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 following:

2. **SECTION 1. SHORT TITLE.**

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

4. **SEC. 2. FINDINGS.**

5. Congress finds that—

6. (1) the Federal Government funds basic and applied research with the expectation that new ideas and discoveries that result from the research, if shared and effectively disseminated, will advance
science and improve the lives and welfare of people
of the United States and around the world;

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

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

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

(5) the executive branch advises that such pub-
lic access should be implemented “with the fewest
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;
(2) the incorporation of all changes resulting from the peer review publication process in the manuscript described under paragraph (1);

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

(A) the publisher consents to the replacement; and

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

(4) free online public access to such final peer-reviewed manuscripts or published versions within a time period that is appropriate for each type of research conducted or sponsored by the Federal agency, not later than 12 months after publication in peer-reviewed journals, preferably sooner, or as adjusted under established mechanisms;

(5) a means, using established mechanisms for making requests to the applicable Federal agency, for members of the public and other stakeholders to request to adjust the period before such a final peer-reviewed manuscript or published version is made publicly available by presenting evidence demonstrating that the period is inconsistent with the objectives of the Federal research public access pol-
icy or the needs of the public, industry, or the scientific community;

(6) providing research papers as described in paragraph (4) in formats and under terms that enable productive reuse of the research and computational analysis by state-of-the-art technologies;

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

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

(A) in a stable digital repository maintained by the Federal agency; or

(B) if consistent with the purposes of the Federal agency, in any repository meeting conditions determined favorable by the Federal agency, including free public access, interoperability, and long-term preservation.

(c) Application of Policy.—Each Federal research public access policy shall—

(1) apply to—

(A) researchers employed by the Federal agency whose works remain in the public domain; and
(B) researchers funded by the Federal agency;

(2) provide that works described under paragraph (1)(A) shall be—

(A) marked as being public domain material when published; and

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

(3) make effective use of any law or guidance relating to the creation and reservation of a Government license that provides for the reproduction, publication, release, or other uses of a final manuscript for Federal purposes.

(d) EXCLUSIONS.—Each Federal research public access policy shall not apply to—

(1) research progress reports presented at professional meetings or conferences;

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

(3) classified research, research resulting in works that generate revenue or royalties for authors (such as books) or patentable discoveries, to the extent necessary to protect a copyright or patent; or
(4) authors who do not submit their work to a journal or works that are rejected by journals.

(c) PATENT OR COPYRIGHT LAW.—Nothing in this Act shall be construed to affect any right under the provisions of title 17 or 35, United States Code.

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

(1) includes an analysis of the period between the date on which each paper becomes public available in a journal and the date on which the paper is in the online repository of the applicable Federal agency; and

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

(A) whether the terms of use applicable to such research papers in effect are effective in enabling productive reuse of the research and computational analysis by state-of-the-art technologies; and
(B) examines whether such research papers should include a royalty-free copyright license that is available to the public and that permits the reuse of those research papers, on the condition that attribution is given to the author or authors of the research and any others designated by the copyright owner.