

Calendar No. 166

114TH CONGRESS
1ST SESSION**S. 1172****[Report No. 114-94]**

To improve the process of presidential transition.

IN THE SENATE OF THE UNITED STATES

APRIL 30, 2015

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

JULY 27, 2015

Reported by Mr. JOHNSON, with amendments

[Insert the part printed in italic]

A BILL

To improve the process of presidential transition.

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 “*Edward ‘Ted’ Kaufman*
5 *and Michael Leavitt Presidential Transitions Improve-*
6 *ments Act of 2015*”.

1 **SEC. 2. PRESIDENTIAL TRANSITION IMPROVEMENTS.**

2 (a) IN GENERAL.—The Presidential Transition Act
3 of 1963 (3 U.S.C. 102 note) is amended—

4 (1) by redesignating sections 4, 5, and 6 as sec-
5 tions 5, 6, and 7, respectively; and

6 (2) by inserting after section 3 the following:

7 **“SEC. 4. TRANSITION SERVICES AND ACTIVITIES BEFORE**
8 **ELECTION.**

9 “(a) DEFINITIONS.—In this section—

10 “(1) the term ‘Administrator’ means the Ad-
11 ministrator of General Services;

12 “(2) the term ‘agency’ means an Executive
13 agency, as defined in section 105 of title 5, United
14 States Code;

15 “(3) the term ‘eligible candidate’ has the mean-
16 ing given that term in section 3(h)(4); and

17 “(4) the term ‘Presidential election’ means a
18 general election held to determine the electors of
19 President and Vice President under section 1 or 2
20 of title 3, United States Code.

21 “(b) GENERAL DUTIES.—The President shall take
22 such actions as the President determines necessary and
23 appropriate to plan and coordinate activities by the Execu-
24 tive branch of the Federal Government to facilitate an effi-
25 cient transfer of power to a successor President, including
26 by—

1 “(1) establishing and operating a White House
2 transition coordinating council in accordance with
3 subsection (d); and

4 “(2) establishing and operating an agency tran-
5 sition directors council in accordance with subsection
6 (e).

7 “(c) FEDERAL TRANSITION COORDINATOR.—The
8 Administrator shall designate an employee of the General
9 Services Administration who is a senior career appointee
10 to—

11 “(1) carry out the duties and authorities of the
12 General Services Administration relating to Presi-
13 dential transitions under this Act or any other provi-
14 sion of law;

15 “(2) serve as the Federal Transition Coordi-
16 nator with responsibility for coordinating transition
17 planning across agencies, including through the
18 agency transition directors council established under
19 subsection (e);

20 “(3) ensure agencies comply with all statutory
21 requirements relating to transition planning and re-
22 porting; and

23 “(4) act as a liaison to eligible candidates.

24 “(d) WHITE HOUSE TRANSITION COORDINATING
25 COUNCIL.—

1 “(1) ESTABLISHMENT.—Not later than 6
2 months before the date of a Presidential election, the
3 President shall establish a White House transition
4 coordinating council for purposes of facilitating the
5 Presidential transition.

6 “(2) DUTIES.—The White House transition co-
7 ordinating council shall—

8 “(A) provide guidance to agencies and the
9 Federal Transition Coordinator regarding prep-
10 arations for the Presidential transition, includ-
11 ing succession planning and preparation of
12 briefing materials;

13 “(B) facilitate communication and infor-
14 mation sharing between the transition rep-
15 resentatives of eligible candidates and senior
16 employees in agencies and the Executive Office
17 of the President; and

18 “(C) prepare and host interagency emer-
19 gency preparedness and response exercises.

20 “(3) MEMBERSHIP.—The members of the
21 White House transition coordinating council shall in-
22 clude—

23 “(A) senior employees of the Executive
24 branch selected by the President, which may in-
25 clude the Chief of Staff to the President, any

1 Cabinet officer, the Director of the Office of
2 Management and Budget, the Administrator,
3 the Director of the Office of Personnel Manage-
4 ment, the Director of the Office of Government
5 Ethics, and the Archivist of the United States;

6 “(B) the Federal Transition Coordinator;

7 “(C) the transition representative for each
8 eligible candidate, who shall serve in an advi-
9 sory capacity; and

10 “(D) any other individual the President de-
11 termines appropriate.

12 “(4) CHAIRPERSON.—The Chairperson of the
13 White House transition coordinating council shall be
14 a senior employee in the Executive Office of the
15 President, designated by the President.

16 “(e) AGENCY TRANSITION DIRECTORS COUNCIL.—

17 “(1) IN GENERAL.—The President shall estab-
18 lish and operate an agency transition directors coun-
19 cil, which shall—

20 “(A) ensure the Federal Government has
21 an integrated strategy for addressing inter-
22 agency challenges and responsibilities around
23 Presidential transitions and turnover of non-
24 career appointees;

1 “(B) coordinate transition activities be-
2 tween the Executive Office of the President,
3 agencies, and the transition team of eligible
4 candidates and the President-elect and Vice-
5 President-elect; and

6 “(C) draw on guidance provided by the
7 White House transition coordinating council
8 and lessons learned from previous Presidential
9 transitions in carrying out its duties.

10 “(2) DUTIES.—As part of carrying out the re-
11 sponsibilities under paragraph (1), the agency tran-
12 sition directors council shall—

13 “(A) assist the Federal Transition Coordi-
14 nator in identifying and carrying out the re-
15 sponsibilities of the Federal Transition Coordi-
16 nator relating to a Presidential transition;

17 “(B) provide guidance to agencies in gath-
18 ering briefing materials and information relat-
19 ing to the Presidential transition that may be
20 requested by eligible candidates;

21 “(C) ensure materials and information de-
22 scribed in subparagraph (B) are prepared not
23 later than November 1 of a year during which
24 a Presidential election is held;

1 “(D) ensure agencies adequately prepare
2 career employees who are designated to fill non-
3 career positions under subsection (f) during a
4 Presidential transition; and

5 “(E) consult with the President’s Manage-
6 ment Council, or any successor thereto, in car-
7 rying out the duties of the agency transition di-
8 rectors council.

9 “(3) MEMBERSHIP.—The members of the agen-
10 cy transition directors council shall include—

11 “(A) the Federal Transition Coordinator,
12 who shall serve as Chairperson of the agency
13 transition directors council;

14 “(B) a senior employee serving in the Ex-
15 ecutive Office of the President, who shall be ap-
16 pointed by the President;

17 “(C) a senior representative from each
18 agency described in section 901(b)(1) of title
19 31, United States Code, the Office of Personnel
20 Management, the Office of Government Ethics,
21 and the National Archives and Records Admin-
22 istration whose responsibilities include leading
23 Presidential transition efforts within the agen-
24 cy;

1 “(D) a senior representative from any
2 other agency determined by the Federal Transi-
3 tion Coordinator to be an agency that has sig-
4 nificant responsibilities relating to the Presi-
5 dential transition process; and

6 “(E) during a year during which a Presi-
7 dential election will be held, a transition rep-
8 resentative for each eligible candidate, who shall
9 serve in an advisory capacity.

10 “(4) MEETINGS.—The agency transition direc-
11 tors council shall meet—

12 “(A) subject to subparagraph (B), not less
13 than once per year; and

14 “(B) during the period beginning on the
15 date that is 6 months before a Presidential elec-
16 tion and ending on the date on which the Presi-
17 dent-elect is inaugurated, on a regular basis as
18 necessary to carry out the duties and authori-
19 ties of the agency transition directors council.

20 “(f) INTERIM AGENCY LEADERSHIP FOR TRANSI-
21 TIONS.—

22 “(1) OVERSIGHT AND IMPLEMENTATION OF
23 TRANSITION.—Not later than 6 months before the
24 date of a Presidential election, the head of each
25 agency shall designate a senior career employee of

1 the agency and a senior career employee of each
2 major component and subcomponent of the agency
3 to oversee and implement the activities of the agen-
4 cy, component, or subcomponent relating to the
5 Presidential transition.

6 “(2) ACTING OFFICERS.—Not later than Sep-
7 tember 15 of a year during which a Presidential
8 election occurs, and in accordance with subchapter
9 III of chapter 33 of title 5, United States Code, for
10 each noncareer position in an agency that the head
11 of the agency determines is critical, the head of the
12 agency shall designate a qualified career employee to
13 serve in the position in an acting capacity if the po-
14 sition becomes vacant.

15 “(g) MEMORANDUMS OF UNDERSTANDING.—

16 “(1) IN GENERAL.—Not later than November 1
17 of a year during which a Presidential election oc-
18 curs, the President (acting through the Federal
19 Transition Coordinator) shall, to the maximum ex-
20 tent practicable, negotiate a memorandum of under-
21 standing with the transition representative of each
22 eligible candidate, which shall include, at a min-
23 imum, the conditions of access to employees, facili-
24 ties, and documents of agencies by transition staff.

1 “(2) EXISTING RESOURCES.—To the maximum
2 extent practicable, the memorandums of under-
3 standing negotiated under paragraph (1) shall be
4 based on memorandums of understanding from pre-
5 vious Presidential transitions.

6 “(h) EQUITY IN ASSISTANCE.—Any information or
7 other assistance provided to eligible candidates under this
8 section shall be offered on an equal basis and without re-
9 gard to political affiliation.

10 “(i) REPORTS.—

11 “(1) IN GENERAL.—The President, acting
12 through the Federal Transition Coordinator, shall
13 submit to the Committee on Oversight and Govern-
14 ment Reform of the House of Representatives and
15 the Committee on Homeland Security and Govern-
16 mental Affairs of the Senate reports describing the
17 activities undertaken by the President and agencies
18 to prepare for the transfer of power to a new Presi-
19 dent.

20 “(2) TIMING.—The reports under paragraph
21 (1) shall be provided 6 months and 3 months before
22 the date of a Presidential election.”.

23 (b) OTHER IMPROVEMENTS.—Section 3 of the Presi-
24 dential Transition Act of 1963 (3 U.S.C. 102 note) is
25 amended—

1 (1) in subsection (a)—

2 (A) in paragraph (8)—

3 (i) in subparagraph (A)(i)—

4 (I) by inserting “and during the
5 term of a President” after “during
6 the transition”; and

7 (II) by striking “after inaugura-
8 tion”; and

9 (ii) in subparagraph (B), by inserting
10 “or Executive agencies (as defined in sec-
11 tion 105 of title 5, United States Code)”
12 before the period; and

13 (B) in paragraph (10), by inserting “in-
14 cluding, to the greatest extent practicable,
15 human resource management system software
16 compatible with the software used by the in-
17 cumbent President and likely to be used by the
18 President-elect and Vice President-elect” before
19 the period;

20 (2) in subsection (b)(2), by striking “30 days”
21 and inserting “180 days”;

22 (3) in subsection (g), by inserting “except for
23 activities under subsection (a)(8)(A),” before “there
24 shall be no”; and

1 (4) in subsection (h)(2), by adding at the end
2 the following:

3 “(D) An eligible candidate shall have a right to the
4 services and facilities described in this paragraph until the
5 date on which the Administrator is able to determine the
6 apparent successful candidates for the office of President
7 and Vice President.”.

8 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) Section 3 of the Pre-Election Presidential
10 Transition Act of 2010 (3 U.S.C. 102 note) is re-
11 pealed.

12 (2) The Presidential Transition Act of 1963 (3
13 U.S.C. 102 note) is amended—

14 (A) in section 3—

15 (i) in subsection (a)(4)(B), by striking
16 “section 6” and inserting “section 7”;

17 (ii) in subsection (b), in the matter
18 preceding paragraph (1), by striking “sec-
19 tion 3 of this Act” and inserting “this sec-
20 tion”; and

21 (iii) in subsection (h)(3)(B)(iii), by
22 striking “section 5” each place it appears
23 and inserting “section 6”;

24 (B) in section 6, as redesignated by sub-
25 section (a) of this section, by striking “section

1 6(a)(1)” each place it appears and inserting
2 “section 7(a)(1)”; and

3 (C) in section (7)(a)(2), as redesignated by
4 subsection (a) of this section, by striking “sec-
5 tion 4” and inserting “section 5”.

6 (3) Section 8331(1)(K) of title 5, United States
7 Code, is amended by striking “section 4” and insert-
8 ing “section 5”.

9 (4) Section 8701(a)(10) of title 5, United
10 States Code, is amended by striking “section 4” and
11 inserting “section 5”.

12 (5) Section 8901(1)(I) of title 5, United States
13 Code, is amended by striking “section 4” and insert-
14 ing “section 5”.

15 **SEC. 3. NATIONAL ARCHIVES PRESIDENTIAL TRANSITION.**

16 Section 2203(g) of title 44, United States Code, is
17 amended—

18 (1) by redesignating paragraph (3) as para-
19 graph (4); and

20 (2) by inserting after paragraph (2) the fol-
21 lowing:

22 “(3) When the President considers it prac-
23 ticable and in the public interest, the President shall
24 include in the President’s budget transmitted to
25 Congress, for each fiscal year in which the term of

1 office of the President will expire, such funds as may
 2 be necessary for carrying out the authorities of this
 3 subsection.”.

4 **SEC. 4. REPORTS ON POLITICAL APPOINTEES APPOINTED**
 5 **TO NONPOLITICAL PERMANENT POSITIONS.**

6 (a) *DEFINITIONS.—In this section—*

7 (1) *the term “agency” has the meaning given the*
 8 *term “Executive agency” in section 105 of title 5,*
 9 *United States Code;*

10 (2) *the term “covered civil service position”*
 11 *means a position in the civil service (as defined in*
 12 *section 2101 of title 5, United States Code) that is*
 13 *not—*

14 (A) *a temporary position; or*

15 (B) *a political position;*

16 (3) *the term “former political appointee” means*
 17 *an individual who—*

18 (A) *is not serving in an appointment to a*
 19 *political position; and*

20 (B) *served as a political appointee during*
 21 *the 5-year period ending on the date of the re-*
 22 *quest for an appointment to a covered civil serv-*
 23 *ice position in any agency;*

1 (4) *the term “political appointee” means an in-*
 2 *dividual serving in an appointment to a political po-*
 3 *sition; and*

4 (5) *the term “political position” means—*

5 (A) *a position described under sections 5312*
 6 *through 5316 of title 5, United States Code (re-*
 7 *lating to the Executive Schedule);*

8 (B) *a noncareer appointment in the Senior*
 9 *Executive Service, as defined under paragraph*
 10 *(7) of section 3132(a) of title 5, United States*
 11 *Code; or*

12 (C) *a position in the executive branch of the*
 13 *Government of a confidential or policy-deter-*
 14 *mining character under schedule C of subpart C*
 15 *of part 213 of title 5, Code of Federal Regula-*
 16 *tions.*

17 (b) *REPORTING ON CURRENT OR RECENT POLITICAL*
 18 *APPOINTEES APPOINTED TO COVERED CIVIL SERVICE PO-*
 19 *SITIONS.—The Director of the Office of Personnel Manage-*
 20 *ment shall submit to the Committee on Homeland Security*
 21 *and Governmental Affairs of the Senate and the Committee*
 22 *on Oversight and Government Reform of the House of Rep-*
 23 *resentatives a quarterly report regarding requests by agen-*
 24 *cies to appoint political appointees or former political ap-*
 25 *pointees to covered civil service positions, which shall—*

1 (1) for each request by an agency that a political
2 appointee be appointed to a covered civil service posi-
3 tion during the period covered by the quarterly re-
4 port, provide—

5 (A) the date on which the request was re-
6 ceived by the Office of Personnel Management;

7 (B) subject to subsection (c), the name of the
8 individual and the political position held by the
9 individual, including title, office, and agency;

10 (C) the date on which the individual was
11 first appointed to a political position in the
12 agency in which the individual is serving as a
13 political appointee;

14 (D) the grade and rate of basic pay for the
15 individual as a political appointee;

16 (E) the proposed covered civil service posi-
17 tion, including title, office, and agency, and the
18 proposed grade and rate of basic pay for the in-
19 dividual;

20 (F) whether the Office of Personnel Manage-
21 ment approved or denied the request; and

22 (G) the date on which the individual was
23 appointed to a covered civil service position, if
24 applicable; and

1 (2) *for each request by an agency that a former*
2 *political appointee be appointed to a covered civil*
3 *service position during the period covered by the*
4 *quarterly report, provide—*

5 (A) *the date on which the request was re-*
6 *ceived by the Office of Personnel Management;*

7 (B) *subject to subsection (c), the name of the*
8 *individual and the political position held by the*
9 *individual, including title, office, and agency;*

10 (C) *the date on which the individual was*
11 *first appointed to any political position;*

12 (D) *the grade and rate of basic pay for the*
13 *individual as a political appointee;*

14 (E) *the date on which the individual ceased*
15 *to serve in a political position;*

16 (F) *the proposed covered civil service posi-*
17 *tion, including title, office, and agency, and the*
18 *proposed grade and rate of basic pay for the in-*
19 *dividual;*

20 (G) *whether the Office of Personnel Manage-*
21 *ment approved or denied the request; and*

22 (H) *the date on which the individual was*
23 *first appointed to a covered civil service position,*
24 *if applicable.*

1 (c) *NAMES AND TITLES OF CERTAIN APPOINTEES.*—
 2 *If determined appropriate by the Director of the Office of*
 3 *Personnel Management, a report submitted under sub-*
 4 *section (b) may exclude the name or title of a political ap-*
 5 *pointee or former political appointee—*

6 (1) *who—*

7 (A) *was requested to be appointed to a cov-*
 8 *ered civil service position; and*

9 (B) *was not appointed to a covered civil*
 10 *service position; or*

11 (2) *relating to whom a request to be appointed*
 12 *to a covered civil service position is pending at the*
 13 *end of the period covered by that report.*

14 **SEC. 5. REPORT ON REGULATIONS PROMULGATED NEAR**
 15 **THE END OF PRESIDENTIAL TERMS.**

16 (a) *DEFINITIONS.*—*In this section—*

17 (1) *the term “covered presidential transition pe-*
 18 *riod” means—*

19 (A) *the 120-day period ending on January*
 20 *20, 1993.*

21 (B) *the 120-day period ending on January*
 22 *20, 2001;*

23 (C) *the 120-day period ending on January*
 24 *20, 2009; and*

1 (D) the 120-day period ending on January
2 20, 2017;

3 (2) the term “covered regulation” means a final
4 regulation promulgated by an Executive department;
5 and

6 (3) the term “Executive department” has the
7 meaning given that term under section 101 of title 5,
8 United States Code.

9 (b) *REPORTS.*—

10 (1) *IN GENERAL.*—The Comptroller General of
11 the United States shall submit to the Committee on
12 Homeland Security and Governmental Affairs of the
13 Senate and the Committee on Oversight and Govern-
14 ment Reform of the House of Representatives a report
15 regarding covered regulations promulgated during the
16 covered presidential transition periods described in
17 subparagraph (A), (B), or (C) of subsection (a)(1).

18 (2) *NEXT PRESIDENTIAL TRANSITION.*—The
19 Comptroller General of the United States shall submit
20 to the Committee on Homeland Security and Govern-
21 mental Affairs of the Senate and the Committee on
22 Oversight and Government Reform of the House of
23 Representatives a report regarding covered regula-
24 tions promulgated during the covered presidential
25 transition period described in subsection (a)(1)(D).

1 (3) *CONTENTS OF REPORTS.*—*The reports re-*
2 *quired under paragraphs (1) and (2) shall, for each*
3 *covered presidential transition period covered by the*
4 *report—*

5 (A) *compare the number, scope, and cost (if*
6 *possible) of, and type of rulemaking procedure*
7 *used for, covered regulations promulgated during*
8 *the covered presidential transition period to the*
9 *number, scope, and cost of, and type of rule-*
10 *making procedure used for, covered regulations*
11 *promulgated during the 120-day periods ending*
12 *on January 20 of each year after 1988, other*
13 *than 1993, 2001, and 2009;*

14 (B) *determine the statistical significance of*
15 *any differences identified under subparagraph*
16 (A) *and whether and to what extent such dif-*
17 *ferences indicate any patterns;*

18 (C) *evaluate the size, scope, and effect of the*
19 *covered regulations promulgated during the cov-*
20 *ered presidential transition period; and*

21 (D) *assess the extent to which the regularly*
22 *required processes for the promulgation of cov-*
23 *ered regulations were followed during the covered*
24 *presidential transition period, including compli-*
25 *ance with the requirements under—*

1 (i) chapter 8 of title 5, United States
2 Code (commonly known as the “Congress-
3 sional Review Act”);

4 (ii) the Small Business Regulatory En-
5 forcement Fairness Act of 1996 (5 U.S.C.
6 601 note);

7 (iii) chapter 6 of title 5, United States
8 Code (commonly known as the “Regulatory
9 Flexibility Act”); and

10 (iv) chapter 35 of title 44, United
11 States Code (commonly known as the “Pa-
12 perwork Reduction Act”).

13 **SEC. 6. ANALYSIS OF THREATS AND VULNERABILITIES.**

14 (a) *IN GENERAL.*—Not later than February 15, 2016,
15 the Secretary of Homeland Security shall submit to Con-
16 gress a report analyzing the threats and vulnerabilities fac-
17 ing the United States during a presidential transition,
18 which—

19 (1) shall identify and discuss vulnerabilities re-
20 lated to border security and threats related to ter-
21 rorism, including from weapons of mass destruction;

22 (2) shall identify steps being taken to address the
23 threats and vulnerabilities during a presidential
24 transition; and

1 (3) *may include recommendations for actions by*
2 *components and agencies within the Department of*
3 *Homeland Security.*

4 (b) *FORM.—The report submitted under subsection (a)*
5 *shall be prepared in unclassified form, but may contain a*
6 *classified annex.*

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