may not
21 grant a waiver under subparagraph (A) if,
22 as a result of the waiver, products embody-
23 ing the applicable subject invention, or pro-
24 duced through the use of the applicable

1 subject invention, will be manufactured
2 substantially in a country of concern.”.

3 (b) AMENDMENT TO TITLE 35.—Section 204 of title
4 35, United States Code, is amended by inserting “and ex-
5 cept as provided in subsection (d) of section 308 of the
6 Homeland Security Act of 2002 (6 U.S.C. 188),” after
7 “this chapter,”.