

118TH CONGRESS
2D SESSION

S. 4668

To amend section 1078 of the National Defense Authorization Act for Fiscal Year 2018 to increase the effectiveness of the Technology Modernization Fund, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 10, 2024

Mr. MORAN (for himself and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend section 1078 of the National Defense Authorization Act for Fiscal Year 2018 to increase the effectiveness of the Technology Modernization Fund, 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 “Modernizing Govern-
5 ment Technology Reform Act”.

1 **SEC. 2. REALIGNING USE OF FUNDS WITH ORIGINAL CON-**
2 **GRESSIONAL INTENT.**

3 Section 1078 of the National Defense Authorization
4 Act for Fiscal Year 2018 (Public Law 115–91; 40 U.S.C.
5 11301 note) is amended—

6 (1) in subsection (b)—

7 (A) by amending paragraph (3) to read as
8 follows:

9 “(3) USE OF FUNDS.—

10 “(A) IN GENERAL.—The Administrator
11 shall, in accordance with recommendations from
12 the Board, use amounts in the Fund for the fol-
13 lowing:

14 “(i) To transfer such amounts, to re-
15 main available until expended, to the head
16 of an agency for the acquisition, procure-
17 ment, and operation of information tech-
18 nology, or the development of information
19 technology when more efficient and cost ef-
20 fective, to—

21 “(I) modernize, retire, or replace
22 legacy information technology systems
23 used by the agency;

24 “(II) enhance cybersecurity and
25 privacy at the agency;

1 “(III) improve long-term effi-
2 ciency and effectiveness of agency in-
3 formation technology; or

4 “(IV) improve the ability of the
5 agency to perform the mission of the
6 agency and deliver services to the
7 public.

8 “(ii) To provide services or work per-
9 formed in support of—

10 “(I) the activities described in
11 clause (i); and

12 “(II) the Board and the Director
13 in carrying out the responsibilities de-
14 scribed in subsection (c)(2).

15 “(iii) To fund only programs, projects,
16 or activities, or to fund increases for any
17 programs, projects, or activities that have
18 not been denied or restricted by Congress.

19 “(iv) To transfer such amounts only
20 for programs, projects, or activities that
21 will be reimbursed to the Fund to the ex-
22 tent necessary to ensure total amounts in
23 the Fund are no less than the amounts
24 needed to keep the Fund operational until

1 the Fund sunsets pursuant to subsection
2 (g)(1).

3 “(B) TERMINATION OR SUSPENSION OF
4 FUNDS.—The Administrator shall, in accord-
5 ance with recommendations from the Board,
6 suspend or terminate funding for any project
7 with respect to which the head of an agency
8 provided fraudulent or misleading statements
9 about such project (including fraudulent state-
10 ments about technical design, the business case,
11 or program management with respect to the
12 project) in the application or proposal for
13 amounts from the Fund for such project.”;

14 (B) in paragraph (5)—

15 (i) in subparagraph (A)—

16 (I) in clause (i)—

17 (aa) by striking “or (B)”;

18 and

19 (bb) by striking “(3)(C)”

20 and inserting “(3)(A)(ii)”;

21 (II) in clause (ii), by striking “,

22 consistent with any applicable re-

23 programming law or guidelines of the

24 Committees on Appropriations of the

1 Senate and the House of Representa-
2 tives”; and

3 (ii) in subparagraph (B)(i)—

4 (I) by striking “paragraph
5 (3)(C)” and inserting “paragraph
6 (3)(A)(ii)”; and

7 (II) by striking “the solvency of
8 the Fund, including operating ex-
9 penses” and inserting the following:
10 “total amounts in the Fund are no
11 less than the amounts needed to keep
12 the Fund operational until the Fund
13 sunsets pursuant to subsection
14 (g)(1)”; and

15 (C) in paragraph (6)—

16 (i) in subparagraph (A)—

17 (I) in the matter before clause
18 (i), by striking “subparagraphs (A)
19 and (B) of paragraph (3)” and insert-
20 ing the following: “paragraph
21 (3)(A)(i) and before any services or
22 work are provided under paragraph
23 (3)(A)(ii)(I)”; and

24 (II) in clause (i)—

1 (aa) by striking “unless ap-
2 proved by the Director”; and

3 (bb) by striking “; and” and
4 inserting a semicolon;

5 (III) by redesignating clause (ii)
6 as clause (iv); and

7 (IV) by inserting after clause (i)
8 the following new clauses:

9 “(ii) which shall include terms of re-
10 payment that require the head of the agen-
11 cy to reimburse the Fund for funds trans-
12 ferred under paragraph (3)(A)(i) at a level
13 that ensures total amounts in the Fund
14 are no less than the amounts needed to
15 keep the Fund operational until the Fund
16 sunsets pursuant to subsection (g)(1);

17 “(iii) which shall include terms of re-
18 payment that require the head of the agen-
19 cy to fully reimburse the Fund for any
20 services or work provided under paragraph
21 (3)(A)(ii) in direct support of the project;
22 and”; and

23 (ii) in subparagraph (B)—

24 (I) by striking clause (i) and in-
25 serting the following:

1 “(i) for any funds transferred to an
2 agency under paragraph (3)(A)(i), in the
3 absence of compelling circumstances docu-
4 mented by the Administrator at the time of
5 transfer, that such funds shall be trans-
6 ferred only—

7 “(I) on an incremental basis, tied
8 to metric-based development mile-
9 stones achieved by the agency through
10 the use of rapid, iterative, develop-
11 ment processes; and

12 “(II) after the head of the agency
13 has provided the Director any infor-
14 mation the Director is required to re-
15 port pursuant to paragraph (7)(A)(i);
16 and”;

17 (II) in clause (ii)—

18 (aa) by striking “subpara-
19 graphs (A) and (B) of paragraph
20 (3)” and inserting “paragraph
21 (3)(A)(i)”;

22 (bb) by striking “paragraph
23 (6)” and inserting “this para-
24 graph”;

25 (D) in paragraph (7)—

1 (i) in subparagraph (A)(i)—

2 (I) by inserting “the written
3 agreement entered into under para-
4 graph (6),” after “description of the
5 project,”; and

6 (II) by inserting “(including doc-
7 umented market research into com-
8 mercial products and services)” after
9 “used”;

10 (ii) in subparagraph (B)—

11 (I) in clause (i)—

12 (aa) by striking “estab-
13 lishing”; and

14 (bb) by striking “the cost
15 savings associated with the
16 projects funded both annually
17 and over the life of the acquired
18 products and services by the
19 Fund;” and inserting the fol-
20 lowing: “the amount repaid to
21 the Fund in accordance with the
22 terms established in the written
23 agreements described in para-
24 graph (6);”;

25 (II) in clause (ii)—

1 (aa) by striking “reliability
2 of the cost savings” and inserting
3 “total cost savings”; and

4 (bb) by striking the semi-
5 colon and inserting “; and”; and

6 (III) in clause (iii), by striking “;
7 and” and inserting a period; and

8 (IV) by striking clause (iv);

9 (2) in subsection (c)(2)—

10 (A) in subparagraph (A)—

11 (i) in clause (ii), by striking “the
12 greatest Governmentwide impact; and” and
13 inserting the following: “the greatest im-
14 pact on modernizing, retiring, or replacing
15 Federal legacy information technology sys-
16 tems; and”;

17 (ii) by redesignating clauses (i)
18 through (iii) as clauses (ii) through (iv),
19 respectively; and

20 (iii) by inserting before clause (ii), as
21 so redesignated, the following new clause:

22 “(i) the ability for the head of the
23 agency to ensure repayment of funds
24 transferred from the Fund to the head of

1 the agency, in accordance with subsection
2 (b);”;

3 (B) in subparagraph (D), by striking “to
4 improve or replace multiple information tech-
5 nology systems” and inserting the following: “to
6 modernize, retire, or replace legacy information
7 technology systems under subsection
8 (b)(3)(A)(i)”;

9 (C) in subparagraph (F), by inserting after
10 “subsection (b)(6)” the following: “or the iden-
11 tification of fraudulent or misleading state-
12 ments about the project (including fraudulent
13 statements about technical design, the business
14 case, or program management with respect to
15 the project) in the application or proposal for
16 amounts from the Fund for the project”;

17 (D) in subparagraph (G), by inserting
18 after “operating costs of the Fund” the fol-
19 lowing: “to ensure total amounts in the Fund
20 are no less than the amounts needed to keep
21 the Fund operational until the Fund sunsets
22 pursuant to subsection (g)(1)”;

23 (3) in subsection (c)—

24 (A) in paragraph (5)—

1 (i) in subparagraph (B), by striking
2 the period at the end and inserting “;
3 and”; and

4 (ii) by inserting after subparagraph
5 (B) the following;

6 “(C) a senior official from the Cybersecu-
7 rity and Infrastructure Security Agency of the
8 Department of Homeland Security, appointed
9 by the Director of the Cybersecurity and Infra-
10 structure Security Agency, with the approval of
11 the Director of the Office of Management and
12 Budget.”; and

13 (B) in paragraph (6)(A)—

14 (i) by striking “shall be—” and in-
15 serting “shall be 4 employees of the Fed-
16 eral Government primarily having technical
17 expertise in information technology devel-
18 opment, financial management, cybersecu-
19 rity and privacy, and acquisition, ap-
20 pointed by the Director.”; and

21 (ii) by striking clauses (i) and (ii);

22 (4) in subsection (d)(2)—

23 (A) in subparagraph (A), by striking “sub-
24 section (b)(3)(A) and for products, services, and
25 acquisition vehicles funded under subsection

1 (b)(3)(B)” and inserting “subsection (b)(3)”;
2 and

3 (B) in subparagraph (C), by inserting after
4 “and reduce waste” the following: “and ensure
5 total amounts in the Fund are no less than the
6 amounts needed to keep the Fund operational
7 until the Fund sunsets pursuant to subsection
8 (g)(1)”;

9 (5) by redesignating subsections (e) and (f) as
10 subsections (f) and (g), respectively;

11 (6) by inserting after subsection (d) the fol-
12 lowing new subsection:

13 “(e) RESPONSIBILITIES OF THE FEDERAL CHIEF IN-
14 FORMATION OFFICER; AGENCY CHIEF INFORMATION OF-
15 FICERS.—

16 “(1) AGENCY INVENTORY.—An agency Chief
17 Information Officer, in coordination with stake-
18 holders and other agency officials, shall provide to
19 the Federal Chief Information Officer—

20 “(A) on or before the first September 30
21 that occurs after the date of the enactment of
22 the Modernizing Government Technology Re-
23 form Act, a list of high-risk legacy information
24 technology systems used, operated, or main-

1 tained by the agency, in accordance with the
2 guidance issued under paragraph (4); and

3 “(B) on or before September 30 of each
4 year after the first year in which the list is pro-
5 vided under subparagraph (A), any updates to
6 such list.

7 “(2) LEGACY FEDERAL IT INVENTORY.—The
8 Federal Chief Information Officer shall—

9 “(A) on or before the first December 30
10 that occurs after the date of the enactment of
11 the Modernizing Government Technology Re-
12 form Act, compile a Legacy Federal IT Inven-
13 tory on the basis of each list provided by an
14 agency Chief Information Officers under para-
15 graph (1)(A) that includes information about
16 each high-risk legacy information technology
17 system used, operated, or maintained by an
18 agency; and

19 “(B) on or before December 30 each year
20 after the year in which the Legacy Federal IT
21 Inventory is compiled, update such Inventory on
22 the basis of each update to the list provided by
23 an agency Chief Information Officer under
24 paragraph (1)(B).

25 “(3) PRIORITIZATION LIST.—

1 “(A) REQUIREMENT.—The Federal Chief
2 Information Officer shall—

3 “(i) not later than 90 days after the
4 date on which the Federal Chief Informa-
5 tion Officer receives the list required by
6 paragraph (1)(A) from each agency Chief
7 Information Officer, compile, on the basis
8 of each such list, a list of 10 legacy infor-
9 mation technology systems that present the
10 greatest security, privacy, and operational
11 risks to the Federal Government; and

12 “(ii) not later than 90 days after the
13 date on which the Federal Chief Informa-
14 tion Officer receives updates under para-
15 graph (1)(B) from each agency Chief In-
16 formation Officer, update the list required
17 by clause (i) on the basis of each updates
18 to the list provided by agency Chief infor-
19 mation Officers under paragraph (1)(B).

20 “(B) REPORT TO CONGRESS.—Not later
21 than 14 days after the date on which the Fed-
22 eral Chief Information Officer compiles the list
23 required by subparagraph (A), or updates such
24 list, the Director shall submit to the Committee
25 on Oversight and Accountability of the House

1 of Representatives, the Committee on Home-
2 land Security and Governmental Affairs of the
3 Senate, and the Comptroller General of the
4 United States, a report (which may include a
5 classified annex) containing—

6 “(i) such list (including any update
7 made to such list under subparagraph
8 (A)(ii)); and

9 “(ii) each list provided by an agency
10 Chief Information Officer under paragraph
11 (1)(A) (including any update made to any
12 such list under paragraph (1)(B)).

13 “(4) GUIDANCE.—

14 “(A) IN GENERAL.—Not later than 180
15 days after the date of enactment of the Modern-
16 izing Government Technology Reform Act, the
17 Director shall issue guidance on implementing
18 the requirements of this subsection that shall,
19 at a minimum—

20 “(i) prescribe an appropriate format
21 for list to be provided under paragraph
22 (1)(A);

23 “(ii) prescribe the information to be
24 included in the Legacy Federal IT Inven-
25 tory required by paragraph (2);

1 “(iii) provide guidance on how an
2 agency Chief Information Officer should
3 identify high-risk legacy information tech-
4 nology systems that, at least, requires
5 agency Chief Information Officers, in co-
6 ordination with other agency stakeholders,
7 to identify as a high risk legacy informa-
8 tion technology system any outdated or ob-
9 solete system of information technology
10 that is critical to the agency such that the
11 loss or degradation of the system would
12 create a security, operational, or privacy
13 risk to the agency or would otherwise im-
14 pact the ability of the agency to perform
15 the mission of the agency, effectively de-
16 liver programs, or conduct business; and

17 “(iv) provide guidance on how existing
18 reporting structures can be used to submit
19 the Legacy Federal IT inventory required
20 by paragraph (2).

21 “(B) UPDATES.—The Director may update
22 the guidance issued under subparagraph (A) as
23 the Director determines necessary.

24 “(5) DEFINITIONS.—In this subsection:

1 “(A) AGENCY CHIEF INFORMATION OFFI-
2 CER.—The term ‘agency Chief Information Of-
3 ficer’ means a Chief Information Officer des-
4 ignated under section 3506(a)(2) of title 44,
5 United States Code.

6 “(B) FEDERAL CHIEF INFORMATION OFFI-
7 CER.—The term ‘Federal Chief Information Of-
8 ficer’ means the Administrator of the Office of
9 Electronic Government.”; and

10 (7) in subsection (g)(1), as so redesignated, by
11 striking “On and after the date that is 2 years after
12 the date on which the Comptroller General of the
13 United States issues the third report required under
14 subsection (b)(7)(B),” and inserting “After Decem-
15 ber 31, 2031,”.

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