

One Hundred Eleventh Congress  
of the  
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,  
the sixth day of January, two thousand and nine*

An Act

Making omnibus appropriations for the fiscal year ending September 30, 2009,  
and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Omnibus Appropriations Act,  
2009”.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. References.
- Sec. 4. Explanatory statement.
- Sec. 5. Statement of appropriations.

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG  
ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2009

- Title I—Agricultural Programs
- Title II—Conservation Programs
- Title III—Rural Development Programs
- Title IV—Domestic Food Programs
- Title V—Foreign Assistance and Related Programs
- Title VI—Related Agency and Food and Drug Administration
- Title VII—General Provisions

DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES  
APPROPRIATIONS ACT, 2009

- Title I—Department of Commerce
- Title II—Department of Justice
- Title III—Science
- Title IV—Related Agencies
- Title V—General Provisions

DIVISION C—ENERGY AND WATER DEVELOPMENT AND RELATED  
AGENCIES APPROPRIATIONS ACT, 2009

- Title I—Department of Defense—Civil: Department of the Army
- Title II—Department of the Interior
- Title III—Department of Energy
- Title IV—Independent Agencies
- Title V—General Provisions

DIVISION D—FINANCIAL SERVICES AND GENERAL GOVERNMENT  
APPROPRIATIONS ACT, 2009

- Title I—Department of the Treasury
- Title II—Executive Office of the President and Funds Appropriated to the President
- Title III—The Judiciary
- Title IV—District of Columbia
- Title V—Independent Agencies

Service Retirement and Disability Fund, the Employees Life Insurance Fund, and the Employees Health Benefits Fund, as appropriate, and shall be available for the authorized purposes of those accounts: *Provided further*, That sections 801, 802, and 803 of division B, Public Law 108–447 shall remain in effect during fiscal year 2009: *Provided further*, That the Director may, this year, reduce by regulation fees payable for documents in patent and trademark matters, in connection with the filing of documents filed electronically in a form prescribed by the Director: *Provided further*, That \$2,000,000 shall be transferred to Office of Inspector General for activities associated with carrying out investigations and audits related to the USPTO: *Provided further*, That from the amounts provided herein, no less than \$4,000,000 shall be available only for the USPTO contribution in a cooperative or joint agreement or agreements with a non-profit organization or organizations, successfully audited within the previous year, and with previous experience in such programs, to conduct policy studies, including studies relating to activities of United Nations Specialized agencies and other international organizations, as well as conferences and other development programs, in support of fair international protection of intellectual property rights.

#### NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

##### SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For necessary expenses of the National Institute of Standards and Technology, \$472,000,000, to remain available until expended, of which not to exceed \$9,000,000 may be transferred to the “Working Capital Fund”: *Provided*, That not to exceed \$5,000 shall be for official reception and representation expenses: *Provided further*, That within the amounts appropriated, \$3,000,000 shall be used for the projects, and in the amounts, specified in the explanatory statement described in section 4 (in the matter preceding division A of this consolidated Act).

##### INDUSTRIAL TECHNOLOGY SERVICES

For necessary expenses of the Hollings Manufacturing Extension Partnership of the National Institute of Standards and Technology, \$110,000,000, to remain available until expended. In addition, for necessary expenses of the Technology Innovation Program of the National Institute of Standards and Technology, \$65,000,000, to remain available until expended.

##### CONSTRUCTION OF RESEARCH FACILITIES

For construction of new research facilities, including architectural and engineering design, and for renovation and maintenance of existing facilities, not otherwise provided for the National Institute of Standards and Technology, as authorized by 15 U.S.C. 278c–278e, \$172,000,000, to remain available until expended, of which \$30,000,000 is for a competitive construction grant program for research science buildings: *Provided*, That within the amounts appropriated, \$44,000,000 shall be used for the projects, and in the amounts, specified in the explanatory statement described in section 4 (in the matter preceding division A of this consolidated Act): *Provided further*, That the Secretary of Commerce shall include

in the budget justification materials that the Secretary submits to Congress in support of the Department of Commerce budget (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) an estimate for each National Institute of Standards and Technology construction project having a total multi-year program cost of more than \$5,000,000 and simultaneously the budget justification materials shall include an estimate of the budgetary requirements for each such project for each of the five subsequent fiscal years.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of activities authorized by law for the National Oceanic and Atmospheric Administration, including maintenance, operation, and hire of aircraft and vessels; grants, contracts, or other payments to nonprofit organizations for the purposes of conducting activities pursuant to cooperative agreements; and relocation of facilities, \$3,045,549,000, to remain available until September 30, 2010, except for funds provided for cooperative enforcement, which shall remain available until September 30, 2011: *Provided*, That fees and donations received by the National Ocean Service for the management of national marine sanctuaries may be retained and used for the salaries and expenses associated with those activities, notwithstanding 31 U.S.C. 3302: *Provided further*, That in addition, \$3,000,000 shall be derived by transfer from the fund entitled “Coastal Zone Management” and in addition \$79,000,000 shall be derived by transfer from the fund entitled “Promote and Develop Fishery Products and Research Pertaining to American Fisheries”: *Provided further*, That of the \$3,133,549,000 provided for in direct obligations under this heading \$3,045,549,000 is appropriated from the general fund, \$82,000,000 is provided by transfer, and \$6,000,000 is derived from recoveries of prior year obligations: *Provided further*, That the total amount available for the National Oceanic and Atmospheric Administration corporate services administrative support costs shall not exceed \$226,809,000: *Provided further*, That payments of funds made available under this heading to the Department of Commerce Working Capital Fund including Department of Commerce General Counsel legal services shall not exceed \$36,583,000: *Provided further*, That within the amounts appropriated, \$129,970,000 shall be used for the projects, and in the amounts, specified in the explanatory statement described in section 4 (in the matter preceding division A of this consolidated Act): *Provided further*, That any deviation from the amounts designated for specific activities in the report accompanying this Act, or any use of deobligated balances of funds provided under this heading in previous years, shall be subject to the procedures set forth in section 505 of this Act: *Provided further*, That in allocating grants under sections 306 and 306A of the Coastal Zone Management Act of 1972, as amended, no coastal State shall receive more than 5 percent or less than 1 percent of increased funds appropriated over the previous fiscal year: *Provided further*, That the number of authorized officers in the NOAA Commissioned Officer Corps shall remain at 321 until such time as section 6 of Public Law 110–386 takes effect.

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**[House Appropriations Committee Print]**

**Omnibus Appropriations Act, 2009**  
**(H.R. 1105; Public Law 111-8)**

**DIVISION B—COMMERCE, JUSTICE, SCIENCE,  
AND RELATED AGENCIES APPROPRIATIONS  
ACT, 2009**

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more than one jurisdiction. This means that the USPTO and other national patent offices are duplicating one another's work. The Government Accountability Office has found that the hiring of additional patent examiners has not been sufficient to reverse this trend, and is therefore unlikely to resolve the backlog problem. Therefore, the most likely means of reducing the pendency of patent applications is for the leading patent offices to make more effective use of one another's work. The USPTO is directed to take actions to reduce duplication of work already performed by another patent office in a manner that does not compromise the quality of the examination or compromise the sovereignty of the United States. The USPTO is also encouraged to review its proposed rules changes so that they fall within the statutory authority of the Director and take into account the concerns of the majority of users of the patent system.

*USPTO operations.*—The USPTO is directed to adopt the principles of the Baldrige National Quality Program, which represents the pinnacle of performance excellence for American business. The USPTO is directed to work with the Baldrige program to begin the process of incorporating these principles and to report to the House and Senate Committees on Appropriations on a quarterly basis on progress made towards adoption.

*Patent examiners.*—Numerous reviews conducted by the Government Accountability Office (GAO) have shown that for every two examiners hired, one leaves the agency, many citing the unreasonable work productivity goals as a major reason for their departure. These goals, first adopted in the 1970s, have not been updated to address the ever more complex technologies that encompass today's patent applications. The unrealistic goals are encouraging junior examiners to leave, and that will make it difficult to replace the productivity rates of senior examiners when they retire. Thus, the bill includes language withholding \$5,000,000 of fees from obligation pending a comprehensive reevaluation of the work productivity goals for patent examiners and submission of the results to the House and Senate Committees on Appropriations.

*Spend plan.*— Any deviations from the funding distribution provided for in this Act and in its accompanying statement, including carryover balances, are subject to the standard reprogramming procedures set forth in section 505 of this Act. The USPTO is directed to submit a spending plan to the House and Senate Committees on Appropriations, incorporating all carryover balances from previous years and describing any changes to the patent or trademark fee structure, within 30 days of enactment of this Act.

*Fee estimate.*—It is noted that the USPTO's actual fee collections for the last four fiscal years have been less than the earlier estimates. The uncertainty of fees is understandable; however, results in excess appropriations. USPTO is therefore directed to provide revised fee estimates for fiscal year 2010 to the House and Senate Committees on Appropriations, no later than September 1, 2009.

#### NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

The bill includes \$819,000,000 for the National Institute of Standards and Technology (NIST), which is \$183,000,000 above the request.

## SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

The bill includes \$472,000,000 for NIST's scientific and technical core programs, of which no less than \$8,522,000 shall be for the Baldrige National Quality Program. Within 30 days of enactment of this Act, NIST is directed to provide a spend plan that coincides with the budget restructuring the agency proposed to the House and Senate Committees on Appropriations on July 7, 2008. NIST is encouraged to devote resources to its Measurement & Standards for Climate Change Program and the Office of Law Enforcement Standards.

*Printed electronics study.*—Flexible, large area and printed electronics technology holds great promise for the competitiveness of the United States. NIST shall enter into an agreement with the National Academy of Sciences to undertake a study that examines the position of the United States in flexible electronics relative to efforts in other countries. The National Academies shall also consider the particular technologies and commercial sectors to which flexible electronics apply and the recommendations that must be undertaken at a Federal level for a national initiative.

*Working Capital Fund (WCF).*—Within the appropriation, the bill provides up to \$9,000,000 for transfer to NIST's WCF, which is \$3,300,000 less than the budget request.

NIST is directed to refrain from charging administrative costs for congressionally directed projects, and is expected to provide appropriate management and oversight of each grant. Within the appropriation, \$3,000,000 is provided for the following congressionally directed activities:

National Institute of Standards and Technology  
Scientific and Technical Research and Services  
Congressionally-designated Items  
(\$ in thousands)

Recipient	Project	Location	Amount
University at Albany College of Nanoscale Science and Engineering	for a nanoscale fabrication and measurement project.	Albany, NY	1,000
University of Maryland, Baltimore County and College Park	for ultrafast dynamics for next generation nanotechnology research and development.	College Park, MD	2,000

## INDUSTRIAL TECHNOLOGY SERVICES

The bill includes \$175,000,000 for industrial technology services. Of this amount, \$110,000,000 is provided for the Manufacturing Extension Partnerships (MEP) and \$65,000,000 is provided for the Technology Innovation Program (TIP).

## CONSTRUCTION OF RESEARCH FACILITIES

The bill includes \$172,000,000 for construction of research facilities. NIST is directed to provide to the House and Senate Committees on Appropriations a spend plan for the funding provided within 30 days of enactment of this Act. NIST is further directed to provide annual reports on the status of all construction projects, and to provide an accounting of such projects to the House and Senate Committees on Appropriations.

Funds for NIST construction are to be available as follows:

Boulder Bldg. 1E; JILA expansion; Safety, capacity, major modifications & repairs .....	\$90,800,000
NIST Child care center .....	7,200,000
Construction grants program .....	30,000,000
Congressionally directed projects .....	44,000,000

*Competitive construction grants.*—The bill provides \$30,000,000 for competitive construction grants for research science buildings. These grants shall be awarded to colleges, universities and other non-profit science research organizations on a merit basis.

NIST is further directed to refrain from charging administrative costs for congressionally directed projects and competitive construction grants, and is expected to provide appropriate management and oversight of each grant. Within the appropriation, \$44,000,000 is provided for the following congressionally directed activities:

National Institute of Standards and Technology  
 Construction of Research Facilities  
 Congressionally-designated Items  
 (\$ in thousands)

Recipient	Project	Location	Amount
Mississippi State University	for construction for a research and technology park.	Starkville, MS	6,500
The University of Mississippi Medical Center	for developing a biotechnology research park.	Jackson, MS	6,500
The University of Southern Mississippi	to create, develop, and commercialize new technology for advanced materials.	Hattiesburg, MS	1,000
University of Alabama	for an interdisciplinary science and engineering teaching and research corridor.	Tuscaloosa, AL	30,000