

Calendar No. 157

115TH CONGRESS }
1st Session }

SENATE

{ REPORT
115-120

PROVIDING ACCOUNTABILITY THROUGH
TRANSPARENCY ACT OF 2017

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 577

TO REQUIRE EACH AGENCY, IN PROVIDING NOTICE OF A
RULE MAKING, TO INCLUDE A LINK TO A 100 WORD PLAIN
LANGUAGE SUMMARY OF THE PROPOSED RULE



JUNE 28, 2017.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

69-010

WASHINGTON : 2017

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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. 577]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 577) to require each agency, in providing notice of a rule making, to include a link to a 100 plain language summary of the proposed rule, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The Providing Accountability Through Transparency Act of 2017 requires Federal agencies to include, as part of a notice of proposed rulemaking (NPRM), a link to a 100-word or less, plain language summary of the proposed rule. The summary itself will be made available on the website “regulations.gov.”

II. BACKGROUND AND THE NEED FOR LEGISLATION

The Administrative Procedure Act (APA)¹ forms the procedural basis by which Federal agencies issue most regulations and other policies. The APA, which has been called the result of a “fierce compromise,”² is intended as a means to enable agencies to engage in policymaking while promoting the interests of those nongovernmental parties affected.³ Specifically, the procedure outlined in Section 553 of the APA for so-called “informal” rulemaking “establishes the minimum procedural requirements”⁴ that agencies must observe for most regulations.⁵ Because regulations issued through such a process are generally considered legally binding, the APA formalizes a notice to the public of a forthcoming rule, and at that point establishes an early opportunity for the general public to submit comments.

However, the public’s ability to offer useful feedback through comments, especially parties who may not be experts in the particular subject of the rule, is dependent upon the clarity and simplicity of the proposal. Therefore, this bill offers a uniform and universally accessible standard for agencies to better communicate their intended policies to the public: a 100-word plain language summary made available by agencies at *regulations.gov*.

III. LEGISLATIVE HISTORY

Senator James Lankford (R–OK) introduced S. 577 on March 8, 2017, with Senator James E. Risch (R–ID). The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Pat Roberts (R–KS) later joined as a co-sponsor of the bill. The Committee considered S. 577 at a May 17, 2017 business meeting.

The Committee ordered S. 577 reported favorably on May 17, 2017, by voice vote en bloc. Senators present were Senators Johnson, McCain, Portman, Paul, Lankford, Enzi, Hoeven, Daines, McCaskill, Tester, Heitkamp, Peters, Hassan, and Harris. Consistent with Committee Rule 11, the Committee reports the bill with a technical amendment by mutual agreement of the Chairman and Ranking Member.

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

Section 1. Short title

This section provides the bill’s short title, the “Providing Accountability Through Transparency Act of 2017.”

Section 2. Requirement to post a 100 word summary to regulations.gov

This section amends the list of information required for inclusion when agencies issue a notice of proposed rulemaking to add that

¹Pub. Law 79–404, 60 Stat. 237.

²George B. Shepherd, “Fierce Compromise: The Administrative Procedure Act Emerges from New Deal Politics,” *Northwestern University Law Review*, Vol. 90, No. 4.

³*Id.*

⁴Emily S. Bremer, “A Primer on the Informal Rulemaking Process,” *Administrative Fix* (blog), Administrative Conference of the United States, May 10, 2013, <https://www.acus.gov/newsroom/administrative-fix-blog/primer-informal-rulemaking-process>.

⁵5 U.S.C. § 553

they also include a link to a 100-word or less summary of the proposed rule. The summary shall be posted to *regulations.gov*.

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

JUNE 2, 2017.

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. 577, the Providing Accountability Through Transparency Act of 2017.

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. 577—Providing Accountability Through Transparency Act of 2017

S. 577 would require agencies to post the Internet address of the website (*regulations.gov*), which would contain a summary of every rule the agencies propose. Under the bill, those summaries could not exceed 100 words in length. Executive Orders 12866, 13563, and the June 1, 1998, Presidential Memorandum on Plain Language require agencies to use plain language in all proposed and final rules. Thus, CBO expects that preparing the short summary of proposed rules under S. 577 would have no significant cost.

Enacting the bill would affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting S. 577 would not affect revenues.

CBO estimates that enacting S. 577 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 577 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. This estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1820 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 5—ADMINISTRATIVE PROCEDURE

* * * * *

Subchapter II—Administrative Procedure

* * * * *

SEC. 553. RULE MAKING

(a) * * *

* * * * *

(b) * * *

(1) * * *

(2) reference to the legal authority under which the rule is proposed; **[and]**(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved~~].~~; *and*(4) *the Internet address of a summary of not more than 100 words in length of the proposed rule, in plain language, that shall be posted on the Internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as regulations.gov).*