

Union Calendar No. 326

118TH CONGRESS
2D SESSION

H. R. 5527

[Report No. 118–397]

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 HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2023

Ms. MACE (for herself and Mr. CONNOLLY) introduced the following bill;
which was referred to the Committee on Oversight and Accountability

FEBRUARY 23, 2024

Additional sponsor: Mr. KHANNA

FEBRUARY 23, 2024

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on September 18, 2023]

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”.*

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

8 *Section 1078 of the National Defense Authorization*
 9 *Act for Fiscal Year 2018 (Public Law 115–91; 40 U.S.C.*
 10 *11301 note) is amended—*

11 *(1) in subsection (b)—*

12 *(A) by amending paragraph (3) to read as*
 13 *follows:*

14 *“(3) USE OF FUNDS.—*

15 *“(A) IN GENERAL.—The Administrator*
 16 *shall, in accordance with recommendations from*
 17 *the Board, use amounts in the Fund for the fol-*
 18 *lowing:*

19 *“(i) To transfer such amounts, to re-*
 20 *main available until expended, to the head*
 21 *of an agency for the acquisition, procure-*
 22 *ment, and operation of information tech-*
 23 *nology, or the development of information*
 24 *technology when more efficient and cost ef-*
 25 *fective, to—*

1 “(I) modernize, retire, or replace
2 *legacy information technology systems*
3 *used by the agency;*

4 “(II) enhance cybersecurity and
5 *privacy at the agency;*

6 “(III) improve long-term effi-
7 *ciency and effectiveness of agency in-*
8 *formation technology; or*

9 “(IV) improve the ability of the
10 *agency to perform the mission of the*
11 *agency and deliver services to the pub-*
12 *lic.*

13 “(ii) To provide services or work per-
14 *formed in support of—*

15 “(I) the activities described in
16 *clause (i); and*

17 “(II) the Board and the Director
18 *in carrying out the responsibilities de-*
19 *scribed in subsection (c)(2).*

20 “(iii) To fund only programs, projects,
21 *or activities, or to fund increases for any*
22 *programs, projects, or activities that have*
23 *not been denied or restricted by Congress.*

24 “(iv) To transfer such amounts only
25 *for programs, projects, or activities that will*

1 *be reimbursed to the Fund to the extent nec-*
 2 *essary to ensure total amounts in the Fund*
 3 *are no less than the amounts needed to keep*
 4 *the Fund operational until the Fund sun-*
 5 *sets pursuant to subsection (g)(1).*

6 “(B) *TERMINATION OR SUSPENSION OF*
 7 *FUNDS.—The Administrator shall, in accordance*
 8 *with recommendations from the Board, suspend*
 9 *or terminate funding for any project with respect*
 10 *to which the head of an agency provided fraudu-*
 11 *lent or misleading statements about such project*
 12 *(including fraudulent statements about technical*
 13 *design, the business case, or program manage-*
 14 *ment with respect to the project) in the applica-*
 15 *tion or proposal for amounts from the Fund for*
 16 *such project.”;*

17 (B) *in paragraph (4)(A), by striking*
 18 *“\$250,000,000” and inserting “\$50,000,000” and*
 19 *by striking “fiscal years 2018 and 2019” and in-*
 20 *serting “fiscal years 2024 through 2030”;*

21 (C) *in paragraph (5)—*

22 (i) *in subparagraph (A)—*

23 (I) *in clause (i)—*

24 (aa) *by striking “or (B)”;*

25 *and*

1 *(bb) by striking “(3)(C)” and*
 2 *inserting “(3)(A)(ii)”;* and

3 *(II) in clause (ii), by striking “,*
 4 *consistent with any applicable re-*
 5 *programming law or guidelines of the*
 6 *Committees on Appropriations of the*
 7 *Senate and the House of Representa-*
 8 *tives”;* and

9 *(ii) in subparagraph (B)(i)—*

10 *(I) by striking “paragraph*
 11 *(3)(C)” and inserting “paragraph*
 12 *(3)(A)(ii)”;* and

13 *(II) by striking “the solvency of*
 14 *the Fund, including operating ex-*
 15 *penses” and inserting the following:*
 16 *“total amounts in the Fund are no less*
 17 *than the amounts needed to keep the*
 18 *Fund operational until the Fund sun-*
 19 *sets pursuant to subsection (g)(1)”;*

20 *(D) in paragraph (6)—*

21 *(i) in subparagraph (A)—*

22 *(I) in the matter before clause (i),*
 23 *by striking “subparagraphs (A) and*
 24 *(B) of paragraph (3)” and inserting*
 25 *the following: “paragraph (3)(A)(i)*

1 *and before any services or work are*
2 *provided under paragraph*
3 *(3)(A)(ii)(I)”;*

4 *(II) in clause (i)—*

5 *(aa) by striking “unless ap-*
6 *proved by the Director”; and*

7 *(bb) by striking “; and” and*
8 *inserting a semicolon;*

9 *(III) by redesignating clause (ii)*
10 *as clause (iv); and*

11 *(IV) by inserting after clause (i)*
12 *the following new clauses:*

13 *“(ii) which shall include terms of re-*
14 *payment that require the head of the agency*
15 *to reimburse the Fund for funds transferred*
16 *under paragraph (3)(A)(i) at a level that*
17 *ensures total amounts in the Fund are no*
18 *less than the amounts needed to keep the*
19 *Fund operational until the Fund sunsets*
20 *pursuant to subsection (g)(1);*

21 *“(iii) which shall include terms of re-*
22 *payment that require the head of the agency*
23 *to fully reimburse the Fund for any services*
24 *or work provided under paragraph*

1 (3)(A)(ii) *in direct support of the project;*
2 *and”; and*

3 (ii) *in subparagraph (B)—*

4 (I) *by striking clause (i) and in-*
5 *serting the following:*

6 “(i) *for any funds transferred to an*
7 *agency under paragraph (3)(A)(i), in the*
8 *absence of compelling circumstances docu-*
9 *mented by the Administrator at the time of*
10 *transfer, that such funds shall be transferred*
11 *only—*

12 “(I) *on an incremental basis, tied*
13 *to metric-based development milestones*
14 *achieved by the agency through the use*
15 *of rapid, iterative, development proc-*
16 *esses; and*

17 “(II) *after the head of the agency*
18 *has provided the Director any informa-*
19 *tion the Director is required to report*
20 *pursuant to paragraph (7)(A)(i); and”;*
21 *and*

22 (II) *in clause (ii)—*

23 (aa) *by striking “subpara-*
24 *graphs (A) and (B) of paragraph*

1 (3)” and inserting “paragraph
2 (3)(A)(i)”; and

3 (bb) by striking “paragraph
4 (6)” and inserting “this para-
5 graph”;

6 (E) in paragraph (7)—

7 (i) in subparagraph (A)(i)—

8 (I) by inserting “the written
9 agreement entered into under para-
10 graph (6),” after “description of the
11 project,”; and

12 (II) by inserting “(including doc-
13 umented market research into commer-
14 cial products and services)” after
15 “used”;

16 (ii) in subparagraph (B)—

17 (I) in clause (i)—

18 (aa) by striking “estab-
19 lishing”; and

20 (bb) by striking “the cost
21 savings associated with the
22 projects funded both annually and
23 over the life of the acquired prod-
24 ucts and services by the Fund;”
25 and inserting the following: “the

1 *amount repaid to the Fund in ac-*
 2 *cordance with the terms estab-*
 3 *lished in the written agreements*
 4 *described in paragraph (6);”;*

5 *(II) in clause (ii)—*

6 *(aa) by striking “reliability*
 7 *of the cost savings” and inserting*
 8 *“total cost savings”; and*

9 *(bb) by striking the semicolon*
 10 *and inserting “; and”; and*

11 *(III) in clause (iii), by striking “;*
 12 *and” and inserting a period; and*

13 *(IV) by striking clause (iv);*

14 *(2) in subsection (c)(2)—*

15 *(A) in subparagraph (A)—*

16 *(i) in clause (ii), by striking “the*
 17 *greatest Governmentwide impact; and” and*
 18 *inserting the following: “the greatest impact*
 19 *on modernizing, retiring, or replacing Fed-*
 20 *eral legacy information technology systems;*
 21 *and”;*

22 *(ii) by redesignating clauses (i)*
 23 *through (iii) as clauses (ii) through (iv), re-*
 24 *spectively; and*

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

3 “(i) the ability for the head of the
4 agency to ensure repayment of funds trans-
5 ferred from the Fund to the head of the
6 agency, in accordance with subsection (b);”;

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

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

21 (D) in subparagraph (G), by inserting after
22 “operating costs of the Fund” the following: “to
23 ensure total amounts in the Fund are no less
24 than the amounts needed to keep the Fund oper-

1 *ational until the Fund sunsets pursuant to sub-*
2 *section (g)(1)”;*

3 *(3) in subsection (c)—*

4 *(A) in paragraph (5)—*

5 *(i) in subparagraph (B) by striking*
6 *the period at the end and inserting “; and”;*
7 *and*

8 *(ii) by inserting after subparagraph*
9 *(B) the following;*

10 *“(C) a senior official from the Cybersecurity*
11 *and Infrastructure Security Agency of the De-*
12 *partment of Homeland Security, appointed by*
13 *the Director of the Cybersecurity and Infrastruc-*
14 *ture Security Agency, with the approval of the*
15 *Director of the Office of Management and Budg-*
16 *et.”;*

17 *(B) in paragraph (6)(A)—*

18 *(i) by striking “shall be—” and insert-*
19 *ing “shall be 4 employees of the Federal*
20 *Government primarily having technical ex-*
21 *pertise in information technology develop-*
22 *ment, financial management, cybersecurity*
23 *and privacy, and acquisition, appointed by*
24 *the Director.”; and*

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

2 and

3 (4) in subsection (d)(2)—

4 (A) in subparagraph (A), by striking “sub-
5 section (b)(3)(A) and for products, services, and
6 acquisition vehicles funded under subsection
7 (b)(3)(B)” and inserting “subsection (b)(3)”; and

8 (B) in subparagraph (C), by inserting after
9 “and reduce waste” the following: “and ensure
10 total amounts in the Fund are no less than the
11 amounts needed to keep the Fund operational
12 until the Fund sunsets pursuant to subsection
13 (g)(1)”;

14 (5) by redesignating subsections (e) and (f) as
15 subsections (f) and (g), respectively;

16 (6) by inserting after subsection (d) the following
17 new subsection:

18 “(e) *RESPONSIBILITIES OF THE FEDERAL CHIEF IN-*
19 *FORMATION OFFICER; AGENCY CHIEF INFORMATION OFFI-*
20 *CERS.—*

21 “(1) *AGENCY INVENTORY.—*An agency Chief In-
22 *formation Officer, in coordination with stakeholders*
23 *and other agency officials, shall provide to the Fed-*
24 *eral Chief Information Officer—*

1 “(A) on or before the first September 30
2 that occurs after the date of the enactment of the
3 *Modernizing Government Technology Reform Act*
4 of 2023, a list of high-risk legacy information
5 technology systems used, operated, or maintained
6 by the agency, in accordance with the guidance
7 issued under paragraph (4); and

8 “(B) on or before September 30 of each year
9 after the first year in which the list is provided
10 under subparagraph (A), any updates to such
11 list.

12 “(2) *LEGACY FEDERAL IT INVENTORY.*—*The Fed-*
13 *eral Chief Information Officer shall—*

14 “(A) on or before the first December 30 that
15 occurs after the date of the enactment of the *Mod-*
16 *ernizing Government Technology Reform Act* of
17 2023, compile a *Legacy Federal IT Inventory* on
18 the basis of the each list provided by an agency
19 Chief Information Officers under paragraph
20 (1)(A) that includes information about each
21 high-risk legacy information technology system
22 used, operated, or maintained by an agency; and

23 “(B) on or before December 30 each year
24 after the year in which the *Legacy Federal IT*
25 *Inventory* is compiled, update such *Inventory* on

1 *the basis of each update to the list provided by*
2 *an agency Chief Information Officer under para-*
3 *graph (1)(B).*

4 “(3) *PRIORITIZATION LIST.*—

5 “(A) *REQUIREMENT.*—*The Federal Chief*
6 *Information Officer shall—*

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

16 “(ii) *not later than 90 days after the*
17 *date on which the Federal Chief Informa-*
18 *tion Officer receives updates under para-*
19 *graph (1)(B) from each agency Chief Infor-*
20 *mation Officer, update the list required by*
21 *subparagraph (A) on the basis of each up-*
22 *dates to the list provided by agency Chief*
23 *information Officers under paragraph*
24 *(1)(B).*

1 “(B) *REPORT TO CONGRESS.*—Not later
2 than 14 days after the date on which the Federal
3 Chief Information Officer compiles the list re-
4 quired by subparagraph (A), or updates such
5 list, the Director shall submit to the Committee
6 on Oversight and Accountability of the House of
7 Representatives, the Committee on Homeland Se-
8 curity and Governmental Affairs of the Senate,
9 and the Comptroller General of the United
10 States, a report (which may include a classified
11 annex) containing—

12 “(i) such list (including any update
13 made to such list under subparagraph
14 (A)(ii)); and

15 “(ii) each list provided by an agency
16 Chief Information Officer under paragraph
17 (1)(A) (including any update made to any
18 such list under paragraph (1)(B)).

19 “(4) *GUIDANCE.*—

20 “(A) *IN GENERAL.*—Not later than 180
21 days after enactment of this Act, the Director
22 shall issue guidance on implementing the re-
23 quirements of this subsection that shall, at a
24 minimum—

1 “(i) prescribe an appropriate format
2 for list to be provided under paragraph
3 (1)(A);

4 “(ii) prescribe the information to be
5 included in the Legacy Federal IT Inven-
6 tory required by paragraph (2);

7 “(iii) provide guidance on how an
8 agency Chief Information Officer should
9 identify high-risk legacy information tech-
10 nology systems that, at least, requires agen-
11 cy Chief Information Officers, in coordina-
12 tion with other agency stakeholders, to iden-
13 tify as a high risk legacy information tech-
14 nology system any outdated or obsolete sys-
15 tem of information technology that is crit-
16 ical to the agency such that the loss or deg-
17 radation of the system would create a secu-
18 rity, operational, or privacy risk to the
19 agency or would otherwise impact the abil-
20 ity of the agency to perform the mission of
21 the agency, effectively deliver programs, or
22 conduct business; and

23 “(iv) provide guidance on how existing
24 reporting structures can be used to submit

1 *the Legacy Federal IT inventory required*
2 *by paragraph (2).*

3 “(B) *UPDATES.*—*The Director may update*
4 *the guidance issued under subparagraph (A) as*
5 *the Director determines necessary.*

6 “(5) *DEFINITIONS.*—*In this subsection:*

7 “(A) *AGENCY CHIEF INFORMATION OFFI-*
8 *CER.*—*The term ‘agency Chief Information Offi-*
9 *cer’ means a Chief Information Officer des-*
10 *ignated under section 3506(a)(2) of title 44,*
11 *United States Code.*

12 “(B) *FEDERAL CHIEF INFORMATION OFFI-*
13 *CER.*—*The term ‘Federal Chief Information Offi-*
14 *cer’ means the Administrator of the Office of*
15 *Electronic Government.’; and*

16 *(7) in subsection (g)(1), as so redesignated, by*
17 *striking “On and after the date that is 2 years after*
18 *the date on which the Comptroller General of the*
19 *United States issues the third report required under*
20 *subsection (b)(7)(B),” and inserting “After December*
21 *31, 2030,”.*

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2^D Session

H. R. 5527

[Report No. 118-397]

A BILL

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