S. 760

To expand the Government’s use and administration of data to facilitate transparency, effective governance, and innovation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2017

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

A BILL

To expand the Government’s use and administration of data to facilitate transparency, effective governance, and innovation, 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 “Open, Public, Electronic, and Necessary Government Data Act” or the “OPEN Government Data Act”.

SEC. 2. FINDINGS.

(a) FINDINGS.—Congress finds the following:
(1) Federal Government data is a valuable national resource. Managing Federal Government data to make it open, available, discoverable, and usable to the general public, businesses, journalists, academics, and advocates promotes efficiency and effectiveness in Government, creates economic opportunities, promotes scientific discovery, and most importantly, strengthens our democracy.

(2) Maximizing the usefulness of Federal Government data that is appropriate for release rests upon making it readily available, discoverable, and usable—in a word: open. Information presumptively should be available to the general public unless the Federal Government reasonably foresees that disclosure could harm a specific, articulable interest protected by law or the Federal Government is otherwise expressly prohibited from releasing such data due to statutory requirements.

(3) The Federal Government has the responsibility to be transparent and accountable to its citizens.

(4) Data controlled, collected, or created by the Federal Government should be originated, transmitted, and published in modern, open, and electronic format, to be as readily accessible as possible,
consistent with data standards under this Act or otherwise permitted by law.

(5) The effort to inventory Government data will have additional benefits, including identifying opportunities within agencies to reduce waste, increase efficiencies, and save taxpayer dollars. As such, this effort should involve many types of data, including data generated by applications, devices, networks, and equipment, which can be harnessed to improve operations, lower energy consumption, reduce costs, and strengthen security.

(6) Communication, commerce, and data transcend national borders. Global access to Government information is often essential to promoting innovation, scientific discovery, entrepreneurship, education, and the general welfare.

**SEC. 3. DEFINITION.**

In this Act, the term “agency” has the meaning given the term in section 3561 of title 44, United States Code, as added by section 4.

**SEC. 4. OPEN GOVERNMENT DATA.**

(a) In General.—Chapter 35 of title 44, United States Code, is amended by adding at the end the following:
“Subchapter III—Open Government Data

§ 3561. Definitions

“As used in this subchapter—

“(1) the term ‘agency’—

“(A) has the meaning given the term in section 3502; and

“(B) includes the Federal Election Commission;

“(2) the term ‘data’ means recorded information, regardless of form or the media on which the data is recorded;

“(3) the term ‘data asset’ means a collection of data elements or data sets that may be grouped together;

“(4) the term ‘Director’ means the Director of the Office of Management and Budget;

“(5) the term ‘Enterprise Data Inventory’ means the data inventory developed and maintained pursuant to section 3563;

“(6) the terms ‘information resources management’, ‘information system’, and ‘information technology’ have the meanings given those terms in section 3502;

“(7) the term ‘machine-readable’ means a format in which information or data can be easily proc-
essed by a computer without human intervention while ensuring no semantic meaning is lost;

“(8) the term ‘metadata’ means structural or descriptive information about data such as content, format, source, rights, accuracy, provenance, frequency, periodicity, granularity, publisher or responsible party, contact information, method of collection, and other descriptions;

“(9) the term ‘nonpublic data asset’—

“(A) means a data asset that may not be made available to the public for privacy, security, confidentiality, regulation, or other reasons as determined by law; and

“(B) includes data provided by contractors that is protected by contract, license, patent, trademark, copyright, confidentiality, regulation, or other restriction;

“(10) the term ‘open Government data asset’ means a data asset maintained by the Federal Government that is—

“(A) machine-readable;

“(B) available in an open format;

“(C) not encumbered by restrictions that would impede use or reuse; and
“(D) based on an underlying open standard that is maintained by a standards organization;

“(11) the term ‘open license’ means a legal guarantee applied to a public data asset that the data asset is made available—

“(A) at no cost to the public; and

“(B) with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting; and

“(12) the term ‘public data asset’ means a data asset maintained by the Federal Government that—

“(A) may be released to the public;

“(B) has been released to the public in an open format and is discoverable through a search of Data.gov or any successor to Data.gov; or

“(C) is part of the worldwide public domain or, if necessary, published with an open license.

§ 3562. Requirements for Government data

“(a) MACHINE-READABLE DATA REQUIRED.—Open Government data assets made available by an agency shall be published as machine-readable data.
“(b) OPEN BY DEFAULT.—When not otherwise prohibited by law, and to the extent practicable, public data assets and nonpublic data assets maintained by the Federal Government shall—

“(1) be available in an open format; and
“(2) be available under open licenses.

“(c) OPEN LICENSE OR WORLDWIDE PUBLIC DOMAIN DEDICATION REQUIRED.—When not otherwise prohibited by law, and to the extent practicable, open Government data assets published by or for an agency shall be made available under an open license or, if not made available under an open license and appropriately released, shall be considered to be published as part of the worldwide public domain.

“(d) INNOVATION.—Each agency may engage with nongovernmental organizations, citizens, nonprofit organizations, colleges and universities, private and public companies, and other agencies to explore opportunities to leverage the public data assets of the agency in a manner that may provide new opportunities for innovation in the public and private sectors in accordance with law and regulation.

“§ 3563. Enterprise data inventory

“(a) AGENCY DATA INVENTORY REQUIRED.—
“(1) IN GENERAL.—In order to develop a clear and comprehensive understanding of the data assets in the possession of an agency, the head of each agency, in consultation with the Director, shall develop and maintain an enterprise data inventory (in this section referred to as the ‘Enterprise Data Inventory’) that accounts for any data asset created, collected, under the control or direction of, or maintained by the agency after the effective date of this section, with the goal of including all data assets, to the extent practicable.

“(2) CONTENTS.—The Enterprise Data Inventory shall include each of the following:

“(A) Data assets used in agency information systems (including program administration, statistics, and financial activity) generated by applications, devices, networks, facilities, and equipment, categorized by source type.

“(B) Data assets shared or maintained across agency programs and bureaus.

“(C) Data assets that are shared among agencies or created by more than 1 agency.

“(D) A clear indication of all data assets that can be made publicly available under sec-
section 552 of title 5 (commonly known as the
‘Freedom of Information Act’).

“(E) A description of whether the agency
has determined that an individual data asset
may be made publicly available and whether the
data asset is available to the public.

“(F) Nonpublic data assets.

“(G) Open Government data assets.

“(b) PUBLIC AVAILABILITY.—The Chief Information
Officer of each agency shall use the standards provided
by the Director issued pursuant to subsection (c) to make
public data assets included in the Enterprise Data Inven-
tory publicly available in an open format and under an
open license.

“(c) STANDARDS FOR ENTERPRISE DATA INVEN-
tory.—The Director shall issue standards for the Enter-
prise Data Inventory, including—

“(1) a requirement that the Enterprise Data
Inventory include a compilation of metadata about
agency data assets; and

“(2) criteria that the head of each agency shall
use in determining whether to make a particular
data asset publicly available in a manner that takes
into account—
“(A) the expectation of confidentiality associated with an individual data asset;

“(B) security considerations, including the risk that information in an individual data asset in isolation does not pose a security risk but when combined with other available information may pose such a risk;

“(C) the cost and benefits to the public of converting the data into a manner that could be understood and used by the public;

“(D) the expectation that all data assets that would otherwise be made available under section 552 of title 5 (commonly known as the ‘Freedom of Information Act’) be disclosed; and

“(E) any other considerations that the Director determines to be relevant.

“(d) NONPUBLIC DATA ASSETS.—Nonpublic data assets included in the Enterprise Data Inventory may be maintained in a nonpublic section of the inventory.

“(e) AVAILABILITY OF ENTERPRISE DATA INVENTORY.—The Chief Information Officer of each agency—

“(1) shall make the Enterprise Data Inventory available to the public on Data.gov;
“(2) shall ensure that access to the Enterprise Data Inventory and the data contained therein is consistent with applicable law and regulation; and

“(3) may implement paragraph (1) in a manner that maintains a nonpublic portion of the Enterprise Data Inventory.

“(f) Regular Updates Required.—The Chief Information Officer of each agency shall—

“(1) to the extent practicable, complete the Enterprise Data Inventory for the agency not later than 1 year after the date of enactment of this section; and

“(2) add additional data assets to the Enterprise Data Inventory for the agency not later than 90 days after the date on which the data asset is created or identified.

“(g) Use of Existing Resources.—When practicable, the Chief Information Officer of each agency shall use existing procedures and systems to compile and publish the Enterprise Data Inventory for the agency.

§ 3564. Federal agency responsibilities

“(a) Information Resources Management.—With respect to general information resources management, each agency shall—
“(1) improve the integrity, quality, and utility of information to all users within and outside the agency by—

“(A) using open format for any new open Government data asset created or obtained on the date that is 1 year after the date of enactment of this section; and

“(B) to the extent practicable, encouraging the adoption of open format for all open Government data assets created or obtained before the date of enactment of this section; and

“(2) in consultation with the Director, develop an open data plan that, at a minimum and to the extent practicable—

“(A) requires the agency to develop processes and procedures that—

“(i) require each new data collection mechanism to use an open format; and

“(ii) allow the agency to collaborate with non-Government entities, researchers, businesses, and private citizens for the purpose of understanding how data users value and use open Government data assets;
“(B) identifies and implements methods for collecting and analyzing digital information on data asset usage by users within and outside of the agency, including designating a point of contact within the agency to assist the public and to respond to quality issues, usability, recommendations for improvements, and complaints about adherence to open data requirements;

“(C) develops and implements a process to evaluate and improve the timeliness, completeness, accuracy, usefulness, and availability of open Government data assets;

“(D) requires the agency to update the plan at an interval determined by the Director;

“(E) includes requirements for meeting the goals of the agency open data plan including technology, training for employees, and implementing procurement standards, in accordance with existing law, that allow for the acquisition of innovative solutions from the public and private sectors; and

“(F) prohibits the dissemination and accidental disclosure of nonpublic data assets.
“(b) INFORMATION DISSEMINATION.—With respect to information dissemination, each agency—

“(1) shall provide access to open Government data assets online;

“(2) shall take the necessary precautions to ensure that the agency maintains the production and publication of data assets which are directly related to activities that protect the safety of human life or property, as identified by the open data plan of the agency required under subsection (a)(2); and

“(3) may engage the public in using open Government data assets and encourage collaboration by—

“(A) publishing information on open Government data assets usage in regular, timely intervals, but not less than annually;

“(B) receiving public input regarding priorities for the analysis and disclosure of data assets to be published;

“(C) assisting civil society groups and members of the public working to expand the use of open Government data assets; and

“(D) hosting challenges, competitions, events, or other initiatives designed to create
additional value from open Government data assets.

“§3565. Additional Chief Information Officer responsibilities

“The Chief Information Officer of each agency, or other appropriate official designated by the head of an agency, is responsible for—

“(1) data asset management, format standardization, sharing of data assets, and publication of data assets for the agency;

“(2) the compilation and publication of the Enterprise Data Inventory for the agency required under section 3563;

“(3) ensuring that agency data conforms with open data best practices;

“(4) engaging agency employees, the public, and contractors in using open Government data assets and encourage collaborative approaches to improving data use;

“(5) supporting the agency Performance Improvement Officer in generating data to support the function of the Performance Improvement Officer described in section 1124(a)(2) of title 31;

“(6) reviewing the information technology infrastructure of the agency and the impact of the infra-
structure on making data assets accessible to reduce barriers that inhibit data asset accessibility;

“(7) ensuring that, to the extent practicable, the agency is maximizing its own use of data, including data assets used in agency information systems (including program administration, statistics, and financial activity) generated by applications, devices, networks, facilities, and equipment, categorized by source type, and such use is not otherwise prohibited, to reduce costs, improve operations, and strengthen security and privacy protections; and

“(8) identifying points of contact for roles and responsibilities related to open data use and implementation as required by the Director.

§3566. Technology portal

“(a) DATA.GOV REQUIRED.—The Administrator of General Services shall maintain a single public interface online as a point of entry dedicated to sharing open Government data assets with the public.

“(b) COORDINATION WITH AGENCIES.—The Director shall determine, after consultation with the head of each agency and the Administrator of General Services, the method to access any open Government data assets published through the interface described in subsection (a).”.

(b) SPECIAL PROVISIONS.—
(1) **Effective Date.**—Notwithstanding section 8, section 3562 of title 44, United States Code, as added by subsection (a), shall take effect on the date that is 1 year after the date of enactment of this Act and shall apply with respect to any contract entered into by an agency on or after such effective date.

(2) **Use of Open Data Assets.**—Not later than 1 year after the date of enactment of this Act, the head of each agency shall ensure that any activities by the agency or any new contract entered into by the agency meet the requirements of section 3562 of title 44, United States Code, as added by subsection (a).

(3) **Deadline for Technology Portal.**—Not later than 180 days after the effective date of this Act, the Administrator of General Services shall meet the requirements of section 3566 of title 44, United States Code, as added by subsection (a).

(e) **Technical and Conforming Amendment.**—The table of sections for chapter 35 of title 44, United States Code, is amended by adding at the end the following:

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''SUBCHAPTER III—OPEN GOVERNMENT DATA

3561. Definitions.
3562. Requirements for Government data.
3563. Enterprise data inventory.
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SEC. 5. EVALUATION OF AGENCY ANALYTICAL CAPABILITIES.

(a) AGENCY REVIEW OF EVALUATION AND ANALYSIS CAPABILITIES; REPORT.—Not later than 3 years after the date of enactment of this Act, the Chief Operating Officer of each agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Director of the Office of Management and Budget a report on the review described in subsection (b).

(b) REQUIREMENTS OF AGENCY REVIEW.—The report required under subsection (a) shall assess the coverage, quality, methods, effectiveness, and independence of the evaluation, research, and analysis efforts of an agency, including each of the following:

(1) A list of the activities and operations of the agency that are being evaluated and analyzed and the activities and operations that have been evaluated and analyzed during the previous 5 years.

(2) The extent to which the evaluations, research, and analysis efforts and related activities of the agency support the needs of various divisions within the agency.
(3) The extent to which the evaluation research and analysis efforts and related activities of the agency address an appropriate balance between needs related to organizational learning, ongoing program management, performance management, strategic management, interagency and private sector coordination, internal and external oversight, and accountability.

(4) The extent to which the agency uses methods and combinations of methods that are appropriate to agency divisions and the corresponding research questions being addressed, including an appropriate combination of formative and summative evaluation research and analysis approaches.

(5) The extent to which evaluation and research capacity is present within the agency to include personnel, agency process for planning and implementing evaluation activities, disseminating best practices and findings, and incorporating employee views and feedback.

(6) The extent to which the agency has the capacity to assist front-line staff and program offices to develop the capacity to use evaluation research and analysis approaches and data in the day-to-day operations.
(c) **GAO Review of Agency Reports.**—Not later than 4 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that summarizes agency findings and highlights trends from the reports submitted pursuant to subsection (a) and, if appropriate, recommends actions to further improve agency capacity to use evaluation techniques and data to support evaluation efforts.

**SEC. 6. ONLINE REPOSITORY AND ADDITIONAL REPORTS.**

(a) **Repository.**—The Director of the Office of Management and Budget shall collaborate with the Office of Government Information Services and the Administrator of General Services to develop and maintain an online repository of tools, best practices, and schema standards to facilitate the adoption of open data practices, which shall—

1. include definitions, regulation and policy, checklists, and case studies related to open data, this Act, and the amendments made by this Act; and
2. facilitate collaboration and the adoption of best practices across the Federal Government relating to the adoption of open data practices.

(b) **GAO Report.**—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on
Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report that identifies—

(1) the value of information made available to the public as a result of this Act and the amendments made by this Act;

(2) whether it is valuable to expand the publicly available information to any other data assets; and

(3) the completeness of the Enterprise Data Inventory at each agency required under section 3563 of title 44, United States Code, as added by section 4.

(e) Biennial OMB Report.—Not later than 1 year after the effective date of this Act, and every 2 years thereafter, the Director of the Office of Management and Budget shall electronically publish a report on agency performance and compliance with this Act and the amendments made by this Act.

(d) Agency CIO Report.—Not later than 1 year after the effective date of this Act and every year thereafter, the Chief Information Officer of each agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a re-
port on compliance with the requirements of this Act and
the amendments made by this Act, including information
on the requirements that the agency could not meet and
what the agency needs to comply with those requirements.

SEC. 7. RULE OF CONSTRUCTION.

Nothing in this Act, or the amendments made by this
Act, shall be construed to require the disclosure of infor-
mination or records that are exempt from public disclosure
under section 552 of title 5, United States Code (com-
monly known as the “Freedom of Information Act”).

SEC. 8. EFFECTIVE DATE.

This Act, and the amendments made by this Act,
shall take effect on the date that is 180 days after the
date of enactment of this Act.