

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—114th Cong., 1st Sess.

S. 779

To provide for Federal agencies to develop public access policies relating to research conducted by employees of that agency or from funds administered by that agency.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. JOHNSON (for himself and Mr. CARPER)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Access to Science
5 and Technology Research Act of 2015”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the Federal Government funds basic and
9 applied research with the expectation that new ideas
10 and discoveries that result from the research, if
11 shared and effectively disseminated, will advance

1 science and improve the lives and welfare of people
2 of the United States and around the world;

3 (2) the Internet makes it possible for this infor-
4 mation to be promptly available to every scientist,
5 physician, educator, and citizen at home, in school,
6 or in a library;

7 (3) the United States has a substantial interest
8 in maximizing the impact and utility of the research
9 it funds by enabling a wide range of reuses of the
10 peer-reviewed literature that reports the results of
11 such research, including by enabling computational
12 analysis by state-of-the-art technologies;

13 (4) the Office of Science and Technology Policy
14 issued a policy memorandum dated February 22,
15 2013, which established the commitment of the exec-
16 utive branch of the Federal Government to ensuring
17 that “the direct results of Federally funded scientific
18 research are made available to and useful for the
19 public, industry, and the scientific community”; and

20 (5) the executive branch advises that such pub-
21 lic access should be implemented “with the fewest
22 constraints possible”.

1 **SEC. 3. DEFINITION OF FEDERAL AGENCY.**

2 In this Act, the term “Federal agency” means an Ex-
3 ecutive agency, as defined under section 105 of title 5,
4 United States Code.

5 **SEC. 4. FEDERAL RESEARCH PUBLIC ACCESS POLICY.**

6 (a) REQUIREMENT TO DEVELOP POLICY.—

7 (1) IN GENERAL.—Not later than 1 year after
8 the date of enactment of this Act, each Federal
9 agency with annual extramural research expendi-
10 tures of over \$100,000,000 shall develop a Federal
11 research public access policy that is consistent with
12 and advances the purposes of the Federal agency.

13 (2) COMMON PROCEDURES.—To the extent
14 practicable, Federal agencies required to develop a
15 policy under paragraph (1) shall follow common pro-
16 cedures for the collection and depositing of research
17 papers.

18 (b) CONTENT.—Each Federal research public access
19 policy shall provide for—

20 (1) submission to a digital repository des-
21 ignated or maintained by the Federal agency of an
22 electronic version of the author’s final manuscript of
23 original research papers that have been accepted for
24 publication in peer-reviewed journals and that result
25 from research supported, in whole or in part, from
26 funding by the Federal Government;

1 (2) the incorporation of all changes resulting
2 from the peer review publication process in the
3 manuscript described under paragraph (1);

4 (3) the replacement of the final manuscript
5 with the final published version if—

6 (A) the publisher consents to the replace-
7 ment; and

8 (B) the goals of the Federal agency for
9 functionality and interoperability are retained;

10 (4) free online public access to such final peer-
11 reviewed manuscripts or published versions within a
12 time period that is appropriate for each type of re-
13 search conducted or sponsored by the Federal agen-
14 cy, not later than 12 months after publication in
15 peer-reviewed journals, preferably sooner, or as ad-
16 justed under established mechanisms;

17 (5) a means, using established mechanisms for
18 making requests to the applicable Federal agency,
19 for members of the public and other stakeholders to
20 request to adjust the period before such a final peer-
21 reviewed manuscript or published version is made
22 publicly available by presenting evidence dem-
23 onstrating that the period is inconsistent with the
24 objectives of the Federal research public access pol-

1 icy or the needs of the public, industry, or the sci-
2 entific community;

3 (6) providing research papers as described in
4 paragraph (4) in formats and under terms that en-
5 able productive reuse of the research and computa-
6 tional analysis by state-of-the-art technologies;

7 (7) improving the ability of the public to locate
8 and access research papers made accessible under
9 the Federal research public access policy; and

10 (8) long-term preservation of, and free public
11 access to, published research findings—

12 (A) in a stable digital repository main-
13 tained by the Federal agency; or

14 (B) if consistent with the purposes of the
15 Federal agency, in any repository meeting con-
16 ditions determined favorable by the Federal
17 agency, including free public access, interoper-
18 ability, and long-term preservation.

19 (c) APPLICATION OF POLICY.—Each Federal re-
20 search public access policy shall—

21 (1) apply to—

22 (A) researchers employed by the Federal
23 agency whose works remain in the public do-
24 main; and

1 (B) researchers funded by the Federal
2 agency;

3 (2) provide that works described under para-
4 graph (1)(A) shall be—

5 (A) marked as being public domain mate-
6 rial when published; and

7 (B) made available at the same time such
8 works are made available under subsection
9 (b)(4); and

10 (3) make effective use of any law or guidance
11 relating to the creation and reservation of a Govern-
12 ment license that provides for the reproduction, pub-
13 lication, release, or other uses of a final manuscript
14 for Federal purposes.

15 (d) EXCLUSIONS.—Each Federal research public ac-
16 cess policy shall not apply to—

17 (1) research progress reports presented at pro-
18 fessional meetings or conferences;

19 (2) laboratory notes, preliminary data analyses,
20 notes of the author, phone logs, or other information
21 used to produce final manuscripts;

22 (3) classified research, research resulting in
23 works that generate revenue or royalties for authors
24 (such as books) or patentable discoveries, to the ex-
25 tent necessary to protect a copyright or patent; or

1 (4) authors who do not submit their work to a
2 journal or works that are rejected by journals.

3 (e) PATENT OR COPYRIGHT LAW.—Nothing in this
4 Act shall be construed to affect any right under the provi-
5 sions of title 17 or 35, United States Code.

6 (f) GAO REPORT.—Not later than 3 years after the
7 date of the enactment of this Act, and every 5 years there-
8 after, the Comptroller General of the United States shall
9 submit to the Congress a report that—

10 (1) includes an analysis of the period between
11 the date on which each paper becomes public avail-
12 able in a journal and the date on which the paper
13 is in the online repository of the applicable Federal
14 agency; and

15 (2) examines the effectiveness of the Federal re-
16 search public access policy in providing the public
17 with free online access to papers on research funded
18 by each Federal agency required to develop a policy
19 under subsection (a)(1), including—

20 (A) whether the terms of use applicable to
21 such research papers in effect are effective in
22 enabling productive reuse of the research and
23 computational analysis by state-of-the-art tech-
24 nologies; and

1 (B) examines whether such research pa-
2 pers should include a royalty-free copyright li-
3 cense that is available to the public and that
4 permits the reuse of those research papers, on
5 the condition that attribution is given to the au-
6 thor or authors of the research and any others
7 designated by the copyright owner.