

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—112th Cong., 2d Sess.

S. 810

To prohibit the conducting of invasive research on great apes, and for other purposes.

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 _____

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 “Great Ape Protection
5 and Cost Savings Act of 2012”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) chimpanzees are the only great apes cur-
9 rently used in invasive research in the United
10 States;

1 (2)(A) as of the date of introduction of this
2 Act, there are approximately 1,000 chimpanzees
3 housed in laboratories in the United States;

4 (B) more than $\frac{1}{2}$ of these chimpanzees are
5 owned by the Federal Government; and

6 (C) the vast majority are financially supported
7 by the Federal Government;

8 (3) great apes are highly intelligent and social
9 animals;

10 (4) research laboratory environments involving
11 invasive research cannot meet the complex physical,
12 social, and psychological needs of great apes;

13 (5) invasive research performed on great apes,
14 and the breeding, housing, maintenance, and trans-
15 port of great apes for these purposes, are economic
16 in nature and substantially affect interstate com-
17 merce;

18 (6) the Federal Government incurs significant
19 costs maintaining great apes in laboratories;

20 (7) the National Research Council report enti-
21 tled “Chimpanzees in Research—Strategies for their
22 Ethical Care, Management, and Use” concluded
23 that—

1 (A) there is a “moral responsibility” for
2 the long-term care of chimpanzees used for sci-
3 entific research;

4 (B) euthanasia should not be used as a
5 means to control the size of the great ape popu-
6 lation;

7 (C) sanctuary animals require less inten-
8 sive management than animals in research fa-
9 cilities and therefore entail lower costs of daily
10 care; and

11 (D) sanctuaries offer an opportunity for
12 substantially reducing the costs of long-term
13 maintenance of chimpanzees without compro-
14 mising high standards of well-being; and

15 (8) the Institute of Medicine and National Re-
16 search Council report entitled “Chimpanzees in Bio-
17 medical and Behavioral Research: Assessing the Ne-
18 cessity” concluded that—

19 (A) while the chimpanzee has been a valu-
20 able animal model in past research, most cur-
21 rent use of chimpanzees for biomedical research
22 is unnecessary;

23 (B) chimpanzees are not necessary for re-
24 search relating to a Hepatitis C antiviral drug,
25 respiratory syncytial virus, future monoclonal

1 antibodies therapies, or a therapeutic Hepatitis
2 C vaccine;

3 (C) the use of a combination of non-chim-
4 panzee methods for the development of
5 monoclonal antibody therapies may make re-
6 search on the chimpanzee largely unnecessary;
7 and

8 (D) non-chimpanzee models, if further im-
9 proved, may reduce or obviate the need for the
10 continued use of the chimpanzee for prophyl-
11 lactic Hepatitis C vaccine research.

12 (b) PURPOSES.—The purposes of this Act are—

13 (1) to phase out invasive research on great apes
14 and the use of Federal funding of that research,
15 both within and outside of the United States;

16 (2) to prohibit the transport of great apes for
17 purposes of invasive research;

18 (3) to prohibit the breeding of great apes for
19 purposes of invasive research; and

20 (4) to require the provision of lifetime care for
21 great apes that are owned by or under the control
22 of the Federal Government in a suitable sanctuary
23 through the permanent retirement of the great apes.

24 **SEC. 3. DEFINITIONS.**

25 In this Act:

1 (1) ASSIGNED TO AN ACTIVE PROTOCOL.—The
2 term “assigned to an active protocol” means that a
3 great ape is supported by, or used pursuant to, pub-
4 lic or private funding that requires invasive research.

5 (2) DEBILITATING.—The term “debilitating”
6 means causing major irreversible morbidity, includ-
7 ing blindness, loss of hearing, paralysis, or stroke.

8 (3) DISEASE OR DISORDER.—

9 (A) IN GENERAL.—The term “disease or
10 disorder” means a life-threatening or debili-
11 tating clinical condition in human beings.

12 (B) EXCLUSIONS.—The term “disease or
13 disorder” does not include a clinical condition
14 in human beings for which research on chim-
15 panzees has been found to be unnecessary by a
16 Committee of the Institute of Medicine.

17 (4) FUND.—The term “Fund” means the Great
18 Ape Sanctuary System Fund established by section
19 8(a).

20 (5) GREAT APE.—The term “great ape” means
21 any individual of the following species:

22 (A) Chimpanzee (*Pan troglodytes*).

23 (B) Bonobo (*Pan paniscus*).

24 (C) Gorilla (*Gorilla gorilla* or *Gorilla*
25 *beringei*).

1 (D) Orangutan (*Pongo pygmaeus* or *Pongo*
2 *abelii*).

3 (E) Gibbon (Family Hylobatidae).

4 (6) INVASIVE RESEARCH.—

5 (A) IN GENERAL.—The term “invasive re-
6 search” means any research that may cause
7 death, injury, pain, distress, fear, or trauma to
8 a great ape, including—

9 (i) the testing of any drug or inten-
10 tional exposure to a substance that may be
11 detrimental to the health or psychological
12 well-being of a great ape;

13 (ii) research that involves penetrating
14 or cutting the body or removing body
15 parts, restraining, tranquilizing, or anes-
16 thetizing a great ape; and

17 (iii) isolation, social deprivation, or
18 other experimental manipulations that may
19 be detrimental to the health or psycho-
20 logical well-being of a great ape.

21 (B) EXCLUSIONS.—

22 (i) IN GENERAL.—The term “invasive
23 research” does not include—

24 (I) close observation of natural or
25 voluntary behavior of a great ape, if

1 the research does not require an anes-
2 thetic or sedation event to collect data
3 or record observations;

4 (II) the temporary separation of
5 a great ape from the social group of
6 the great ape, leaving and returning
7 by the own volition of the great ape;

8 (III) post-mortem examination of
9 a great ape that was not killed for the
10 purpose of examination or research;
11 and

12 (IV) the administration of a
13 physical exam by a licensed veteri-
14 narian or physician conducted for the
15 well-being of the individual great ape.

16 (ii) PHYSICAL EXAM.—A physical
17 exam conducted for the well-being of an in-
18 dividual great ape, as described in clause
19 (i)(IV), may include the collection of bio-
20 logical samples or the implantation of mon-
21 itoring devices previously approved by the
22 Food and Drug Administration, subject to
23 the condition that the collection or implan-
24 tation is carried out to further the well-
25 being of the individual great ape, the social

1 group of the great ape, or the great ape
2 species.

3 (7) MONITORING DEVICE.—The term “moni-
4 toring device” means a medical device that has been
5 approved by the Food and Drug Administration that
6 collects data from an individual great ape but does
7 not dispense any drugs or harmful substances.

8 (8) PERMANENT RETIREMENT.—

9 (A) IN GENERAL.—The term “permanent
10 retirement” means a situation in which—

11 (i) a great ape is placed in a suitable
12 sanctuary that will provide for the lifetime
13 care of the great ape; and

14 (ii) the great ape will no longer be
15 used in invasive research.

16 (B) EXCLUSION.—The term “permanent
17 retirement” does not include euthanasia.

18 (9) PERSON.—The term “person” means—

19 (A) an individual, corporation, partnership,
20 trust, association, or any other private or not-
21 for-profit entity;

22 (B) any officer, employee, agent, depart-
23 ment, or instrumentality of the Federal Govern-
24 ment, a State, municipality, or political subdivi-
25 sion of a State; or

1 (C) any other entity subject to the jurisdic-
2 tion of the United States.

3 (10) SECRETARY.—The term “Secretary”
4 means the Secretary of Health and Human Services.

5 (11) SUITABLE SANCTUARY.—The term “suit-
6 able sanctuary” means—

7 (A) a sanctuary that meets or exceeds the
8 standards of care for chimpanzees held in the
9 federally supported sanctuary system, as de-
10 fined in part 9 of title 42, Code of Federal Reg-
11 ulations; or

12 (B) a wildlife sanctuary that is a nonprofit
13 organization that—

14 (i) operates a place of refuge where
15 abused, neglected, unwanted, impounded,
16 abandoned, orphaned, displaced, or retired
17 animals are provided care for the lifetime
18 of the animal;

19 (ii) does not conduct invasive research
20 on animals;

21 (iii) does not conduct any commercial
22 activity with animals, including, at a min-
23 imum, the sale, trade, auction, lease, or
24 loan of animals or animal parts, or use of

1 animals in any manner in a for-profit busi-
2 ness or operation;

3 (iv) does not use animals for enter-
4 tainment purposes or in a traveling exhibit;

5 (v) does not breed any animals,
6 whether intentionally or by failing to use
7 adequate birth control methods; and

8 (vi) does not allow members of the
9 public the opportunity to come into phys-
10 ical contact with the animals.

11 (12) TASK FORCE.—The term “Task Force”
12 means the Great Ape Research Task Force estab-
13 lished under section 5(b).

14 **SEC. 4. PROHIBITIONS.**

15 (a) INVASIVE RESEARCH PROHIBITED.—No person
16 shall conduct invasive research on a great ape.

17 (b) HOUSING FOR INVASIVE RESEARCH PROHIB-
18 ITED.—No person shall possess, maintain, or house a
19 great ape for the purpose of conducting invasive research.

20 (c) FEDERAL FUNDING FOR INVASIVE RESEARCH
21 PROHIBITED.—No Federal funds may be used to conduct
22 invasive research on a great ape or to support an entity
23 conducting or facilitating invasive research on a great ape
24 either within or outside of the United States.

1 (d) BREEDING FOR INVASIVE RESEARCH PROHIB-
2 ITED.—No person shall knowingly breed a great ape for
3 the purpose of conducting or facilitating invasive research.

4 (e) TRANSPORT FOR INVASIVE RESEARCH PROHIB-
5 ITED.—No person shall transport, move, deliver, receive,
6 lease, rent, donate, purchase, sell, or borrow a great ape
7 in interstate or foreign commerce for the purpose of con-
8 ducting or facilitating invasive research on a great ape.

9 (f) TRANSFER OF OWNERSHIP PROHIBITED.—No
10 Federal agency may transfer ownership of a great ape to
11 a non-Federal entity unless the entity is a suitable sanc-
12 tuary.

13 (g) EXEMPTION.—Nothing in this Act limits or pre-
14 vents individualized medical care performed on a great ape
15 by a licensed veterinarian or physician for the well-being
16 of the great ape, including surgical procedures or chemical
17 treatments for birth control.

18 **SEC. 5. INVASIVE RESEARCH TO ADDRESS HUMAN HEALTH**

19 **THREATS.**

20 (a) IN GENERAL.—If at any time beginning on the
21 date that is 3 years after the date of enactment of this
22 Act, the Secretary finds, based on the best available sci-
23 entific evidence, that a new, emerging, or reemerging dis-
24 ease or disorder presents a challenge to treatment, preven-
25 tion, or control that defies non-great ape models and tech-

1 nologies and, as a result, the use of great apes for research
2 may be required, the Secretary shall publish that prelimi-
3 nary finding in the Federal Register.

4 (b) GREAT APE RESEARCH TASK FORCE.—

5 (1) IN GENERAL.—Notwithstanding section 4,
6 if the Secretary determines under subsection (a)
7 that the use of invasive research on great apes may
8 be necessary, the Secretary shall convene the Great
9 Ape Research Task Force, which shall consist of—

10 (A) the Secretary;

11 (B) the Director of the National Institutes
12 of Health;

13 (C) the Secretary of Defense;

14 (D) the Secretary of the Interior;

15 (E) the President of the Institute of Medi-
16 cine;

17 (F) the Chair of the Association of Zoos
18 and Aquariums Ape Taxon Advisory Group;

19 (G) an individual appointed by the Sec-
20 retary with scientific expertise in the use of
21 great apes in areas of research relating to the
22 disease or disorder for which the Task Force is
23 considering authorizing invasive research;

24 (H) an individual appointed by the Sec-
25 retary with scientific expertise in the use of re-

1 search models that do not use great apes in
2 areas of research relating to the disease or dis-
3 order for which the Task Force is considering
4 authorizing invasive research; and

5 (I) an individual appointed by the Sec-
6 retary who is a representative of an animal pro-
7 tection organization.

8 (2) DUTIES.—

9 (A) IN GENERAL.—The Task Force shall
10 review proposed research protocols and deter-
11 mine whether to authorize invasive research on
12 great apes.

13 (B) CONSULTATION.—In reviewing pro-
14 posed research protocols, the Task Force shall
15 consult with the Animal Welfare Information
16 Center established under section 13(e) of the
17 Animal Welfare Act (7 U.S.C. 2143(e)).

18 (3) PUBLIC PARTICIPATION.—The Secretary
19 shall allow public comment on any proposed research
20 protocol prior to final authorization by the Task
21 Force.

22 (4) AUTHORIZATION.—After consideration of
23 any public comments submitted to the Task Force,
24 the Task Force may issue written authorization for
25 a person to carry out an approved research protocol

1 for invasive research on a great ape in order to pre-
2 vent, control, or treat the new, emerging, or re-
3 emerging disease or disorder for which the Secretary
4 convenes the Task Force, only if the Task Force de-
5 termines based on the best scientific evidence avail-
6 able that—

7 (A) for invasive research for biomedical
8 purposes—

9 (i) there is no suitable model available
10 other than great apes, such as in vitro,
11 nonhuman, in vivo, or other models, for
12 the research in question;

13 (ii) the research in question cannot be
14 performed ethically on human subjects;

15 (iii) foregoing the use of great apes
16 for the research in question will signifi-
17 cantly slow or prevent important advance-
18 ments to prevent, control, or treat life-
19 threatening or debilitating conditions; and

20 (iv) the research has not already been
21 found to be unnecessary by a committee of
22 the Institute of Medicine; or

23 (B) for invasive research for comparative
24 genomics and behavioral studies—

1 (i) a study using great apes would
2 provide otherwise unattainable insight into
3 comparative genomics, normal and abnormal
4 behavior, mental health, emotion, or
5 cognition;

6 (ii) each experiment is performed on
7 acquiescent animals, using techniques that
8 are minimally invasive, and in a manner
9 that minimizes pain and distress; and

10 (iii) the research has not already been
11 found to be unnecessary by a committee of
12 the Institute of Medicine.

13 (5) REQUIREMENTS.—If the Task Force au-
14 thorizes the use of great apes for invasive research
15 under this section, the Task Force shall require each
16 person authorized to carry out the research—

17 (A) to identify each individual great ape on
18 which research will be performed based on the
19 prior medical history of the great ape;

20 (B) to minimize the pain and physical or
21 mental harm or distress to the great ape result-
22 ing from the research; and

23 (C) to maintain the great ape in
24 ethologically appropriate physical and social en-

1 vironments throughout the course of the au-
2 thorized research protocol.

3 (6) NONAPPLICABILITY OF FACCA.—The Federal
4 Advisory Committee Act (5 U.S.C. App.) shall not
5 apply to the Task Force.

6 (c) LIMITATION.—A person conducting invasive re-
7 search pursuant to a written authorization issued under
8 subsection (b)(4) shall be exempt from the prohibitions
9 under section 4.

10 (d) EFFECT.—Nothing in this section authorizes re-
11 search to be conducted on a great ape retired pursuant
12 to the Chimpanzee Health Improvement, Maintenance,
13 and Protection Act (Public Law 106–551; 114 Stat. 2752)
14 or the Chimp Haven is Home Act (Public Law 110–170;
15 121 Stat. 2465).

16 (e) REPORT.—

17 (1) IN GENERAL.—The Secretary shall submit
18 to Congress a report detailing the findings and rec-
19 ommendations of the Working Group on the Use of
20 Chimpanzees in NIH-Supported Research of the
21 Council of Councils of the National Institutes of
22 Health.

23 (2) INCLUSIONS.—The report shall include any
24 legislative recommendations relating to the Task
25 Force and the requirements of this section that are

1 necessary to ensure consistency with the rec-
2 ommendations of the working group described in
3 paragraph (1).

4 (f) **AUTHORITY.**—The Secretary may promulgate reg-
5 ulations to carry out the findings and recommendations
6 of the working group described in subsection (e)(1) and
7 the requirements of this section in a manner consistent
8 with this Act.

9 **SEC. 6. RETIREMENT.**

10 (a) **IN GENERAL.**—Notwithstanding any other provi-
11 sion of law, not later than 3 years after the date of enact-
12 ment of this Act, the Secretary shall effectuate the perma-
13 nent retirement of all great apes owned by the Federal
14 Government that are being maintained in any facility for
15 the purpose of breeding for, holding for, or conducting
16 invasive research.

17 (b) **INVASIVE RESEARCH.**—A federally owned great
18 ape that is selected for invasive research under section 5
19 shall be returned to a suitable sanctuary immediately after
20 the research is concluded.

21 **SEC. 7. CIVIL PENALTIES.**

22 (a) **IN GENERAL.**—In addition to any other penalties
23 that may apply under law, any person who violates any
24 provision of this Act shall be assessed a civil penalty of
25 not more than \$10,000 for each violation.

1 (b) MULTIPLE VIOLATIONS.—Each day that a viola-
2 tion of this Act continues shall constitute a separate of-
3 fense.

4 **SEC. 8. GREAT APE SANCTUARY SYSTEM FUND.**

5 (a) ESTABLISHMENT OF FUND.—There is estab-
6 lished in the Treasury of the United States a fund to be
7 known as the “Great Ape Sanctuary System Fund”, to
8 be administered by the Secretary, to be available without
9 fiscal year limitation and not subject to appropriation, for
10 construction, renovation, and operation of the sanctuary
11 system established pursuant to section 404K of the Public
12 Health Service Act (42 U.S.C. 283m).

13 (b) TRANSFERS TO FUND.—

14 (1) IN GENERAL.—The Fund shall consist of—

15 (A) such amounts as are appropriated to
16 the Fund under paragraph (2); and

17 (B) such other amounts as are appro-
18 priated to the Fund under this Act.

19 (2) CIVIL PENALTIES.—There are authorized to
20 be appropriated to the Fund, out of funds of the
21 Treasury not otherwise appropriated, amounts equiv-
22 alent to amounts collected as penalties and received
23 in the Treasury under section 7.

1 (c) PROHIBITION.—Amounts in the Fund may not be
2 made available for any purpose other than a purpose de-
3 scribed in subsection (a).

4 (d) ANNUAL REPORTS.—

5 (1) IN GENERAL.—Not later than 60 days after
6 the end of each fiscal year beginning with fiscal year
7 2013, the Secretary shall submit to the appropriate
8 committees of Congress a report on the operation of
9 the Fund during the fiscal year.

10 (2) CONTENTS.—Each report shall include, for
11 the fiscal year covered by the report—

12 (A) a statement of the amounts deposited
13 into the Fund;

14 (B) a description of the expenditures made
15 from the Fund for the fiscal year, including the
16 purpose of the expenditures;

17 (C) recommendations for additional au-
18 thorities to fulfill the purpose of the Fund; and

19 (D) a statement of the balance remaining
20 in the Fund at the end of the fiscal year.

21 **SEC. 9. EFFECTIVE DATES.**

22 (a) PROHIBITION ON RESEARCH.—The prohibition
23 under section (4)(a) takes effect—

24 (1) on the date that is 3 years after the date
25 of enactment of this Act for great apes assigned to

1 an active protocol as of the date of enactment of this
2 Act; or

3 (2) on the date of enactment of this Act for
4 great apes not assigned to an active protocol as of
5 that date.

6 (b) PROHIBITION ON HOUSING AND FUNDING.—The
7 prohibitions under subsections (b) and (c) of section 4
8 take effect on the date that is 3 years after the date of
9 enactment of this Act.

10 (c) OTHER REQUIREMENTS.—Any provision of this
11 Act for which a specific effective date is not provided takes
12 effect on the date of enactment of this Act.

13 **SEC. 10. SEVERABILITY.**

14 In the event that any provision of this Act is, for any
15 reason, be held to be invalid or unenforceable in any re-
16 spect, the invalidity or unenforceability shall not affect any
17 other provision of this Act, and this Act shall be construed
18 as if the invalid or unenforceable provision had never been
19 included in this Act.