

AMENDMENT NO. _____ Calendar No. _____

Purpose: To modernize Government information technology,
and for other purposes.

IN THE SENATE OF THE UNITED STATES—115th Cong., 1st Sess.

H. R. 2810

To authorize appropriations for fiscal year 2018 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, 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 intended to be proposed by Mr. MORAN (for himself, Mr. UDALL, Mr. DAINES, and Mr. WARNER) to the amendment (No. _____) proposed by Mr. MCCAIN

Viz:

1 At the end of title X, add the following:

2 **Subtitle H—Modernizing**
3 **Government Technology**

4 **SEC. 1091. SHORT TITLE.**

5 This subtitle may be cited as the “Modernizing Gov-
6 ernment Technology Act of 2017” or the “MGT Act”.

7 **SEC. 1092. DEFINITIONS.**

8 In this subtitle:

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of General Serv-
3 ices.

4 (2) BOARD.—The term “Board” means the
5 Technology Modernization Board established under
6 section 1094(c)(1).

7 (3) CLOUD COMPUTING.—The term “cloud
8 computing” has the meaning given the term by the
9 National Institute of Standards and Technology in
10 NIST Special Publication 800–145 and any amend-
11 atory or superseding document thereto.

12 (4) DIRECTOR.—The term “Director” means
13 the Director of the Office of Management and Budg-
14 et.

15 (5) FUND.—The term “Fund” means the Tech-
16 nology Modernization Fund established under sec-
17 tion 1094(b)(1).

18 (6) INFORMATION TECHNOLOGY.—The term
19 “information technology” has the meaning given the
20 term in section 3502 of title 44, United States Code.

21 (7) IT WORKING CAPITAL FUND.—The term
22 “IT working capital fund” means an information
23 technology system modernization and working cap-
24 ital fund established under section 1093(b)(1).

1 (8) LEGACY INFORMATION TECHNOLOGY SYS-
2 TEM.—The term “legacy information technology sys-
3 tem” means an outdated or obsolete system of infor-
4 mation technology.

5 **SEC. 1093. ESTABLISHMENT OF AGENCY INFORMATION**
6 **TECHNOLOGY SYSTEMS MODERNIZATION**
7 **AND WORKING CAPITAL FUNDS.**

8 (a) DEFINITION.—In this section, the term “covered
9 agency” means each agency listed in section 901(b) of title
10 31, United States Code.

11 (b) INFORMATION TECHNOLOGY SYSTEM MOD-
12 ERNIZATION AND WORKING CAPITAL FUNDS.—

13 (1) ESTABLISHMENT.—The head of a covered
14 agency may establish within the covered agency an
15 information technology system modernization and
16 working capital fund for necessary expenses de-
17 scribed in paragraph (3).

18 (2) SOURCE OF FUNDS.—The following
19 amounts may be deposited into an IT working cap-
20 ital fund:

21 (A) Reprogramming and transfer of funds
22 made available in appropriations Acts enacted
23 after the date of enactment of this Act, includ-
24 ing the transfer of any funds for the operation
25 and maintenance of legacy information tech-

1 nology systems, in compliance with any applica-
2 ble reprogramming law or guidelines of the
3 Committees on Appropriations of the Senate
4 and the House of Representatives or transfer
5 authority specifically provided in appropriations
6 law.

7 (B) Amounts made available to the IT
8 working capital fund through discretionary ap-
9 propriations made available after the date of
10 enactment of this Act.

11 (3) USE OF FUNDS.—An IT working capital
12 fund established under paragraph (1) may only be
13 used—

14 (A) to improve, retire, or replace existing
15 information technology systems in the covered
16 agency to enhance cybersecurity and to improve
17 efficiency and effectiveness across the life of a
18 given workload, procured using full and open
19 competition among all commercial items to the
20 greatest extent practicable;

21 (B) to transition legacy information tech-
22 nology systems at the covered agency to com-
23 mercial cloud computing and other innovative
24 commercial platforms and technologies, includ-

1 ing those serving more than 1 covered agency
2 with common requirements;

3 (C) to assist and support covered agency
4 efforts to provide adequate, risk-based, and
5 cost-effective information technology capabilities
6 that address evolving threats to information se-
7 curity;

8 (D) to reimburse funds transferred to the
9 covered agency from the Fund with the ap-
10 proval of the Chief Information Officer, in con-
11 sultation with the Chief Financial Officer, of
12 the covered agency; and

13 (E) for a program, project, or activity or
14 to increase funds for any program, project, or
15 activity that has not been denied or restricted
16 by Congress.

17 (4) EXISTING FUNDS.—An IT working capital
18 fund may not be used to supplant funds provided for
19 the operation and maintenance of any system within
20 an appropriation for the covered agency at the time
21 of establishment of the IT working capital fund.

22 (5) PRIORITIZATION OF FUNDS.—The head of
23 each covered agency—

24 (A) shall prioritize funds within the IT
25 working capital fund of the covered agency to

1 be used initially for cost savings activities ap-
2 proved by the Chief Information Officer of the
3 covered agency; and

4 (B) may reprogram and transfer any
5 amounts saved as a direct result of the cost
6 savings activities approved under clause (i) for
7 deposit into the IT working capital fund of the
8 covered agency, consistent with paragraph
9 (2)(A).

10 (6) AVAILABILITY OF FUNDS.—

11 (A) IN GENERAL.—Any funds deposited
12 into an IT working capital fund shall be avail-
13 able for obligation for the 3-year period begin-
14 ning on the last day of the fiscal year in which
15 the funds were deposited.

16 (B) TRANSFER OF UNOBLIGATED
17 AMOUNTS.—Any amounts in an IT working
18 capital fund that are unobligated at the end of
19 the 3-year period described in subparagraph (A)
20 shall be transferred to the general fund of the
21 Treasury.

22 (7) AGENCY CIO RESPONSIBILITIES.—In evalu-
23 ating projects to be funded by the IT working cap-
24 ital fund of a covered agency, the Chief Information
25 Officer of the covered agency shall consider, to the

1 extent applicable, guidance issued under section
2 1094(b)(1) to evaluate applications for funding from
3 the Fund that include factors including a strong
4 business case, technical design, consideration of
5 commercial off-the-shelf products and services, pro-
6 curement strategy (including adequate use of rapid,
7 iterative software development practices), and pro-
8 gram management.

9 (c) REPORTING REQUIREMENT.—

10 (1) IN GENERAL.—Not later than 1 year after
11 the date of enactment of this Act, and every 6
12 months thereafter, the head of each covered agency
13 shall submit to the Director, with respect to the IT
14 working capital fund of the covered agency—

15 (A) a list of each information technology
16 investment funded, including the estimated cost
17 and completion date for each investment; and

18 (B) a summary by fiscal year of obliga-
19 tions, expenditures, and unused balances.

20 (2) PUBLIC AVAILABILITY.—The Director shall
21 make the information submitted under paragraph
22 (1) publicly available on a website.

1 information technology systems to enhance cy-
2 bersecurity and privacy and improve long-term
3 efficiency and effectiveness;

4 (B) to transfer such amounts, to remain
5 available until expended, to the head of an
6 agency for the operation and procurement of in-
7 formation technology products and services, or
8 the development of such products and services
9 when more efficient and cost effective, and ac-
10 quisition vehicles for use by agencies to improve
11 Governmentwide efficiency and cybersecurity in
12 accordance with the requirements of the agen-
13 cies;

14 (C) to provide services or work performed
15 in support of—

16 (i) the activities described in subpara-
17 graph (A) or (B); and

18 (ii) the Board and the Director in car-
19 rying out the responsibilities described in
20 subsection (c)(2); and

21 (D) to fund only programs, projects, or ac-
22 tivities or to fund increases for any programs,
23 projects, or activities that have not been denied
24 or restricted by Congress.

1 (4) AUTHORIZATION OF APPROPRIATIONS;
2 CREDITS; AVAILABILITY OF FUNDS.—

3 (A) AUTHORIZATION OF APPROPRIA-
4 TIONS.—There is authorized to be appropriated
5 to the Fund \$250,000,000 for each of fiscal
6 years 2018 and 2019.

7 (B) CREDITS.—In addition to any funds
8 otherwise appropriated, the Fund shall be cred-
9 ited with all reimbursements, advances, or re-
10 funds or recoveries relating to information tech-
11 nology or services provided for the purposes de-
12 scribed in paragraph (3).

13 (C) AVAILABILITY OF FUNDS.—Amounts
14 deposited, credited, or otherwise made available
15 to the Fund shall be available until expended
16 for the purposes described in paragraph (3).

17 (5) REIMBURSEMENT.—

18 (A) REIMBURSEMENT BY AGENCY.—

19 (i) IN GENERAL.—The head of an
20 agency shall reimburse the Fund for any
21 transfer made under subparagraph (A) or
22 (B) of paragraph (3), including any serv-
23 ices or work performed in support of the
24 transfer under paragraph (3)(C), in ac-
25 cordance with the terms established in a

1 written agreement described in paragraph
2 (6).

3 (ii) REIMBURSEMENT FROM SUBSE-
4 QUENT APPROPRIATIONS.—Notwith-
5 standing any other provision of law, an
6 agency may make a reimbursement re-
7 quired under clause (i) from any appro-
8 priation made available after the date of
9 enactment of this Act for information tech-
10 nology activities, consistent with any appli-
11 cable reprogramming law or guidelines of
12 the Committees on Appropriations of the
13 Senate and the House of Representatives.

14 (iii) RECORDING OF OBLIGATION.—
15 Notwithstanding section 1501 of title 31,
16 United States Code, an obligation to make
17 a payment under a written agreement de-
18 scribed in paragraph (6) in a fiscal year
19 after the date of enactment of this Act
20 shall be recorded in the fiscal year in
21 which the payment is due.

22 (B) PRICES FIXED BY ADMINISTRATOR.—

23 (i) IN GENERAL.—The Administrator,
24 in consultation with the Director, shall es-
25 tablish amounts to be paid by an agency

1 under this paragraph and the terms of re-
2 payment for activities funded under para-
3 graph (3), including any services or work
4 performed in support of that development
5 under paragraph (3)(C), at levels sufficient
6 to ensure the solvency of the Fund, includ-
7 ing operating expenses.

8 (ii) REVIEW AND APPROVAL.—Before
9 making any changes to the established
10 amounts and terms of repayment, the Ad-
11 ministrator shall conduct a review and ob-
12 tain approval from the Director.

13 (C) FAILURE TO MAKE TIMELY REIM-
14 BURSEMENT.—The Administrator may obtain
15 reimbursement from an agency under this para-
16 graph by the issuance of transfer and counter-
17 warrants, or other lawful transfer documents,
18 supported by itemized bills, if payment is not
19 made by the agency during the 90-day period
20 beginning after the expiration of a repayment
21 period described in a written agreement de-
22 scribed in paragraph (6).

23 (6) WRITTEN AGREEMENT.—

24 (A) IN GENERAL.—Before the transfer of
25 funds to an agency under subparagraphs (A)

1 and (B) of paragraph (3), the Administrator, in
2 consultation with the Director, and the head of
3 the agency shall enter into a written agree-
4 ment—

5 (i) documenting the purpose for which
6 the funds will be used and the terms of re-
7 payment, which may not exceed 5 years
8 unless approved by the Director; and

9 (ii) which shall be recorded as an obli-
10 gation as provided in paragraph (5)(A).

11 (B) REQUIREMENT FOR USE OF INCRE-
12 MENTAL FUNDING, COMMERCIAL PRODUCTS
13 AND SERVICES, AND RAPID, ITERATIVE DEVEL-
14 OPMENT PRACTICES.—The Administrator shall
15 ensure—

16 (i) for any funds transferred to an
17 agency under paragraph (3)(A), in the ab-
18 sence of compelling circumstances docu-
19 mented by the Administrator at the time of
20 transfer, that such funds shall be trans-
21 ferred only on an incremental basis, tied to
22 metric-based development milestones
23 achieved by the agency through the use of
24 rapid, iterative, development processes; and

1 (ii) that the use of commercial prod-
2 ucts and services are incorporated to the
3 greatest extent practicable in activities
4 funded under subparagraphs (A) and (B)
5 of paragraph (3), and that the written
6 agreement required under paragraph (6)
7 documents this preference.

8 (7) REPORTING REQUIREMENTS.—

9 (A) LIST OF PROJECTS.—

10 (i) IN GENERAL.—Not later than 6
11 months after the date of enactment of this
12 Act, the Director shall maintain a list of
13 each project funded by the Fund, to be up-
14 dated not less than quarterly, that includes
15 a description of the project, project status
16 (including any schedule delay and cost
17 overruns), financial expenditure data re-
18 lated to the project, and the extent to
19 which the project is using commercial
20 products and services, including if applica-
21 ble, a justification of why commercial prod-
22 ucts and services were not used and the as-
23 sociated development and integration costs
24 of custom development.

1 (ii) PUBLIC AVAILABILITY.—The list
2 required under clause (i) shall be published
3 on a public website in a manner that is, to
4 the greatest extent possible, consistent
5 with applicable law on the protection of
6 classified information, sources, and meth-
7 ods.

8 (B) COMPTROLLER GENERAL REPORTS.—
9 Not later than 2 years after the date of enact-
10 ment of this Act, and every 2 years thereafter,
11 the Comptroller General of the United States
12 shall submit to Congress and make publically
13 available a report assessing—

14 (i) the costs associated with estab-
15 lishing the Fund and maintaining the over-
16 sight structure associated with the Fund
17 compared with the cost savings associated
18 with the projects funded both annually and
19 over the life of the acquired products and
20 services by the Fund;

21 (ii) the reliability of the cost savings
22 estimated by agencies associated with
23 projects funded by the Fund;

24 (iii) whether agencies receiving trans-
25 fers of funds from the Fund used full and

1 open competition to acquire the custom de-
2 velopment of information technology prod-
3 ucts or services; and

4 (iv) the number of IT procurement,
5 development, and modernization programs,
6 offices, and entities in the Federal Govern-
7 ment, including 18F and the United States
8 Digital Services, the roles, responsibilities,
9 and goals of those programs and entities,
10 and the extent to which they duplicate
11 work.

12 (c) TECHNOLOGY MODERNIZATION BOARD.—

13 (1) ESTABLISHMENT.—There is established a
14 Technology Modernization Board to evaluate pro-
15 posals submitted by agencies for funding authorized
16 under the Fund.

17 (2) RESPONSIBILITIES.—The responsibilities of
18 the Board are—

19 (A) to provide input to the Director for the
20 development of processes for agencies to submit
21 modernization proposals to the Board and to
22 establish the criteria by which those proposals
23 are evaluated, which shall include—

24 (i) addressing the greatest security,
25 privacy, and operational risks;

1 (ii) having the greatest Government-
2 wide impact; and

3 (iii) having a high probability of suc-
4 cess based on factors including a strong
5 business case, technical design, consider-
6 ation of commercial off-the-shelf products
7 and services, procurement strategy (includ-
8 ing adequate use of rapid, agile iterative
9 software development practices), and pro-
10 gram management;

11 (B) to make recommendations to the Ad-
12 ministrator to assist agencies in the further de-
13 velopment and refinement of select submitted
14 modernization proposals, based on an initial
15 evaluation performed with the assistance of the
16 Administrator;

17 (C) to review and prioritize, with the as-
18 sistance of the Administrator and the Director,
19 modernization proposals based on criteria estab-
20 lished pursuant to subparagraph (A);

21 (D) to identify, with the assistance of the
22 Administrator, opportunities to improve or re-
23 place multiple information technology systems
24 with a smaller number of information tech-
25 nology services common to multiple agencies;

1 (E) to recommend the funding of mod-
2 ernization projects, in accordance with the uses
3 described in subsection (b)(3), to the Adminis-
4 trator;

5 (F) to monitor, in consultation with the
6 Administrator, progress and performance in
7 executing approved projects and, if necessary,
8 recommend the suspension or termination of
9 funding for projects based on factors including
10 the failure to meet the terms of a written agree-
11 ment described in subsection (b)(6); and

12 (G) to monitor the operating costs of the
13 Fund.

14 (3) MEMBERSHIP.—The Board shall consist of
15 7 voting members.

16 (4) CHAIR.—The Chair of the Board shall be
17 the Administrator of the Office of Electronic Gov-
18 ernment.

19 (5) PERMANENT MEMBERS.—The permanent
20 members of the Board shall be—

21 (A) the Administrator of the Office of
22 Electronic Government; and

23 (B) a senior official from the General Serv-
24 ices Administration having technical expertise
25 in information technology development, ap-

1 pointed by the Administrator, with the approval
2 of the Director.

3 (6) ADDITIONAL MEMBERS OF THE BOARD.—

4 (A) APPOINTMENT.—The other members
5 of the Board shall be—

6 (i) 1 employee of the National Protec-
7 tion and Programs Directorate of the De-
8 partment of Homeland Security, appointed
9 by the Secretary of Homeland Security;
10 and

11 (ii) 4 employees of the Federal Gov-
12 ernment primarily having technical exper-
13 tise in information technology development,
14 financial management, cybersecurity and
15 privacy, and acquisition, appointed by the
16 Director.

17 (B) TERM.—Each member of the Board
18 described in paragraph (A) shall serve a term
19 of 1 year, which shall be renewable not more
20 than 4 times at the discretion of the appointing
21 Secretary or Director, as applicable.

22 (7) PROHIBITION ON COMPENSATION.—Mem-
23 bers of the Board may not receive additional pay, al-
24 lowances, or benefits by reason of their service on
25 the Board.

1 (8) STAFF.—Upon request of the Chair of the
2 Board, the Director and the Administrator may de-
3 tail, on a reimbursable or nonreimbursable basis,
4 any employee of the Federal Government to the
5 Board to assist the Board in carrying out the func-
6 tions of the Board.

7 (d) RESPONSIBILITIES OF ADMINISTRATOR.—

8 (1) IN GENERAL.—In addition to the respon-
9 sibilities described in subsection (b), the Adminis-
10 trator shall support the activities of the Board and
11 provide technical support to, and, with the concur-
12 rence of the Director, oversight of, agencies that re-
13 ceive transfers from the Fund.

14 (2) RESPONSIBILITIES.—The responsibilities of
15 the Administrator are—

16 (A) to provide direct technical support in
17 the form of personnel services or otherwise to
18 agencies transferred amounts under subsection
19 (b)(3)(A) and for products, services, and acqui-
20 sition vehicles funded under subsection
21 (b)(3)(B);

22 (B) to assist the Board with the evalua-
23 tion, prioritization, and development of agency
24 modernization proposals.

1 (C) to perform regular project oversight
2 and monitoring of approved agency moderniza-
3 tion projects, in consultation with the Board
4 and the Director, to increase the likelihood of
5 successful implementation and reduce waste;
6 and

7 (D) to provide the Director with informa-
8 tion necessary to meet the requirements of sub-
9 section (b)(7).

10 (e) EFFECTIVE DATE.—This section shall take effect
11 on the date that is 90 days after the date of enactment
12 of this Act.

13 (f) SUNSET.—

14 (1) IN GENERAL.—On and after the date that
15 is 2 years after the date on which the Comptroller
16 General of the United States issues the third report
17 required under subsection (b)(7)(B), the Adminis-
18 trator may not award or transfer funds from the
19 Fund for any project that is not already in progress
20 as of such date.

21 (2) TRANSFER OF UNOBLIGATED AMOUNTS.—
22 Not later than 90 days after the date on which all
23 projects that received an award from the Fund are
24 completed, any amounts in the Fund shall be trans-

1 ferred to the general fund of the Treasury and shall
2 be used for deficit reduction.

3 (3) TERMINATION OF TECHNOLOGY MOD-
4 ERNIZATION BOARD.—Not later than 90 days after
5 the date on which all projects that received an award
6 from the Fund are completed, the Technology Mod-
7 ernization Board and all the authorities of sub-
8 section (c) shall terminate.