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114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-289

MAKING ELECTRONIC GOVERNMENT
ACCOUNTABLE BY YIELDING TANGIBLE
EFFICIENCIES ACT OF 2015

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2340

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



JUNE 28, 2016.—Ordered to be printed

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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2340]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2340) 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, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 2340, the Making Electronic Government Accountable By Yielding Tangible Efficiencies (MEGABYTE) Act of 2015, is to improve software license management across the Federal Government to achieve tangible cost savings. The bill requires the Office of Management and Budget (OMB) to issue a directive to each Executive agency to develop a comprehensive software licensing policy. The policy must require each agency's Chief Information Officer (CIO) to: (1) establish a comprehensive inventory of software licenses; (2) track and maintain such licenses; (3) analyze software usage to make cost-effective decisions; (4) provide software

license management training; (5) establish goals and objectives for the agency’s software license management program; and (6) consider the software license management life cycle phases to implement effective decision making and incorporate existing standards, processes, and metrics.

II. BACKGROUND AND THE NEED FOR LEGISLATION

OMB launched the PortfolioStat initiative in March 2012.¹ The initiative requires Federal agencies to conduct an annual, agency-wide IT portfolio review to, among other things, “reduce commodity IT spending and demonstrate how their IT investments align with their missions and business functions.”² To implement these goals, OMB directed agencies to reduce duplicative IT commodities that could include software.³ Subsequently, Congress asked the Government Accountability Office (GAO) to evaluate Federal agencies’ management of software licenses. GAO found that “. . . while PortfolioStat can assist agencies in identifying cost savings and avoidance related to software licensing, this initiative, combined with the key executive order on more efficient software spending, is not enough to guide the agencies in developing comprehensive licensing management policies.”⁴

Portfolio Stat does not guarantee savings through prudently-managed software licenses. Under this initiative it is up to the agencies to decide whether to prioritize software licenses as part of the PortfolioStat review.⁵ Several agencies, including the Department of Housing and Urban Development (HUD), the Department of State (State), the Department of Homeland Security (DHS), and the Department of Veterans Affairs (VA) included software license management as part of Portfolio Stat, but other agencies did not.⁶ The GAO noted that the agencies that created an inventory of software licenses and actively managed it needed additional guidance from OMB to save money.⁷ The corollary cautions that if agencies are not required to manage their software licenses and there is no central policy on software management, some agencies will forgo the associated savings.⁸ In its 2014 report, GAO recommended specific action for OMB and for the agencies to obtain savings from better management of software licenses. Specifically, these recommendations included: directing OMB to guide agencies in managing software licenses, and for agencies to develop software license policy, inventory software licenses, train staff on software li-

¹ Steven Vanroekel, *PortfolioStat 2.0: Driving Better Management and Efficiency in Federal IT*, THE WHITE HOUSE BLOG, <https://www.whitehouse.gov/blog/2013/03/27/portfolio-stat-20-driving-better-management-and-efficiency-federal-it>.

² GOV’T ACCOUNTABILITY OFFICE, GAO-15-404SP: ADDITIONAL OPPORTUNITIES TO REDUCE FRAGMENTATION, OVERLAP, AND DUPLICATION AND ACHIEVE OTHER FINANCIAL BENEFITS 25 (2015), available at <http://gao.gov/assets/670/669613.pdf> [hereinafter GAO-15-404SP: ADDITIONAL OPPORTUNITIES]; see also Jason Miller, *OMB launches PortfolioStat to reduce commodity IT spending*, FEDERAL NEWS RADIO (Apr. 2, 2012 5:22 a.m.), <http://federalnewsradio.com/defense/2012/04/omb-launches-portfoliostat-to-reduce-commodity-it-spending/>.

³ Office of Management and Budget, Memorandum M-12-10: *Implementing PortfolioStat* (2012) https://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-10_1.pdf.

⁴ GOV’T ACCOUNTABILITY OFFICE, GAO-14-413, FEDERAL SOFTWARE LICENSES BETTER MANAGEMENT NEEDED TO ACHIEVE SIGNIFICANT SAVINGS GOVERNMENT-WIDE (2014), available at <http://www.gao.gov/assets/670/663560.pdf> [hereinafter GAO-14-413, FEDERAL SOFTWARE LICENSES].

⁵ *Id.* at 7.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

cense management, and use the information from the inventory to make good management decisions and reduce agency costs.⁹ As stated by GAO,

[W]hile agencies were able to identify millions in savings for software, there is the potential for even greater savings and additional opportunities to reduce software license spending and duplication than what agencies have reported. Until OMB and the agencies focus on improving policies and processes, they will not have the data to manage software licenses and will likely miss opportunities to reduce costs.¹⁰

In 2015, the GAO listed software license management as a top priority in its annual duplication report for the second year in a row.¹¹ The GAO report found that Government-wide there could be greater savings if all agencies better managed all of their software licenses.¹²

Following the release of the GAO report, Senator Bill Cassidy sent a letter to the Director of OMB expressing his concerns about the report's findings and requesting that the Director take action to implement GAO's recommendations.¹³ According to Director Donovan, OMB has requested that agencies provide information on their software inventories, thus satisfying the first recommendation from the 2014 GAO report. However the response only addressed OMB's activities; it did not confirm that agencies have developed software license policy, developed training or are inventorying their software licenses or are using the inventory information to make prudent management decisions.¹⁴

S. 2340 provides the legislative support for OMB's directive to agencies to manage their software licenses. The bill goes beyond OMB's efforts to include a mandate that agencies implement the GAO recommendations that OMB did not address. This bill will ensure that agencies inventory their software licenses, train their IT management workforce on how to manage software licenses, and use the software license information to manage the agency's software licenses in accordance with agency policy. It also goes beyond the OMB directive by requiring agencies to account for the savings achieved through better software license management.

The bill also supports the Federal Information and Technology Acquisition Reform Act (FITARA),¹⁵ which requires the General Services Administration (GSA) to develop Government-wide strategic sourcing vehicles so agencies can procure software licenses efficiently and at a reasonable price. Before GSA can develop new strategic sourcing vehicles for agencies to use, there must be a government wide inventory of the software licenses the government has and an assessment of what it needs. According to GAO, this

⁹*Id.* at 62.

¹⁰*Id.* at 21.

¹¹GAO-15-404SP: ADDITIONAL OPPORTUNITIES at 181-82.

¹²*Id.* at 183.

¹³Letter from Senator Bill Cassidy to Mr. Shaun Donovan (June 2, 2015) (on file with Comm. staff).

¹⁴Letter from Mr. Shaun Donovan to Senator Bill Cassidy (July 16, 2015) (on file with Comm. staff).

¹⁵As enacted in Section 837 within Title VIII Acquisition Policy, Acquisition Management and related Matters, Subtitle D, Federal Information Technology Acquisition Reform of the National Defense Authorization Act of 2015.

type of analysis is rarely done within agencies.¹⁶ Without S. 2340, FITARA implementation could be delayed or sub-optimized due to the lack of information about software licenses.

In June 2016, the United States Chief Acquisition Officer and United States Chief Information Officer issued a joint memorandum entitled, *Category Management Policy 16-1: Improving the Acquisition and Management of Common Information Technology: Software Licensing*.¹⁷ This policy was intended to be responsive to the software requirements in FITARA. It creates the Enterprise Software Category Team which is comprised of GSA, the Department of Defense and OMB. The team is intended to help the government acquire software with less overlap, fragmentation and duplication. It also requires each agency to appoint a software manager, create an agency-wide software inventory and analyze the data to identify opportunities for savings.¹⁸

Accordingly, S. 2340 requires the agency CIO to inventory at least 80 percent of the software licenses using automated tools. By requiring agencies to inventory software licenses using automated tools, software licenses that are on the agencies networks can be easily found without a manual search.¹⁹ Software installed on stand-alone computers is not always discoverable using automated tools and could require a long manual search if it was required to be in the inventory. While management of stand-alone licenses must also be improved, the 2014 GAO report found that savings could be achieved through consolidating enterprise-wide (on the network) software licenses.²⁰ This finding means that agencies will save money without necessarily inventorying 100 percent of the off network software licenses.²¹

S. 2340 establishes a framework to find the savings by requiring training for software license managers and requiring the life cycle costs be considered in management decisions. These savings are reported to OMB and posted publically which holds the Director of OMB ultimately accountable for results while informing the American public of the progress being made to reduce wasteful spending. When these GAO recommendations are implemented throughout the government, GAO estimates the savings.

III. LEGISLATIVE HISTORY

The MEGABYTE Act of 2016, S. 2340, was introduced December 2, 2015, by Senators Bill Cassidy (R-LA) and Gary Peters (D-MI). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 2340 at a business meeting on February 10, 2016. During the business meeting, Senator Peters offered a substitute amendment to the bill that would directly hold each CIO accountable for managing his or her agency's software license and limiting the reporting period to five years. The legisla-

¹⁶ GAO-15-404SP: ADDITIONAL OPPORTUNITIES at 183 (2015).

¹⁷ Office of Management and Budget, Memorandum M-16-12: *Category Management Policy 16-1: Improving the Acquisition and Management of Common Information Technology: Software Licensing* (2016) https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-12_1.pdf.

¹⁸ *Id.*

¹⁹ U.S. CERT, *SWAM Illustrative Process v2* (2014) available at https://www.us-cert.gov/sites/default/files/cdm_files/SWAMIllustrativeProcess.pdf.

²⁰ GAO-14-413, FEDERAL SOFTWARE LICENSES at APPENDIX III.

²¹ *Id.* at 7.

tion, as modified by the Peters substitute amendment, was adopted by voice vote *en bloc*. Members present for the vote were: Senators Johnson, McCain, Portman, Paul, Lankford, Ayotte, Ernst, Sasse, Carper, McCaskill, Tester, Baldwin, Heitkamp, Booker, and Peters.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the short title of the bill as the “Making Electronic Government Accountable By Yielding Tangible Efficiencies Act of 2015,” or the “MEGABYTE Act of 2015.”

Section 2. OMB directive on management of software licenses

This section provides definitions for the terms “Director” and “executive agency”. It also provides specific direction to the Director of OMB to develop software licensing policy for Federal agencies. This policy must include identifying for agencies the roles, responsibility and oversight responsibilities for managing enterprise software licenses.

It also requires Executive agency CIOs to establish an inventory of 80 percent of their software licenses identifying the software licenses through automated tools. The CIOs are required to manage the software licenses through their lifecycle and use software usage information to make cost-effective decisions for the agency. They must also provide training on how to manage software licenses, establish goals for software license management, and consider the total life cycle costs in decision making. This section also requires the CIOs to provide a report to the OMB Director and the public for the next five fiscal years that lists savings resulting from improved software license management.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

APRIL 21, 2016.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2340, the MEGABYTE Act of 2015.

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.

S. 2340—MEGABYTE Act of 2015

S. 2340 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 S. 2340 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 S. 2340 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 S. 2340 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 S. 2340 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2340 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 H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.