

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2985  
OFFERED BY MR. COMER OF KENTUCKY**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Modernizing Govern-  
3 ment Technology Reform Act”.

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

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

9           (1) in subsection (b)—

10                   (A) by amending paragraph (3) to read as  
11 follows:

12                   “(3) USE OF FUNDS.—

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

17                                   “(i) To transfer such amounts, to re-  
18 main available until expended, to the head

1 of an agency for the acquisition, procure-  
2 ment, and operation of information tech-  
3 nology, or the development of information  
4 technology when more efficient and cost ef-  
5 fective, to—

6 “(I) modernize, retire, or replace  
7 legacy information technology systems  
8 used by the agency;

9 “(II) enhance cybersecurity and  
10 privacy at the agency;

11 “(III) improve long-term effi-  
12 ciency and effectiveness of information  
13 technology used by the agency; or

14 “(IV) improve the ability of the  
15 agency to perform the mission of the  
16 agency and deliver services to the  
17 public.

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

20 “(I) the activities described in  
21 clause (i); and

22 “(II) the Board and the Director  
23 in carrying out the responsibilities de-  
24 scribed in subsection (c)(2).

1           “(iii) To fund only programs, projects,  
2           or activities, or to fund increases for any  
3           programs, projects, or activities that have  
4           not been denied or restricted by Congress.

5           “(iv) To transfer such amounts only  
6           for programs, projects, or activities that  
7           will be reimbursed to the Fund to the ex-  
8           tent necessary to ensure total amounts in  
9           the Fund are no less than the amounts  
10          needed to keep the Fund operational until  
11          the date specified in subsection (g)(1).

12          “(B) TERMINATION OR SUSPENSION OF  
13          FUNDS.—The Administrator shall, upon receiv-  
14          ing a recommendation from the Board under  
15          subsection (c)(2)(F), suspend or terminate  
16          funding for any project with respect to which  
17          the head of an agency provided fraudulent or  
18          misleading statements about such project (in-  
19          cluding fraudulent statements about technical  
20          design, the business case, or program manage-  
21          ment with respect to the project) in the applica-  
22          tion or proposal for amounts from the Fund for  
23          such project.”;

24                   (B) in paragraph (5)—

25                           (i) in subparagraph (A)—

- 1 (I) in clause (i)—
- 2 (aa) by striking “(B)”; and
- 3 (bb) by striking “(3)(C)”
- 4 and inserting “(3)(A)(ii)”; and
- 5 (II) in clause (ii), by striking “,
- 6 consistent with any applicable re-
- 7 programming law or guidelines of the
- 8 Committees on Appropriations of the
- 9 Senate and the House of Representa-
- 10 tives”; and
- 11 (ii) in subparagraph (B)(i)—
- 12 (I) by striking “paragraph
- 13 (3)(C)” and inserting “paragraph
- 14 (3)(A)(ii)”; and
- 15 (II) by striking “the solvency of
- 16 the Fund, including operating ex-
- 17 penses” and inserting the following:
- 18 “total amounts in the Fund are no
- 19 less than the amounts needed to keep
- 20 the Fund operational until the date
- 21 specified in subsection (g)(1)”;
- 22 (C) in paragraph (6)—
- 23 (i) in subparagraph (A)—
- 24 (I) in the matter before clause
- 25 (i), by striking “subparagraphs (A)

1 and (B) of paragraph (3)” and insert-  
2 ing the following: “paragraph  
3 (3)(A)(i)”;

4 (II) in clause (i), by striking “;  
5 and” and inserting a semicolon;

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

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

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

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

24 (ii) in subparagraph (B)—

1 (I) by striking clause (i) and in-  
2 sserting the following:

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

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

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

19 (II) in clause (ii)—

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

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

4 (iii) by inserting at the end the fol-  
5 lowing:

6 “(C) CONGRESSIONAL REQUESTS FOR  
7 COPY OF WRITTEN AGREEMENT.—Not later  
8 than 10 days after receiving a request from the  
9 Committee on Oversight and Government Re-  
10 form of the House of Representatives or the  
11 Committee on Homeland Security and Govern-  
12 mental Affairs of the Senate for a copy of a  
13 written agreement entered into under subpara-  
14 graph (A), the Director shall provide such Com-  
15 mittee with a copy of such written agreement.”;  
16 and

17 (D) in paragraph (7)(B)—

18 (i) in the matter before clause (i), by  
19 striking “every 2 years thereafter” and in-  
20 sserting “every 2 years thereafter until the  
21 Board terminates pursuant to subsection  
22 (g)(3)”;

23 (ii) in clause (i)—

24 (I) by striking “establishing”;  
25 and

- 1 (II) by striking “the cost savings  
2 associated with the projects funded  
3 both annually and over the life of the  
4 acquired products and services by the  
5 Fund;” and inserting the following:  
6 “the amount repaid to the Fund in  
7 accordance with the terms established  
8 in the written agreements described in  
9 paragraph (6);”;
- 10 (iii) in clause (ii)—
- 11 (I) by striking “reliability of the  
12 cost savings” and inserting “total cost  
13 savings”; and
- 14 (II) by striking the semicolon  
15 and inserting “; and”; and
- 16 (iv) in clause (iii), by striking “; and”  
17 and inserting a period; and
- 18 (v) by striking clause (iv);
- 19 (2) in subsection (c)(2)—
- 20 (A) in subparagraph (A)—
- 21 (i) in clause (ii), by striking “the  
22 greatest Governmentwide impact; and” and  
23 inserting the following: “the greatest im-  
24 pact on modernizing, retiring, or replacing

1 legacy information technology systems used  
2 by agencies; and”;

3 (ii) by redesignating clauses (i)  
4 through (iii) as clauses (ii) through (iv),  
5 respectively; and

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

8 “(i) the ability for the head of the  
9 agency to ensure repayment of funds  
10 transferred from the Fund to the head of  
11 the agency, in accordance with subsection  
12 (b);”;

13 (B) in subparagraph (D), by striking “to  
14 improve or replace multiple information tech-  
15 nology systems” and inserting the following: “to  
16 modernize, retire, or replace legacy information  
17 technology systems under subsection  
18 (b)(3)(A)(i)”;

19 (C) in subparagraph (F), by inserting after  
20 “subsection (b)(6)” the following: “or the iden-  
21 tification of fraudulent or misleading state-  
22 ments about the project (including fraudulent  
23 statements about technical design, the business  
24 case, or program management with respect to

1 the project) in the application or proposal for  
2 amounts from the Fund for the project”; and

3 (D) in subparagraph (G), by inserting  
4 after “operating costs of the Fund” the fol-  
5 lowing: “to ensure total amounts in the Fund  
6 are no less than the amounts needed to keep  
7 the Fund operational until the date specified in  
8 subsection (g)(1)”;

9 (3) in subsection (d)(2)—

10 (A) in subparagraph (A), by striking “sub-  
11 section (b)(3)(A) and for products, services, and  
12 acquisition vehicles funded under subsection  
13 (b)(3)(B)” and inserting “subsection (b)(3)”;

14 (B) in subparagraph (B), by striking the  
15 period at the end and inserting a semicolon;  
16 and

17 (C) in subparagraph (C), by inserting after  
18 “and reduce waste” the following: “and ensure  
19 total amounts in the Fund are no less than the  
20 amounts needed to keep the Fund operational  
21 until the date specified in subsection (g)(1)”;

22 (4) by redesignating subsections (e) and (f) as  
23 subsections (f) and (g), respectively;

24 (5) by inserting after subsection (d) the fol-  
25 lowing new subsection:

1       “(e) RESPONSIBILITIES OF THE FEDERAL CHIEF IN-  
2 FORMATION OFFICER; AGENCY CHIEF INFORMATION OF-  
3 FICERS.—

4           “(1) AGENCY INVENTORY.—An agency Chief  
5 Information Officer shall provide to the Federal  
6 Chief Information Officer in accordance with the  
7 guidance issued under paragraph (3)—

8           “(A) not later than 180 days after the Di-  
9 rector issues the guidance under such para-  
10 graph, a list of high-risk legacy information  
11 technology systems used, operated, or main-  
12 tained by the agency; and

13           “(B) within one year after the first year in  
14 which the list is provided under subparagraph  
15 (A), and annually thereafter, any updates to  
16 such list.

17       “(2) PRIORITIZATION LIST.—

18           “(A) REQUIREMENT.—The Federal Chief  
19 Information Officer shall—

20           “(i) not later than 90 days after the  
21 date on which the Federal Chief Informa-  
22 tion Officer receives the list required by  
23 paragraph (1)(A) from each agency Chief  
24 Information Officer, compile, on the basis  
25 of each such list, a list of 10 legacy infor-

1           mation technology systems that present the  
2           greatest security, privacy, and operational  
3           risks to the Federal Government; and

4                   “(ii) not later than 90 days after the  
5           date on which the Federal Chief Informa-  
6           tion Officer receives an updated list under  
7           paragraph (1)(B) from at least one agency  
8           Chief Information Officer, update, as nec-  
9           essary, the list required by subparagraph  
10          (A) on the basis of such list.

11                   “(B) REPORT TO CONGRESS.—Not later  
12          than 14 days after the date on which the Fed-  
13          eral Chief Information Officer compiles the list  
14          required by subparagraph (A), or updates such  
15          list, the Director shall submit to the Committee  
16          on Oversight and Government Reform of the  
17          House of Representatives, the Committee on  
18          Homeland Security and Governmental Affairs  
19          of the Senate, and the Comptroller General of  
20          the United States, a report (which may include  
21          a classified annex) containing—

22                           “(i) such list (including any update  
23                           made to such list under subparagraph  
24                           (A)(ii)); and

1           “(ii) each list provided by an agency  
2           Chief Information Officer under paragraph  
3           (1)(A) (including any update made to any  
4           such list under paragraph (1)(B) and any  
5           information included on the list pursuant  
6           to paragraph (3)(A)(ii)).

7           “(3) GUIDANCE.—

8           “(A) IN GENERAL.—Not later than 180  
9           days after enactment of this Act, the Director  
10          shall issue guidance on implementing the re-  
11          quirements of this subsection that shall, at a  
12          minimum—

13               “(i) prescribe an appropriate format  
14               for the list to be provided under paragraph  
15               (1)(A);

16               “(ii) prescribe any additional informa-  
17               tion to be included on such list;

18               “(iii) provide guidance on how an  
19               agency Chief Information Officer should  
20               identify high-risk legacy information tech-  
21               nology systems that, at least, requires  
22               agency Chief Information Officers to iden-  
23               tify as a high-risk legacy information tech-  
24               nology system any outdated or obsolete  
25               system of information technology that is

1 critical to the agency such that the loss or  
2 degradation of the system would create a  
3 security, operational, or privacy risk to the  
4 agency or would otherwise impact the abil-  
5 ity of the agency to perform the mission of  
6 the agency, effectively deliver programs, or  
7 conduct business; and

8 “(iv) provide guidance on how existing  
9 reporting structures can be used to submit  
10 the list under paragraph (1)(A).

11 “(B) UPDATES.—The Director may update  
12 the guidance issued under subparagraph (A) as  
13 the Director determines necessary.

14 “(4) SUNSET.—This subsection shall cease to  
15 have effect on the date specified in subsection (g)(1).

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

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

22 “(B) FEDERAL CHIEF INFORMATION OFFI-  
23 CER.—The term ‘Federal Chief Information Of-  
24 ficer’ means the Administrator of the Office of  
25 Electronic Government.”; and

1           (6) in subsection (g)(1), as so redesignated, by  
2           striking “On and after the date that is 2 years after  
3           the date on which the Comptroller General of the  
4           United States issues the third report required under  
5           subsection (b)(7)(B),” and inserting “After Decem-  
6           ber 31, 2032,”.

