

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 following:  
2

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.**

7 The Institute of Medicine report entitled “Chimpanzees in Biomedical and Behavioral Research: Assessing  
8 the Necessity” (2011) concluded as follows:  
9

10 (1) No uniform set of criteria is currently used  
11 to assess the necessity of the chimpanzee in NIH-  
12 funded biomedical and behavioral research.

1           (2) While the chimpanzee has been a valuable  
2 animal model in past research, most current use of  
3 chimpanzees for biomedical research is unnecessary.

4           (3) The present trajectory indicates a decreas-  
5 ing scientific need for chimpanzee studies due to the  
6 emergence of non-chimpanzee models and tech-  
7 nologies.

8           (4) Development of non-chimpanzee models re-  
9 quires continued support by the NIH.

10          (5) A new, emerging, or reemerging disease or  
11 disorder may present challenges to treatment, pre-  
12 vention, or control that defy non-chimpanzee models  
13 and available technologies and therefore may require  
14 the future use of the chimpanzee.

15          (6) Comparative genomics research may be nec-  
16 essary for understanding human development, dis-  
17 ease mechanisms, and susceptibility because of the  
18 genetic proximity of the chimpanzee to humans. It  
19 poses no risk to the chimpanzee when biological ma-  
20 terials are derived from existing samples or minimal  
21 risk of pain and distress in instances where samples  
22 are collected from living animals.

23          (7) Chimpanzees may be necessary for obtain-  
24 ing otherwise unattainable insights to support un-  
25 derstanding of social and behavioral factors that in-

1       clude the development, prevention, or treatment of  
2       diseases.

3               (8) Application of the criteria recommended in  
4       such report would provide a framework to assess sci-  
5       entific necessity to guide the future use of chim-  
6       panzees in biomedical, comparative genomics, and  
7       behavioral research.

8       **SEC. 3. DEFINITIONS.**

9       In this Act:

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

14               (2) GREAT APE.—The term “great ape” means  
15       any live individual of the following species or family:

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

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

18                       (C) Gorilla (*Gorilla gorilla* or *Gorilla*  
19                       *beringei*).

20                       (D) Orangutan (*Pongo pygmaeus* or *Pongo*  
21                       *abelii*).

22                       (E) Gibbon (family Hylobatidae).

23               (3) INVASIVE RESEARCH.—

24                       (A) IN GENERAL.—The term “invasive re-  
25       search” means any research that could reason-

1 ably be expected to cause death, injury, pain,  
2 distress, fear, or trauma to a great ape, includ-  
3 ing—

4 (i) the testing of any drug or inten-  
5 tional exposure to a substance that could  
6 reasonably be expected to be detrimental to  
7 the health or psychological well-being of a  
8 great ape;

9 (ii) research that involves—

10 (I) penetrating or cutting the  
11 body, excluding—

12 (aa) the drawing of blood;

13 and

14 (bb) any procedure to estab-  
15 lish vascular access; or

16 (II) restraining, tranquilizing, or  
17 anesthetizing a nonacquiescent great  
18 ape; or

19 (iii) isolation, social deprivation, or  
20 other experimental manipulations that  
21 could reasonably be expected to be detri-  
22 mental to the health or psychological well-  
23 being of a great ape.

24 (B) EXCLUSIONS.—

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

3 (I) close observation of natural or  
4 voluntary behavior of a great ape, or  
5 voluntary participation by a great ape  
6 in the collection of data or the record-  
7 ing of observations;

8 (II) the temporary separation of  
9 a great ape from the social group of  
10 the great ape, leaving and returning  
11 by the own volition of the great ape;

12 (III) post-mortem examination of  
13 a great ape that was not euthanized  
14 for the purpose of examination or re-  
15 search; and

16 (IV) the administration of a  
17 physical exam by a licensed veteri-  
18 narian or physician conducted for the  
19 well-being of the individual great ape.

20 (ii) PHYSICAL EXAM.—A physical  
21 exam conducted for the well-being of an in-  
22 dividual great ape, as described in clause  
23 (i)(IV), may include the collection of bio-  
24 logical samples or the implantation of a  
25 monitoring device approved or cleared by

1           the Food and Drug Administration so long  
2           as the collection or implantation is carried  
3           out to further the well-being of the indi-  
4           vidual great ape, the social group of the  
5           great ape, or the great ape species.

6           (4) NATIONAL CHIMPANZEE SANCTUARY SYS-  
7           TEM.—The term “National Chimpanzee Sanctuary  
8           System” means the sanctuary system operated  
9           under section 404K of the Public Health Service Act  
10          (42 U.S.C. 283m).

11          (5) PERMANENT RETIREMENT.—

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

14           (i) a great ape is—

15           (I) placed in a suitable sanctuary  
16           that will provide for the lifetime care  
17           of the great ape; or

18           (II) if space in a suitable sanc-  
19           tuary is not immediately available—

20           (aa) maintained in its tradi-  
21           tional setting (as of the date of  
22           the enactment of this Act) or a  
23           comparable setting; and

24           (bb) placed in a suitable  
25           sanctuary in accordance with

1                   subclause (I) as soon as space be-  
2                   comes available in such a sanc-  
3                   tuary; and

4                   (ii) the great ape will no longer be  
5                   used in invasive research.

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

8                   (6) PERSON.—The term “person” means—

9                   (A) an individual, corporation, partnership,  
10                  trust, association, or other private or not-for-  
11                  profit entity;

12                  (B) any officer, employee, agent, depart-  
13                  ment, or instrumentality of the Federal Govern-  
14                  ment, a State, a municipality, or a political sub-  
15                  division of a State; or

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

18                  (7) SUITABLE SANCTUARY.—The term “suit-  
19                  able sanctuary” means—

20                  (A) a sanctuary that meets or exceeds the  
21                  standards of care for chimpanzees held in the  
22                  National Chimpanzee Sanctuary System; or

23                  (B) a wildlife sanctuary that is a nonprofit  
24                  organization that—

1 (i) operates a place of refuge where  
2 abused, neglected, unwanted, impounded,  
3 abandoned, orphaned, displaced, or retired  
4 animals are provided care for the lifetime  
5 of the animal;

6 (ii) does not conduct invasive research  
7 on animals;

8 (iii) does not conduct any commercial  
9 activity with animals, including, at a min-  
10 imum, sale, trade, auction, lease, or loan of  
11 animals or animal parts, or use of animals  
12 in any manner in a for-profit business or  
13 operation;

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

16 (v) does not breed any animals; and

17 (vi) does not allow members of the  
18 public the opportunity to come into phys-  
19 ical contact with the animals.

20 **SEC. 4. PROHIBITIONS.**

21 (a) **INVASIVE RESEARCH PROHIBITED.**—No person  
22 shall conduct invasive research on a great ape.

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



1           (c) FEDERAL FUNDING FOR INVASIVE RESEARCH  
2 PROHIBITED.—No Federal funds may be used to conduct  
3 invasive research on a great ape or to support an entity  
4 conducting or facilitating invasive research on a great ape  
5 either within or outside of the United States.

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

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

15           (f) EXCEPTIONS.—

16               (1) IN GENERAL.—Nothing in subsections (a)  
17 through (e) limits, prohibits, or otherwise applies  
18 with respect to activities in furtherance of the fol-  
19 lowing:

20                       (A) Individualized medical care performed  
21 on a great ape by a licensed veterinarian or  
22 physician for the well-being of the great ape, in-  
23 cluding any treatment for an illness or condi-  
24 tion, surgical procedure, or chemical treatment

1 for sterilization or other methods of contracep-  
2 tion.

3 (B) Biomedical invasive research that is  
4 described in paragraph (2).

5 (C) Comparative genomics and behavioral  
6 invasive research that is described in paragraph  
7 (3).

8 (D) The use of biospecimens derived from  
9 great apes.

10 (2) BIOMEDICAL INVASIVE RESEARCH DE-  
11 SCRIBED.—Biomedical invasive research is described  
12 in this paragraph if the Secretary of Health and  
13 Human Services finds—

14 (A) based on the best available scientific  
15 evidence, and after consulting with a represent-  
16 ative of an organization with expertise in the  
17 administration of zoos (including great ape con-  
18 servation, captive management, and well-being),  
19 a representative of a suitable sanctuary, an ex-  
20 pert in the use of chimpanzees and alternative  
21 research models, an expert in animal welfare,  
22 and an expert in research on the disease or con-  
23 dition that is the subject of the research pro-  
24 tocol, that—

1 (i) the invasive research protocol per-  
2 tains to prevention, control, or treatment  
3 of a life-threatening or debilitating human  
4 disease or condition;

5 (ii) forgoing the use of great apes for  
6 the research will significantly slow or pre-  
7 vent important advancements to such pre-  
8 vention, control, or treatment;

9 (iii) there is no other suitable model  
10 available (such as in vitro, non-human in  
11 vivo, or other models) for the research; and

12 (iv) the research cannot be performed  
13 ethically on human subjects;

14 (B) that any great ape used for the re-  
15 search will be maintained in—

16 (i) an ethologically appropriate phys-  
17 ical and social environment; or

18 (ii) the great ape's natural habitat;

19 (C) that any great ape used for the re-  
20 search will be suitable for such research based  
21 on the individual great ape's medical history;

22 (D) that the research will be subject to a  
23 research protocol that minimizes the pain and  
24 physical or mental harm and distress to any  
25 great ape used for the research;

1 (E) that the research will not use any  
2 chimpanzee accepted before the date of the en-  
3 actment of this Act into the National Chim-  
4 panzee Sanctuary System; and

5 (F) that the research will be carried out in  
6 accordance with—

7 (i) the scientific and ethical standards  
8 applicable to research supported by the  
9 National Institutes of Health; or

10 (ii) equivalent standards if the re-  
11 search is not supported by the National In-  
12 stitutes of Health.

13 (3) COMPARATIVE GENOMICS AND BEHAVIORAL  
14 INVASIVE RESEARCH DESCRIBED.—Comparative  
15 genomics and behavioral invasive research is de-  
16 scribed in this paragraph if the Secretary of Health  
17 and Human Services finds—

18 (A) based on the best available scientific  
19 evidence, and after consulting with a represent-  
20 ative of an organization with expertise in the  
21 administration of zoos (including great ape con-  
22 servation, captive management, and well-being),  
23 a representative of a suitable sanctuary, an ex-  
24 pert in the use of chimpanzees and alternative  
25 research models, an expert in animal welfare,

1 and an expert in research on the disease or con-  
2 dition that is the subject of the research pro-  
3 tocol, that the invasive research protocol pro-  
4 vides otherwise unattainable insight into com-  
5 parative genomics, normal and abnormal behav-  
6 ior, mental health, emotion, or cognition; and

7 (B) that—

8 (i) the research will be performed on  
9 acquiescent animals, using techniques that  
10 are minimally invasive;

11 (ii) any great ape used for the re-  
12 search will be maintained in the manner  
13 described in paragraph (2)(B);

14 (iii) any great ape used for the re-  
15 search will be suitable for the research as  
16 described in paragraph (2)(C);

17 (iv) the research is subject to a re-  
18 search protocol as described in paragraph  
19 (2)(D);

20 (v) the research will not use any chim-  
21 panzee described in paragraph (2)(E); and

22 (vi) the research will be carried out in  
23 accordance with the standards specified in  
24 paragraph (2)(F).

25 (4) DETERMINATION BY SECRETARY.—

1 (A) REQUEST.—Any person proposing to  
2 conduct invasive research on a great ape may  
3 submit to the Secretary of Health and Human  
4 Services a request for the Secretary to make—

5 (i) a finding under paragraph (2) that  
6 such research constitutes biomedical  
7 invasive research; or

8 (ii) a finding under paragraph (3)  
9 that such research constitutes comparative  
10 genomics and behavioral invasive research.

11 (B) RESPONSE BY SECRETARY.—Not later  
12 than 60 days after receipt of any request under  
13 subparagraph (A), the Secretary of Health and  
14 Human Services shall—

15 (i) make the requested finding; or

16 (ii) provide to the requesting party a  
17 written explanation of why such finding is  
18 not warranted.

19 (5) PUBLICATION OF FINDING.—Not later than  
20 30 days after making any finding under paragraph  
21 (2) or (3), the Secretary of Health and Human  
22 Services shall—

23 (A) publish notice of such finding in the  
24 Federal Register; and

25 (B) include in the notice—

1 (i) a description of the research, in-  
2 cluding—

3 (I) specification of its anticipated  
4 duration;

5 (II) as appropriate, information  
6 sufficient to identify the individual  
7 great apes used in the research (in-  
8 cluding any identification numbers of  
9 the great apes);

10 (III) as appropriate, information  
11 on the proposed number and fre-  
12 quency of anesthesia events, surgeries,  
13 and biopsies to be conducted as part  
14 of the research; and

15 (IV) whether the research is sup-  
16 ported by public funding, private  
17 funding, or a combination of both  
18 public and private funding; and

19 (ii) an explanation of the finding, in-  
20 cluding a description of the best available  
21 scientific evidence upon which the portion  
22 of the finding under paragraph (2)(A) or  
23 (3)(A), as applicable, is based.

24 (g) TRADE SECRETS AND OTHER CONFIDENTIAL IN-  
25 FORMATION.—Nothing in this Act authorizes the dislo-

1 sure of any trade secret or confidential information in vio-  
2 lation of section 1905 of title 18, United States Code, or  
3 section 552(b)(4) of title 5 of such Code.

4 **SEC. 5. BREEDING FOR INVASIVE RESEARCH PROHIBITED.**

5 No person shall knowingly breed a great ape for the  
6 purpose of conducting or facilitating invasive research.

7 **SEC. 6. IOM REPORT ON NUMBER AND TYPE OF GREAT**

8 **APES NECESSARY FOR EXCEPTED RESEARCH.**

9 (a) REPORT.—The Secretary of Health and Human  
10 Services shall enter into an arrangement with the Institute  
11 of Medicine (or, if the Institute declines to enter into such  
12 an arrangement, another appropriate entity) under which  
13 the Institute (or, if applicable, the appropriate entity)—

14 (1) conducts a study to formulate recommenda-  
15 tions on—

16 (A) the adequate number and appropriate  
17 type of great apes, if any, necessary for the cat-  
18 egories of research described in subparagraphs

19 (B) and (C) of section 4(f)(1); and

20 (B) the manner for obtaining such great  
21 apes, including, if applicable, the extent to  
22 which great apes should be bred for the purpose  
23 of conducting or facilitating such research; and



1           (2) not later than 12 months after the date of  
2           the enactment of this Act, submits to the Congress  
3           a report on the results of such study.

4           (b) CONSEQUENCES OF RECOMMENDATIONS.—If  
5           Federal legislation addressing the recommendations in the  
6           report under subsection (a) is not enacted by the date that  
7           is 4 years after the submission of such report, then the  
8           following paragraphs apply:

9           (1) CHANGES TO IMPLEMENTATION PLAN.—  
10          Not later than such date, the Secretary of Health  
11          and Human Services shall, as necessary to achieve  
12          consistency with such recommendations, and subject  
13          to the provisions of section 4, revise the implementa-  
14          tion plan under section 8.

15          (2) BREEDING.—If the report under subsection  
16          (a) recommends that great apes should be bred for  
17          the purpose of conducting or facilitating research de-  
18          scribed in subparagraph (B) or (C) of section  
19          4(f)(1)—

20                 (A) in revising the implementation plan  
21                 pursuant to paragraph (1), the Secretary of  
22                 Health and Human Services shall—

23                         (i) provide for breeding great apes;  
24                         and

1 (ii) limit such breeding to the extent  
2 recommended in such report; and

3 (B) beginning on the date that is 4 years  
4 after the submission of the report under sub-  
5 section (a), the prohibition against breeding in  
6 section 5 does not apply to breeding great apes  
7 to the extent specified in the implementation  
8 plan.

9 **SEC. 7. RETIREMENT.**

10 (a) IN GENERAL.—Not later than 4 years after the  
11 date of enactment of this Act, the Secretary of Health and  
12 Human Services shall, subject to subsection (b), effectuate  
13 the permanent retirement of all great apes owned by the  
14 Federal Government that are being maintained in any fa-  
15 cility for the purpose of breeding for, holding for, or con-  
16 ducting invasive research.

17 (b) EXCEPTION.—For any great ape assigned to an  
18 active protocol for research covered by subparagraph (B)  
19 or (C) of section 4(f)(1), the Secretary shall effectuate the  
20 permanent retirement of the great ape not later than the  
21 completion date of such research.

22 **SEC. 8. IMPLEMENTATION PLAN.**

23 (a) INITIAL PLAN.—The Secretary of Health and  
24 Human Services shall—

1           (1) publish a proposed plan for implementation  
2 of sections 3, 4, 5, and 7;

3           (2) provide an opportunity for the public to  
4 submit written comments on such plan for a period  
5 of at least 30 days; and

6           (3) after consideration of such comments, pub-  
7 lish a final plan for implementation of sections 3, 4,  
8 5, and 7.

9           (b) REVISIONS.—The procedures applicable to devel-  
10 opment and finalization of the initial implementation plan  
11 under subsection (a) also apply to development and final-  
12 ization of any subsequent revisions to the implementation  
13 plan.

14 **SEC. 9. CIVIL PENALTIES.**

15           The provisions of section 19(b) of the Animal Welfare  
16 Act (7 U.S.C. 2149(b); relating to civil penalties) (includ-  
17 ing the civil penalty applicable to knowingly failing to obey  
18 a cease and desist order under such section 19(b)) shall  
19 apply to the Secretary of Health and Human Services and  
20 a violation of this Act by any individual, corporation, part-  
21 nership, trust, association, or other private or not-for-prof-  
22 it entity to the same extent and in the same manner as  
23 such provisions apply to the Secretary of Agriculture and  
24 a violation of the Animal Welfare Act by any dealer, ex-  
25 hibitor, research facility, intermediate handler, carrier, or

1 operator of an auction sale (as such terms are used in  
2 the Animal Welfare Act).

3 **SEC. 10. GREAT APE SANCTUARY SYSTEM FUND.**

4 (a) ESTABLISHMENT OF FUND.—There is estab-  
5 lished in the Treasury of the United States a fund to be  
6 known as the “Great Ape Sanctuary System Fund” (re-  
7 ferred to in this section as the “Fund”), to be adminis-  
8 tered by the Secretary of Health and Human Services, to  
9 be available without fiscal year limitation and not subject  
10 to appropriation, for construction, renovation, and oper-  
11 ation of the National Chimpanzee Sanctuary System.

12 (b) TRANSFERS TO FUND.—

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

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

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

18 (2) CIVIL PENALTIES.—There are appropriated  
19 to the Fund, out of funds of the Treasury not other-  
20 wise appropriated, amounts equivalent to amounts  
21 collected as penalties and received in the Treasury  
22 under section 9.

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

1 (d) ANNUAL REPORTS.—

2 (1) IN GENERAL.—Not later than 60 days after  
3 the end of each fiscal year beginning with fiscal year  
4 2013, the Secretary of Health and Human Services  
5 shall submit to the appropriate committees of the  
6 Congress a report on the operation of the Fund dur-  
7 ing the fiscal year.

8 (2) CONTENTS.—Each report shall include, for  
9 the fiscal year covered by the report, the following:

10 (A) A statement of the amounts deposited  
11 into the Fund.

12 (B) A description of the expenditures made  
13 from the Fund for the fiscal year, including the  
14 purpose of the expenditures.

15 (C) Recommendations for additional au-  
16 thorities to fulfill the purpose of the Fund.

17 (D) A statement of the balance remaining  
18 in the Fund at the end of the fiscal year.

19 **SEC. 11. EFFECTIVE DATES.**

20 (a) PROHIBITION ON RESEARCH.—The prohibition  
21 under section 4(a) shall take effect—

22 (1) on the date that is 4 years after the date  
23 of enactment of this Act for great apes assigned to  
24 an active protocol on the date of enactment of this  
25 Act; or

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

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

8           (c) OTHER REQUIREMENTS.—Any provision of this  
9 Act for which a specific effective date is not provided shall  
10 take effect on the date of enactment of this Act.

11 **SEC. 12. SEVERABILITY.**

12           In the event that any provision of this Act shall, for  
13 any reason, be held to be invalid or unenforceable in any  
14 respect, such invalidity or unenforceability shall not affect  
15 any other provision of this Act, and this Act shall be con-  
16 strued as if the invalid or unenforceable provision had  
17 never been included in this Act.