

109TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend the Internal Revenue Code of 1986 to provide incentives to improve America’s research competitiveness, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

Mr. BAUCUS introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

---

**A BILL**

To amend the Internal Revenue Code of 1986 to provide incentives to improve America’s research competitiveness, 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 “Research Competitive-  
5 ness Act of 2006”.

6 **SEC. 2. SIMPLIFICATION OF RESEARCH AND DEVELOP-**  
7 **MENT CREDIT.**

8 (a) SIMPLIFIED CREDIT FOR QUALIFIED RESEARCH  
9 EXPENSES.—

1           (1) IN GENERAL.—Subsection (a) of section 41  
2 of the Internal Revenue Code of 1986 (relating to  
3 credit for increasing research activities) is amended  
4 to read as follows:

5           “(a) DETERMINATION OF CREDIT.—

6           “(1) IN GENERAL.—For purposes of section 38,  
7 the research credit determined under this section for  
8 the taxable year shall be equal to 20 percent of so  
9 much of the qualified research expenses for such  
10 taxable year as exceeds 50 percent of the average  
11 qualified research expenses for the 3 taxable years  
12 preceding the taxable year for which the credit is  
13 being determined.

14           “(2) SPECIAL RULE IN CASE OF NO QUALIFIED  
15 RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAX-  
16 ABLE YEARS.—

17           “(A) TAXPAYERS TO WHICH PARAGRAPH  
18 APPLIES.—The credit under this section shall  
19 be determined under this paragraph if the tax-  
20 payer has no qualified research expenses in at  
21 least 1 of the 3 taxable years preceding the tax-  
22 able year for which the credit is being deter-  
23 mined.

24           “(B) CREDIT RATE.—The credit deter-  
25 mined under this paragraph shall be equal to



1           “(i) IN GENERAL.—The term ‘basic  
2           research payment’ means, with respect to  
3           any taxable year, any amount paid in cash  
4           during such taxable year by a corporation  
5           to any qualified organization for basic re-  
6           search but only if—

7                       “(I) such payment is pursuant to  
8                       a written agreement between such cor-  
9                       poration and such qualified organiza-  
10                      tion, and

11                     “(II) such basic research is to be  
12                     performed by such qualified organiza-  
13                     tion.

14           “(ii) EXCEPTION TO REQUIREMENT  
15           THAT RESEARCH BE PERFORMED BY THE  
16           ORGANIZATION.—In the case of a qualified  
17           organization described in clause (iii) or (iv)  
18           of subparagraph (C), subclause (II) of  
19           clause (i) shall not apply.

20           “(C) QUALIFIED ORGANIZATION.—For  
21           purposes of this paragraph, the term ‘qualified  
22           organization’ means any of the following orga-  
23           nizations:

24                     “(i) EDUCATIONAL INSTITUTIONS.—  
25                     Any educational organization which—

1           “(I) is an institution of higher  
2           education (within the meaning of sec-  
3           tion 3304(f)), and

4           “(II) is described in section  
5           170(b)(1)(A)(ii).

6           “(ii) CERTAIN SCIENTIFIC RESEARCH  
7           ORGANIZATIONS.—Any organization not  
8           described in clause (i) which—

9           “(I) is described in section  
10           501(c)(3) and is exempt from tax  
11           under section 501(a),

12           “(II) is organized and operated  
13           primarily to conduct scientific re-  
14           search, and

15           “(III) is not a private founda-  
16           tion.

17           “(iii) SCIENTIFIC TAX-EXEMPT ORGA-  
18           NIZATIONS.—Any organization which—

19           “(I) is described in section  
20           501(c)(3) (other than a private foun-  
21           dation) or section 501(c)(6),

22           “(II) is exempt from tax under  
23           section 501(a),

24           “(III) is organized and operated  
25           primarily to promote scientific re-

1 search by qualified organizations de-  
2 scribed in clause (i) pursuant to writ-  
3 ten research agreements, and

4 “(IV) currently expends substan-  
5 tially all of its funds or substantially  
6 all of the basic research payments re-  
7 ceived by it for grants to, or contracts  
8 for basic research with, an organiza-  
9 tion described in clause (i).

10 “(iv) CERTAIN GRANT ORGANIZA-  
11 TIONS.—Any organization not described in  
12 clause (ii) or (iii) which—

13 “(I) is described in section  
14 501(c)(3) and is exempt from tax  
15 under section 501(a) (other than a  
16 private foundation),

17 “(II) is established and main-  
18 tained by an organization established  
19 before July 10, 1981, which meets the  
20 requirements of subclause (I),

21 “(III) is organized and operated  
22 exclusively for the purpose of making  
23 grants to organizations described in  
24 clause (i) pursuant to written research

1 agreements for purposes of basic re-  
2 search, and

3 “(IV) makes an election, rev-  
4 ocable only with the consent of the  
5 Secretary, to be treated as a private  
6 foundation for purposes of this title  
7 (other than section 4940, relating to  
8 excise tax based on investment in-  
9 come).

10 “(D) DEFINITIONS AND SPECIAL RULES.—

11 For purposes of this paragraph—

12 “(i) BASIC RESEARCH.—The term  
13 ‘basic research’ means any original inves-  
14 tigation for the advancement of scientific  
15 knowledge not having a specific commercial  
16 objective, except that such term shall not  
17 include—

18 “(I) basic research conducted  
19 outside of the United States, and

20 “(II) basic research in the social  
21 sciences, arts, or humanities.

22 “(ii) TRADE OR BUSINESS QUALIFICA-  
23 TION .—For purposes of applying para-  
24 graph (1) to this paragraph, any basic re-  
25 search payments shall be treated as an

1 amount paid in carrying on a trade or  
2 business of the taxpayer in the taxable  
3 year in which it is paid (without regard to  
4 the provisions of paragraph (3)(B)).

5 “(iii) CERTAIN CORPORATIONS NOT  
6 ELIGIBLE.—The term ‘corporation’ shall  
7 not include—

8 “(I) an S corporation,

9 “(II) a personal holding company  
10 (as defined in section 542), or

11 “(III) a service organization (as  
12 defined in section 414(m)(3)).”.

13 (3) CONFORMING AMENDMENTS.—

14 (A) Section 41 of such Code is amended by  
15 striking subsection (e).

16 (B) Section 41(f) of such Code is amended  
17 by striking paragraph (6).

18 (c) PERMANENT EXTENSION OF CREDIT.—

19 (1) IN GENERAL.—Section 41 of the Internal  
20 Revenue Code of 1986 is amended by striking sub-  
21 section (h).

22 (2) CONFORMING AMENDMENT.—Paragraph (1)  
23 of section 45C(b) of such Code is amended by strik-  
24 ing subparagraph (D).

25 (d) CONFORMING AMENDMENTS.—

1           (1) Section 41 of the Internal Revenue Code of  
2           1986 is amended by redesignating subsections (d),  
3           (f), and (g) as subsections (c), (d), and (e), respec-  
4           tively.

5           (2) Paragraphs (2)(A) and (5) (as redesignated  
6           by subsection (b)(2)) of section 41(b) of such Code  
7           are each amended by striking “subsection (f)(1)”  
8           and inserting “subsection (d)(1)”.

9           (3) Sections 45C(d)(3), 45G(e)(2), and  
10          936(h)(5)(C)(i)(IV)(c) of such Code are each  
11          amended by striking “section 41(f)” and inserting  
12          “section 41(d)”.

13          (4) Section 54(l)(3)(A) of such Code is amend-  
14          ed by striking “section 41(g)” and inserting “section  
15          41(e)”.

16          (5) Section 170(e)(4)(B)(i) of such Code is  
17          amended by striking “subparagraph (A) or subpara-  
18          graph (B) of section 41(e)(6)” and inserting “clause  
19          (i) or (ii) of section 41(b)(4)(C)”.

20          (6) Sections 197(f)(1)(C), 197(f)(9)(C)(i)(II),  
21          and 280C(b)(3) of such Code are each amended by  
22          striking “section 41(f)(1)” and inserting “section  
23          41(d)(1)”.



1 **“SEC. 45N. RESEARCH INVESTMENT TAX CREDIT.**

2 “(a) ALLOWANCE OF CREDIT.—

3 “(1) IN GENERAL.—For purposes of section 38,  
4 in the case of a taxpayer who holds a qualified equity  
5 investment on a credit allowance date of such  
6 investment which occurs during the taxable year, the  
7 research investment tax credit determined under this  
8 section for such taxable year is an amount equal to  
9 the 5 percent of the amount paid to the qualified re-  
10 search entity for such investment at its original  
11 issue.

12 “(2) CREDIT ALLOWANCE DATE.—For purposes  
13 of paragraph (1), the term ‘credit allowance date’  
14 means, with respect to any qualified equity invest-  
15 ment—

16 “(A) the date on which such investment is  
17 initially made, and

18 “(B) each of the 4 anniversary dates of  
19 such date thereafter.

20 “(b) QUALIFIED EQUITY INVESTMENT.—For pur-  
21 poses of this section—

22 “(1) IN GENERAL.—The term ‘qualified equity  
23 investment’ means any equity investment in a quali-  
24 fied research entity if—

25 “(A) such investment is acquired by the  
26 taxpayer at its original issue (directly or

1 through an underwriter) solely in exchange for  
2 cash,

3 “(B) substantially all of such cash is used  
4 by the qualified research entity to make quali-  
5 fied research investments, and

6 “(C) such investment is designated for  
7 purposes of this section by the qualified re-  
8 search entity.

9 Such term shall not include any equity investment  
10 issued by a qualified research entity more than 5  
11 years after the date that such entity receives an allo-  
12 cation under subsection (e). Any allocation not used  
13 within such 5-year period may be reallocated by the  
14 Secretary under subsection (e).

15 “(2) LIMITATION.—The maximum amount of  
16 equity investments issued by a qualified research en-  
17 tity which may be designated under paragraph  
18 (1)(C) by such entity shall not exceed the portion of  
19 the limitation amount allocated under subsection (f)  
20 to such entity.

21 “(3) SAFE HARBOR FOR DETERMINING USE OF  
22 CASH.—The requirement of paragraph (1)(B) shall  
23 be treated as met if at least 85 percent of the aggre-  
24 gate gross assets of the qualified research entity are  
25 invested in qualified research investments.

1           “(4) TREATMENT OF SUBSEQUENT PUR-  
2 CHASERS.—The term ‘qualified research investment’  
3 includes any equity investment which would (but for  
4 paragraph (1)(A)) be a qualified equity investment  
5 in the hands of the taxpayer if such investment was  
6 a qualified equity investment in the hands of a prior  
7 holder.

8           “(5) REDEMPTIONS.—A rule similar to the rule  
9 of section 1202(c)(3) shall apply for purposes of this  
10 subsection.

11           “(6) EQUITY INVESTMENT.—The term ‘equity  
12 investment’ means—

13                   “(A) any stock (other than nonqualified  
14 preferred stock as defined in section 351(g)(2))  
15 in an entity which is a corporation, and

16                   “(B) any capital interest in an entity  
17 which is a partnership.

18           “(c) QUALIFIED RESEARCH ENTITY.—For purposes  
19 of this section, the term ‘qualified research entity’ means  
20 any domestic corporation or partnership if—

21                   “(1) the primary mission of the entity is serv-  
22 ing, or providing investment capital for, qualifying  
23 small business innovation companies,

24                   “(2) the entity maintains accountability to engi-  
25 neers, scientists, and other research-related profes-

1 sionals through their representation on any gov-  
2 erning board of the entity or on any advisory board  
3 to the entity, and

4 “(3) the entity is certified by the Secretary for  
5 purposes of this section as being a qualified research  
6 entity.

7 “(d) QUALIFIED RESEARCH INVESTMENTS.—For  
8 purposes of this section—

9 “(1) IN GENERAL.—The term ‘qualified re-  
10 search investment’ means—

11 “(A) any capital or equity investment in,  
12 or loan to, any qualifying small business inno-  
13 vation company, which when added to any other  
14 such investment in or loan to such company  
15 taken into account for purposes of this section  
16 for any taxable year does not exceed  
17 \$10,000,000, and

18 “(B) the purchase from another qualified  
19 research entity of any loan made by such entity  
20 which is a qualified research investment.

21 “(2) QUALIFYING SMALL BUSINESS INNOVA-  
22 TION COMPANY.—

23 “(A) IN GENERAL.—For purposes of para-  
24 graph (1), the term ‘qualifying small business  
25 innovation company’ means, with respect to any

1 taxable year, any corporation (including a non-  
2 profit corporation) or partnership if for such  
3 year—

4 “(i) the gross receipts of such entity  
5 do not exceed \$10,000,000,

6 “(ii) the aggregate gross assets of  
7 such entity do not exceed \$25,000,000,  
8 and

9 “(iii) at least 50 percent of the gross  
10 expenditures of such entity would qualify  
11 as research or experimental expenditures  
12 under section 174.

13 All persons treated as a single employer under  
14 subsection (a) or (b) of section 52 or subsection  
15 (m) or (o) of section 414 shall be treated as one  
16 person for purposes of this subparagraph.

17 “(B) AGGREGATE GROSS ASSETS.—For  
18 purposes of subparagraph (A)(ii), the term ‘ag-  
19 gregate gross assets’ shall have meaning given  
20 such term by section 1202(d)(2), except such  
21 term shall not include intangibles and goodwill.

22 “(e) NATIONAL LIMITATION ON AMOUNT OF INVEST-  
23 MENTS DESIGNATED.—

1           “(1) IN GENERAL.—There is a research invest-  
2           ment tax credit limitation for each calendar year.

3           Such limitation is—

4                   “(A) \$500,000,000 for 2007,

5                   “(B) \$750,000,000 for 2008 and 2009,

6           and

7                   “(C) \$1,000,000,000 for 2010 and 2011.

8           “(2) ALLOCATION OF LIMITATION.—The limita-  
9           tion under paragraph (1) shall be allocated by the  
10          Secretary among qualified research entities selected  
11          by the Secretary, with not more than \$25,000,000  
12          allocated to any 1 qualified research entity in any  
13          calendar year. In making allocations under the pre-  
14          ceding sentence, the Secretary shall give priority to  
15          any entity—

16                   “(A) with a record of having successfully  
17                   provided capital or technical assistance to quali-  
18                   fying small business innovation companies, or

19                   “(B) which intends to satisfy the require-  
20                   ment under subsection (b)(1)(B) by making  
21                   qualified research investments in 1 or more  
22                   companies in which persons unrelated to such  
23                   entity (within the meaning of section 267(b) or  
24                   707(b)(1)) hold the majority equity interest,  
25           and

1 if more than 1 qualified research entity meets sub-  
2 paragraph (A) or (B), the Secretary shall give pri-  
3 ority to the entity with the earliest investment. If in-  
4 sufficient allocations are available for all qualified  
5 applicants in any calendar year, the priorities estab-  
6 lished for such applicants without allocations shall  
7 be carried over to the succeeding calendar year.

8 “(3) CARRYOVER OF UNUSED LIMITATION.—If  
9 the research investment tax credit limitation for any  
10 calendar year exceeds the aggregate amount allo-  
11 cated under paragraph (2) for such year, such limi-  
12 tation for the succeeding calendar year shall be in-  
13 creased by the amount of such excess. No amount  
14 may be carried under the preceding sentence to any  
15 calendar year after 2018.

16 “(f) RECAPTURE OF CREDIT IN CERTAIN CASES.—

17 “(1) IN GENERAL.—If, at any time during the  
18 7-year period beginning on the date of the original  
19 issue of a qualified equity investment in a qualified  
20 research entity, there is a recapture event with re-  
21 spect to such investment, then the tax imposed by  
22 this chapter for the taxable year in which such event  
23 occurs shall be increased by the credit recapture  
24 amount.

1           “(2) CREDIT RECAPTURE AMOUNT.—For pur-  
2           poses of paragraph (1), the credit recapture amount  
3           is an amount equal to the sum of—

4                   “(A) the aggregate decrease in the credits  
5                   allowed to the taxpayer under section 38 for all  
6                   prior taxable years which would have resulted if  
7                   no credit had been determined under this sec-  
8                   tion with respect to such investment, plus

9                   “(B) interest at the underpayment rate es-  
10                  tablished under section 6621 on the amount de-  
11                  termined under subparagraph (A) for each  
12                  prior taxable year for the period beginning on  
13                  the due date for filing the return for the prior  
14                  taxable year involved.

15           No deduction shall be allowed under this chapter for  
16           interest described in subparagraph (B).

17           “(3) RECAPTURE EVENT.—For purposes of  
18           paragraph (1), there is a recapture event with re-  
19           spect to an equity investment in a qualified research  
20           entity if—

21                   “(A) such entity ceases to be a qualified  
22                   research entity,

23                   “(B) the proceeds of the investment cease  
24                   to be used as required of subsection (b)(1)(B),  
25                   or

1           “(C) such investment is redeemed by such  
2           entity.

3           “(4) SPECIAL RULES.—

4           “(A) TAX BENEFIT RULE.—The tax for  
5           the taxable year shall be increased under para-  
6           graph (1) only with respect to credits allowed  
7           by reason of this section which were used to re-  
8           duce tax liability. In the case of credits not so  
9           used to reduce tax liability, the carryforwards  
10          and carrybacks under section 39 shall be appro-  
11          priately adjusted.

12          “(B) NO CREDITS AGAINST TAX.—Any in-  
13          crease in tax under this subsection shall not be  
14          treated as a tax imposed by this chapter for  
15          purposes of determining the amount of any  
16          credit under this chapter or for purposes of sec-  
17          tion 55.

18          “(g) REGULATIONS.—The Secretary shall prescribe  
19          such regulations as may be appropriate to carry out this  
20          section, including regulations—

21                 “(1) which prevent the abuse of the purposes of  
22                 this section,

23                 “(2) which provide rules for determining wheth-  
24                 er the requirement of subsection (b)(1)(B) is treated  
25                 as met,



1           (2) by striking the period at the end of para-  
2           graph (15) and inserting “, or”, and

3           (3) by inserting at the end the following new  
4           paragraph:

5           “(16) research park facility.”.

6           (b) DEFINITION.—Section 142 is amended by insert-  
7           ing at the end the following new subsection:

8           “(n) RESEARCH PARK FACILITY.—For purposes of  
9           subsection (a)(15), the term ‘research park facility’ means  
10          a facility (including buildings, land, or other structures)  
11          which is used in connection with research and experimen-  
12          tation (as defined in section 168(i)(11)). For purposes of  
13          the preceding sentence, such term includes facilities which  
14          are directly related and ancillary to a research park facil-  
15          ity (determined without regard to this sentence) if—

16               “(1) such facilities are located on the same site  
17               as the research park facility, and

18               “(2) not more than 25 percent of the net pro-  
19               ceeds of the issue are used to provide such facili-  
20               ties.”.

21          (c) EFFECTIVE DATE.—The amendments made by  
22          this section shall apply with respect to bonds issued on  
23          or after the date of the enactment of this Act.

1 **SEC. 5. CLARIFICATION OF APPLICATION OF PRIVATE AC-**  
2 **TIVITY BOND RULES WITH RESPECT TO**  
3 **FUNDING OF FEDERAL RESEARCH AGREE-**  
4 **MENTS.**

5 Not later than June 30, 2007, the Secretary of the  
6 Treasury shall prescribe guidance identifying the cir-  
7 cumstances, if any, in which the rights of the Federal Gov-  
8 ernment granted under chapter 18 of title 35, United  
9 States Code (commonly known as the Bayh-Dole Act  
10 (Pub. Law No. 96-517)) constitute private business use  
11 under the private activity bond rules in section 141 of the  
12 Internal Revenue Code of 1986.