

Suspend the Rules and Pass the Bill, H.R. 6004, with An Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

114TH CONGRESS
2D SESSION

H. R. 6004

To modernize Government information technology, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September 13, 2016

Mr. Hurd of Texas (for himself, Mr. Connolly, Mr. Chaffetz, Mr. Cummings, Ms. Kelly of Illinois, and Mr. Ted Lieu of California) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To modernize Government information technology, 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 Act of 2016” or the “MGT Act”.

1 **SEC. 2. FINDINGS; PURPOSES.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) The Federal Government spends nearly 75
4 percent of its annual information technology funding
5 on operating and maintaining existing, legacy infor-
6 mation technology systems. These systems can pose
7 operational risks, including rising costs and inability
8 to meet mission requirements. These systems also
9 pose security risks, including the inability to use cur-
10 rent security best practices, such as data encryption
11 and multi-factor authentication, making these sys-
12 tems particularly vulnerable to malicious cyber activ-
13 ity.

14 (2) In 2015, the Government Accountability Of-
15 fice (GAO) designated Improving the Management
16 of IT Acquisitions and Operations to its biannual
17 High Risk List and identified as a particular con-
18 cern the increasing level of information technology
19 spending on Operations and Maintenance making
20 less funding available for development or moderniza-
21 tion. The GAO also found the Government has spent
22 billions on failed and poorly performing IT invest-
23 ments due to a lack of effective oversight.

24 (3) The Federal Government must modernize
25 Federal IT systems to mitigate existing operational
26 and security risks.

1 (4) The efficiencies, cost savings, and greater
2 computing power, offered by modernized solutions,
3 such as cloud computing, have the potential to—

4 (A) eliminate inappropriate duplication and
5 reduce costs;

6 (B) address the critical need for cyber se-
7 curity by design; and

8 (C) move the Federal Government into a
9 broad, digital-services delivery model that will
10 transform the Federal Government's ability to
11 meet mission requirements and deliver services
12 to the American people.

13 (b) PURPOSES.—The purposes of this Act are the fol-
14 lowing:

15 (1) Assist the Federal Government in modern-
16 ized Federal information technology to mitigate cur-
17 rent operational and security risks.

18 (2) Incentivize cost savings in Federal informa-
19 tion technology through modernization.

20 (3) Accelerate the acquisition and deployment
21 of modernized information technology solutions, such
22 as cloud computing, by addressing impediments in
23 the areas of funding, development, and acquisition
24 practices.

1 **SEC. 3. ESTABLISHMENT OF AGENCY INFORMATION TECH-**
2 **NOLOGY SYSTEMS MODERNIZATION AND**
3 **WORKING CAPITAL FUNDS.**

4 (a) INFORMATION TECHNOLOGY SYSTEM MOD-
5 ERNIZATION AND WORKING CAPITAL FUNDS.—

6 (1) ESTABLISHMENT.—There is established in
7 each covered agency an information technology sys-
8 tem modernization and working capital fund (in this
9 section referred to as the “IT working capital fund”)
10 for necessary expenses for the agency described in
11 paragraph (3).

12 (2) SOURCE OF FUNDS.—Amounts may be de-
13 posited into an IT working capital fund as follows:

14 (A) Reprogramming of funds, including re-
15 programming of any funds available on the date
16 of the enactment of this Act for the operation
17 and maintenance of legacy information tech-
18 nology systems, in compliance with any applica-
19 ble reprogramming law or guidelines of the
20 Committees on Appropriations of the House of
21 Representatives and the Senate.

22 (B) Transfer of funds, including transfer
23 of any funds available on the date of the enact-
24 ment of this Act for the operation and mainte-
25 nance of legacy information technology systems,

1 but only if transfer authority is specifically pro-
2 vided for by law.

3 (C) Amounts made available through dis-
4 cretionary appropriations.

5 (3) USE OF FUNDS.—An IT working capital
6 fund established under paragraph (1) may be used,
7 subject to the availability of appropriations, only for
8 the following:

9 (A) To improve, retire, or replace existing
10 information technology systems to improve effi-
11 ciency and effectiveness.

12 (B) To transition to cloud computing and
13 innovative platforms and technologies.

14 (C) To assist and support covered agency
15 efforts to provide adequate, risk-based, and
16 cost-effective information technology capabilities
17 that address evolving threats to information se-
18 curity.

19 (D) Reimbursement of funds transferred
20 from the Information Technology Modernization
21 Fund established under section 4, with the ap-
22 proval of the agency Chief Information Officer.

23 (4) EXISTING FUNDS.—An IT working capital
24 fund may not be used to supplant funds provided for
25 the operation and maintenance of any system al-

1 ready within an appropriation for the covered agency
2 at the time of establishment of the IT working cap-
3 ital fund.

4 (5) REPROGRAMMING AND TRANSFER OF
5 FUNDS.—The head of each covered agency shall
6 prioritize funds within the IT working capital fund
7 to be used initially for cost savings activities ap-
8 proved by the covered agency Chief Information Of-
9 ficer, in consultation with the Administrator of the
10 Office of Electronic Government. The head of each
11 covered agency may—

12 (A) reprogram any amounts saved as a di-
13 rect result of such activities for deposit into the
14 applicable IT working capital fund, consistent
15 with paragraph (2)(A); and

16 (B) transfer any amounts saved as a direct
17 result of such activities for deposit into the ap-
18 plicable IT working capital fund, consistent
19 with paragraph (2)(B).

20 (6) RETURN OF FUNDS.—Any funds deposited
21 into an IT working capital fund shall be available
22 for obligation for 3 years after the date of such de-
23 posit.

24 (7) AGENCY CIO RESPONSIBILITIES.—In evalu-
25 ating projects to be funded from the IT working

1 capital fund, the covered agency Chief Information
2 Officer shall consider, to the extent applicable, guid-
3 ance established pursuant to section 4(a)(1) to
4 evaluate applications for funding from the Informa-
5 tion Technology Modernization Fund that include
6 factors such as a strong business case, technical de-
7 sign, procurement strategy (including adequate use
8 of incremental software development practices), and
9 program management.

10 (b) REPORTING REQUIREMENT.—

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

17 (A) A list of each information technology
18 investment funded with estimated cost and
19 completion date for each such investment.

20 (B) A summary by fiscal year of the obli-
21 gations, expenditures, and unused balances.

22 (2) PUBLIC AVAILABILITY.—The Director shall
23 make the information required pursuant to para-
24 graph (1) publicly available on a website.

1 (c) COVERED AGENCY DEFINED.—In this section,
2 the term “covered agency” means each agency listed in
3 section 901(b) of title 31, United States Code.

4 **SEC. 4. ESTABLISHMENT OF INFORMATION TECHNOLOGY**
5 **MODERNIZATION FUND AND BOARD.**

6 (a) INFORMATION TECHNOLOGY MODERNIZATION
7 FUND.—

8 (1) ESTABLISHMENT.—There is established in
9 the Treasury an Information Technology Moderniza-
10 tion Fund (in this section referred to as the
11 “Fund”) for technology related activities, to improve
12 information technology, to enhance cybersecurity
13 across the Federal Government, and to be adminis-
14 tered in accordance with guidance established by the
15 Director of the Office of Management of Budget.

16 (2) ADMINISTRATION OF FUND.—The Adminis-
17 trator of General Services, in consultation with the
18 Chief Information Officers Council and with the con-
19 currence of the Director, shall administer the Fund
20 in accordance with this subsection.

21 (3) USE OF FUNDS.—The Administrator of
22 General Services shall, in accordance with the rec-
23 ommendations of the Information Technology Mod-
24 ernization Board established under subsection (b),
25 use amounts in the Fund for the following purposes:

1 (A) To transfer such amounts, to remain
2 available until expended, to the head of an
3 agency to improve, retire, or replace existing in-
4 formation technology systems to enhance cyber-
5 security and improve efficiency and effective-
6 ness.

7 (B) For the development, operation, and
8 procurement of information technology prod-
9 ucts, services, and acquisition vehicles for use
10 by agencies to improve Governmentwide effi-
11 ciency and cybersecurity in accordance with the
12 requirements of the agencies.

13 (C) To provide services or work performed
14 in support of the activities described under sub-
15 paragraph (A) or (B).

16 (4) CREDITS; AVAILABILITY OF FUNDS.—

17 (A) CREDITS.—In addition to any funds
18 otherwise appropriated, the Fund shall be cred-
19 ited with all reimbursements, advances, or re-
20 funds or recoveries relating to information tech-
21 nology or services provided through the Fund.

22 (B) AVAILABILITY OF FUNDS.—Amounts
23 deposited, credited, or otherwise made available
24 to the Fund shall be available, as provided in

1 appropriations Acts, until expended for the pur-
2 poses described in paragraph (3).

3 (5) REIMBURSEMENT.—

4 (A) PAYMENT BY AGENCY.—For a product
5 or service developed under paragraph (3), the
6 head of an agency that uses such product or
7 service shall pay an amount fixed by the Ad-
8 ministrator of General Services in accordance
9 with this subsection.

10 (B) REIMBURSEMENT BY AGENCY.—The
11 head of an agency shall reimburse the Fund for
12 any transfer made under paragraph (3)(A) in
13 accordance with the terms established in the
14 written agreement described in paragraph (6).
15 Notwithstanding any other provision of law, an
16 agency may make a reimbursement required by
17 this subparagraph from any appropriation avail-
18 able for information technology activities. An
19 obligation to make a payment under an agree-
20 ment described in paragraph (6) in a future fis-
21 cal year shall be recorded pursuant to section
22 1501 of title 31, United States Code, in the fis-
23 cal year in which the payment is due.

24 (C) PRICES FIXED BY ADMINISTRATOR OF
25 GENERAL SERVICES.—The Administrator of

1 General Services, in consultation with the Di-
2 rector, shall establish amounts to be paid by an
3 agency and terms of repayment for use of a
4 product or service developed under paragraph
5 (3) at levels sufficient to ensure the solvency of
6 the Fund, including operating expenses. Before
7 making any changes to the established amounts
8 and terms of repayment, the Administrator of
9 General Services shall conduct a review and ob-
10 tain approval from the Director.

11 (D) FAILURE TO MAKE TIMELY REIM-
12 BURSEMENT.—The Administrator of General
13 Services may obtain reimbursement by the
14 issuance of transfer and counterwarrants, or
15 other lawful transfer documents, supported by
16 itemized bills, if payment is not made by an
17 agency—

18 (i) within 90 days after the expiration
19 of a repayment period described in the
20 written agreement described in paragraph
21 (6)(A); or

22 (ii) within 45 days after the expiration
23 of the time period to make a payment
24 under a payment schedule for a product or
25 service developed under paragraph (3).

1 (6) WRITTEN AGREEMENT.—

2 (A) IN GENERAL.—Before the transfer of
3 funds to an agency under paragraph (3)(A), the
4 Administrator of General Services (in consulta-
5 tion with the Director) and the head of the req-
6 uisitioning agency shall enter into a written
7 agreement documenting the purpose for which
8 the funds will be used and the terms of repay-
9 ment. An agreement made pursuant to this sub-
10 paragraph shall be recorded as an obligation as
11 provided in paragraph (5)(B).

12 (B) REQUIREMENT FOR USE OF INCRE-
13 MENTAL DEVELOPMENT PRACTICES.—For any
14 funds transferred to an agency under para-
15 graph (3)(A), in the absence of compelling cir-
16 cumstances documented by the Administrator
17 of General Services at the time of transfer, such
18 funds shall be transferred only on an incre-
19 mental basis, tied to metric-based development
20 milestones achieved by the agency, to be de-
21 scribed in the written agreement required pur-
22 suant to subparagraph (A).

23 (7) REPORTING REQUIREMENT.—Not later than
24 6 months after the date of the enactment of this
25 Act, the Director shall publish and maintain a list

1 of each project funded by the Fund on a public
2 website to be updated not less than quarterly, that
3 includes a description of the project, project status
4 (including any schedule delay and cost overruns),
5 and financial expenditure data related to the project.

6 (b) INFORMATION TECHNOLOGY MODERNIZATION
7 BOARD.—

8 (1) ESTABLISHMENT.—There is established an
9 Information Technology Modernization Board (in
10 this section referred to as the “Board”) which shall
11 evaluate proposals submitted by agencies for funding
12 authorized under the Fund.

13 (2) RESPONSIBILITIES.—The responsibilities of
14 the Board are the following:

15 (A) Provide input to the Director for the
16 development of processes for agencies to submit
17 modernization proposals to the Board and to
18 establish the criteria by which such proposals
19 are evaluated, which shall include addressing
20 the greatest security and operational risks, hav-
21 ing the greatest Governmentwide impact, and
22 having a high probability of success based on
23 factors such as a strong business case, technical
24 design, procurement strategy (including ade-

1 quate use of incremental software development
2 practices), and program management.

3 (B) Make recommendations to the Admin-
4 istrator of General Services to assist agencies in
5 the further development and refinement of se-
6 lect submitted modernization proposals, based
7 on an initial evaluation performed with the as-
8 sistance of the Administrator of General Serv-
9 ices.

10 (C) review and prioritize, with the assist-
11 ance of the Administrator of General Services
12 and the Director, modernization proposals
13 based on criteria established pursuant to sub-
14 paragraph (A).

15 (D) Identify, with the assistance of the Ad-
16 ministrator of General Services, opportunities
17 to improve or replace multiple information tech-
18 nology systems with a smaller number of infor-
19 mation technology systems common to multiple
20 agencies.

21 (E) Recommend the funding of moderniza-
22 tion projects, in accordance with the uses de-
23 scribed in subsection (a)(3), to the Adminis-
24 trator of General Services.

1 (F) Monitor, in consultation with the Ad-
2 ministrator of General Services, progress and
3 performance in executing approved projects
4 and, if necessary, recommend the suspension or
5 termination of funding for projects based on
6 factors such as failure to meet the terms of the
7 written agreement described in subsection
8 (a)(6).

9 (G) Monitor operating costs of the Fund.

10 (3) MEMBERSHIP.—The Board shall consist of
11 8 voting members.

12 (4) CHAIR.—The Chair of the Board shall be
13 the Administrator of the Office of Electronic Gov-
14 ernment.

15 (5) PERMANENT MEMBERS.—The permanent
16 members of the Board shall be the following:

17 (A) The Administrator of the Office of
18 Electronic Government.

19 (B) A senior official from the General
20 Services Administration, who shall be appointed
21 by the Administrator of General Services.

22 (6) ADDITIONAL MEMBERS OF THE BOARD.—

23 (A) APPOINTMENT.—The other members
24 of the Board shall be appointed as follows:

1 (i) One employee of the National In-
2 stitute of Standards and Technology of the
3 Department of Commerce, appointed by
4 the Secretary of Commerce.

5 (ii) One employee of the National Pro-
6 tection and Programs Directorate of the
7 Department of Homeland Security, ap-
8 pointed by the Secretary of Homeland Se-
9 curity.

10 (iii) One employee of the Department
11 of Defense, appointed by the Secretary of
12 Defense.

13 (iv) Three Federal employees pri-
14 marily having technical expertise in infor-
15 mation technology development, financial
16 management, cybersecurity and privacy,
17 and acquisition, appointed by the Director.

18 (B) TERM.—Each member of the Board
19 described in paragraph (A) shall serve a term
20 of one year, which shall be renewable up to
21 three times, at the discretion of the appointing
22 Secretary or Director, as applicable.

23 (7) PROHIBITION ON COMPENSATION.—Mem-
24 bers of the Board may not receive additional pay, al-

1 lowances, or benefits by reason of their service on
2 the Board.

3 (8) STAFF.—Upon request of the Chair of the
4 Board, the Director and the Administrator of Gen-
5 eral Services may detail, on a nonreimbursable basis,
6 any of the personnel of the Office of Management
7 and Budget or the General Services Administration
8 (as the case may be) to the Board to assist it in car-
9 rying out its functions under this Act.

10 (c) RESPONSIBILITIES OF THE ADMINISTRATOR OF
11 GENERAL SERVICES.—

12 (1) IN GENERAL.—In addition to the respon-
13 sibilities described in subsection (a), the Adminis-
14 trator of General Services shall support the activities
15 of the Board and provide technical support to, and,
16 with the concurrence of the Director, oversight of,
17 agencies that receive transfers from the Fund.

18 (2) RESPONSIBILITIES.—The responsibilities of
19 the Administrator of General Services are to—

20 (A) provide direct technical support in the
21 form of personnel services or otherwise to agen-
22 cies transferred amounts under subsection
23 (a)(3)(A) and for products, services, and acqui-
24 sition vehicles funded under subsection
25 (a)(3)(B);

1 (B) assist the Board with the evaluation,
2 prioritization, and development of agency mod-
3 ernization proposals;

4 (C) perform regular project oversight and
5 monitoring of approved agency modernization
6 projects, in consultation with the Board and the
7 Director, to increase the likelihood of successful
8 implementation and reduce waste; and

9 (D) provide the Director with information
10 necessary to meet the requirements of sub-
11 section (a)(7).

12 (d) AGENCY DEFINED.—In this section, the term
13 “agency” has the meaning given that term in section 551
14 of title 5, United States Code.

15 **SEC. 5. DEFINITIONS.**

16 In this Act:

17 (1) CLOUD COMPUTING.—The term “cloud
18 computing” has the meaning given that term by the
19 National Institute of Standards and Technology in
20 NIST Special Publication 800–145 and any amend-
21 atory or superseding document thereto.

22 (2) DIRECTOR.—The term “Director” means
23 the Director of the Office of Management and Budg-
24 et.

1 (3) INFORMATION TECHNOLOGY.—The term
2 “information technology” has the meaning given
3 that term in section 3502 of title 44, United States
4 Code.

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