

MEGABYTE ACT OF 2016

MAY 23, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 4904]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 4904) to require the Director of the Office of Management and Budget to issue a directive on the management of software licenses, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 4904, the Making Electronic Government Accountable by Yielding Tangible Efficiencies (MEGABYTE) Act of 2016, was intro-

duced to improve federal agencies' management and acquisition of software licenses. H.R. 4904 would require the Director of the Office of Management and Budget (OMB) to issue a directive on software licenses that would require each executive agency Chief Information Officer (CIO) to develop a comprehensive software licensing policy.

#### BACKGROUND AND NEED FOR LEGISLATION

In Fiscal Year (FY) 2015, the federal government spent over \$80 billion on Information Technology (IT) products and services, including software licenses.<sup>1</sup> However, the federal government has not effectively managed this spending, prompting the Government Accountability Office (GAO) to identify IT acquisition as a high risk area in February 2015.<sup>2</sup> GAO designates areas as high risk due to significant vulnerabilities to fraud, waste, abuse, and mismanagement.

Over the last five years, there have been several IT management initiatives to focus agency efforts on creating inventories of IT assets, eliminating duplication, and effectively managing such assets. However, these initiatives have not made effective management of software licenses a priority. The MEGABYTE Act is intended to fill this policy gap and focus agencies on the management of software licensing.

In March 2012, OMB launched an initiative called PortfolioStat to identify duplication and more effectively manage agency IT portfolios.<sup>3</sup> Under this initiative, OMB directed agencies to review their IT investment portfolios in order “to identify opportunities to consolidate the acquisition and management of commodity IT services and increase the use of shared-service delivery models.”<sup>4</sup>

In December 2014, the Federal Information Technology Reform Act (FITARA)<sup>5</sup> codified the PortfolioStat initiative by requiring agency CIOs to review annually the IT investments of their agencies to, among other things: (1) identify ways to increase efficiencies and effectiveness of IT investments; (2) identify opportunities to consolidate and move to increase the use of shared services models; (3) identify potential duplication and waste; (4) optimize the IT portfolio; and (5) identify cost savings.<sup>6</sup> FITARA also requires the General Service Administration (GSA) to develop a new strategic sourcing initiative to enhance government-wide acquisition, shared use, and dissemination of software, including the purchase of government-wide license agreements. While FITARA provides tools to more effectively manage IT assets, the MEGABYTE Act will complement FITARA and prioritize more effective management of software licenses to promote cost savings in this area.

<sup>1</sup>Data provided to the Committee by the Gov't Accountability Office (GAO) (April 2016) (on file with the Committee).

<sup>2</sup>U.S. Government Accountability Office, “High Risk Series: An Update”, GAO-15-290 (Feb. 2015).

<sup>3</sup>OMB Memorandum for Executive Agencies from Acting Director Jeffrey Zients and Federal Chief Information Officer Steven VanRockel (March 30, 2012) available at: <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-10.pdf>.

<sup>4</sup>Ibid. at 2.

<sup>5</sup>National Defense Authorization Act Fiscal Year 2015 Pub. L. No. 113-291, Title VIII, Subtitle D (Dec. 19, 2014).

<sup>6</sup>National Defense Authorization Act FY 2015, Pub. L. No. 113-291, Title VIII, Subtitle D (Dec. 19, 2014).

In 2014, GAO focused on potential areas of cost savings in software management.<sup>7</sup> GAO stated that the federal government enters into thousands of software license agreements annually and that more effective management of software licenses could result in fewer duplicate licenses and licenses that go unused. However, GAO found only two of 24 major agencies had comprehensive software licensing policies in place and only two agencies had comprehensive license inventories. Further, GAO said federal agencies were not generally following leading best practices identified by GAO for managing software licenses. GAO stated that, “until the agencies have sufficient direction from OMB, opportunities to systematically identify software license related cost savings across the federal government will likely continue to be missed.”<sup>8</sup>

In 2015, GAO listed IT software license management as a potential cost savings area in its annual report to Congress concerning fragmentation, overlap, and duplication.<sup>9</sup> GAO stated that the federal government has already achieved at least \$250 million in savings as a result of effective software license management. For example, GAO reported one major agency saved approximately \$181 million by consolidating its enterprise license agreements. In addition, another major agency report savings of approximately \$33 million as a result of consolidating major IT contracts, including licenses. GAO stated that additional savings could result if agencies implemented GAO’s recommendations. In 2016, GAO again listed the IT software license management area as a potential cost savings area in its annual Duplication Report.<sup>10</sup>

In December 2015, OMB released draft guidance on strategies for improving federal government spending of more than \$9 billion on software.<sup>11</sup> The draft guidance would establish an Enterprise Software Category Team co-managed by OMB, GSA, and the Department of Defense (DOD) to develop government-wide software license agreements and encourage the use of best-in-class existing software licensing agreements. At the agency level, the draft guidance would require agencies to: (1) appoint a software manager and team to manage agency contracts and licenses for commercial software; (2) maintain comprehensive annual inventories of software license and spending; and (3) aggregate agency software license requirements and funding. The draft guidance is a positive step, but the MEGABYTE Act will ensure a comprehensive and sustained approach to implement leading practices in software management, as identified by GAO.

<sup>7</sup> Gov’t Accountability Office, Better Management Needed to Achieve Significant Savings Government-wide (May 2014) (GAO-14-413).

<sup>8</sup> GAO Report (May 2014) (GAO-14-413) at 7.

<sup>9</sup> Gov’t Accountability Office, Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits (April 2015) (GAO-15-404SP) at 181. GAO also listed this area in the same report in 2016. Gov’t Accountability Office, Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits (April 2016) (GAO-16-375SP) at 285.

<sup>10</sup> Gov’t Accountability Office, Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits (April 2016) (GAO-16-375SP) at 285.

<sup>11</sup> OMB Draft Memorandum for Executive Agencies from Chief Acquisition Officer Anne Rung and Chief Information Officer Tony Scott on Category Management Policy 16-1: Improving the Acquisition and Management of Common Information Technology: Software Licensing (December 2015) available at: <https://whitehouse.github.io/software-policy/CategoryManagementSoftware.pdf>.

On April 13, 2016, the Council for Citizens Against Government Waste wrote a letter in support of H.R. 4904.<sup>12</sup> In addition, On April 14, 2016, Senator Cassidy, the author of the Senate companion bill (S. 2340) to H.R. 4904 wrote the Committee supporting H.R. 4904.<sup>13</sup>

#### LEGISLATIVE HISTORY

On April 12, 2016, Congressman Matt Cartwright (D-PA) introduced H.R. 4904, the Making Electronic Government Accountable by Yielding Tangible Efficiencies (MEGABYTE) Act.

A companion bill, S.2340 was introduced by Senator Bill Cassidy (R-LA) on December 2, 2015. The Senate Committee on Homeland Security and Governmental Affairs ordered S.2340 favorably reported on February 10, 2016.

#### SECTION-BY-SECTION

##### Section 1. Short title

Designates the short title of the bill as the “Making Electronic Government Accountable by Yielding Tangible Efficiencies Act of 2016.”

##### Section 2. OMB directive on management of software licenses

Section 2(a) defines “Director” and “executive agency”.

Section 2(b) requires OMB to issue a directive to the CIO of each executive agency to develop a comprehensive software licensing policy.

Under this OMB directive, the agency CIO must establish an agency software licensing policy that identifies clear roles, responsibilities, and central oversight authority within the executive agency for managing enterprise software license agreements and commercial software licenses.

Under this OMB directive, the agency CIO also shall establish a software licensing policy that will:

- (1) establish a comprehensive inventory (including 80 percent of software license spending and enterprise licenses in the agency) by identifying and collecting information about software license agreements using automated discovery and inventory tools;
- (2) regularly track and maintain software licenses to assist the agency with implementing decisions throughout the software license management life cycle;
- (3) analyze software usage and other data to make cost-effective decisions;
- (4) provide training relevant to software license management;
- (5) establish goals and objectives for the agency software license management program; and,
- (6) consider the software license management life cycle phases (including requisition, reception, deployment and maintenance, retirement, and disposal phases) to imple-

<sup>12</sup>Council for Citizens Against Government Waste Letter to Members of the House Committee on Oversight and Gov’t Affairs, April 13, 2016 available at: <http://ccagw.org/legislative-affairs/letters-officials/support-megabyte-act-0>

<sup>13</sup>Senator Cassidy Letter is on file with the Committee.

ment effective decision making and incorporate existing standards, processes, and metrics.

Section 2(c) requires agency CIOs to submit a report to OMB on the financial savings or avoidance of spending that resulted from improved software license management. This reporting requirement begins the first fiscal year after enactment and continues in each of the following five fiscal years. OMB is also required to make these reports publically available.

#### EXPLANATION OF AMENDMENTS

No amendments to H.R. 4904 were offered during Full Committee consideration of the bill.

#### COMMITTEE CONSIDERATION

On April 14, 2016, the Committee met in open session and ordered reported favorably the bill, H.R. 4904, by voice vote, a quorum being present.

#### ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 4904.

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill requires the Director of the Office of Management and Budget to issue a directive on the management of software licenses. As such this bill does not relate to employment or access to public services and accommodations.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of the bill is to require the Director of the Office of Management and Budget to issue a directive on the management of software licenses.

#### DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

## FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

## UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

## EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

## BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 28, 2016.*

Hon. JASON CHAFFETZ,  
*Chairman, Committee on Oversight and Government Reform,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4904, the MEGABYTE Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 4904—MEGABYTE Act of 2016*

H.R. 4904 would amend federal laws related to managing the federal government's licenses for information technology software. The bill would require the Office of Management and Budget (OMB) to issue a directive to each federal agency to develop a comprehensive policy for software licensing including a complete inventory of software licenses and to develop a mechanism to track, maintain, and analyze software use.

Most of the provisions of the bill would codify and expand current policies and practices of the federal government. OMB has reported that agencies spent about \$9 billion in 2015 on software licenses. The Federal Information Technology Acquisition Reform Act (FITARA) recently directed agencies to acquire and manage software in a more coordinated way. In addition, the Enterprise Software Category Team, managed by the General Services Administration, the Department of Defense, and OMB, is developing government-wide agreements for obtaining software licenses. Because such efforts to better manage software licenses are already underway, CBO estimates that the bill would not substantially change those efforts, and that implementing H.R. 4904 would have no significant net impact on the federal budget over the next five years. The bill could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net change in spending by those agencies would not be significant. Enacting H.R. 4904 would not affect revenues.

Some agencies have reported that they have spent less to acquire software by more effectively analyzing data on software licenses and the Government Accountability Office expects that there is the potential for even greater savings government-wide through more efficient spending to acquire software. CBO expects that by improving software purchasing decisions implementing H.R. 4904 could lead to lower federal costs. However, we expect most of the savings in this area will probably be achieved through current efforts to make cost effective decisions when acquiring software.

CBO estimates that enacting H.R. 4904 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

On April 21, 2016, CBO transmitted a cost estimate for S. 2340, the MEGABYTE Act of 2015, as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on February 10, 2016. The two pieces of legislation are similar, and the CBO's estimates of the budgetary effects are the same.

H.R. 4904 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

