

111TH CONGRESS
1ST SESSION

S. 924

To ensure efficient performance of agency functions.

IN THE SENATE OF THE UNITED STATES

APRIL 29, 2009

Ms. MIKULSKI (for herself, Mr. KENNEDY, Mr. SCHUMER, Mrs. MURRAY, Mr. DURBIN, Mr. LEAHY, Mr. BROWN, Mr. CASEY, Mrs. GILLIBRAND, and Mr. BURRIS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To ensure efficient performance of agency functions.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Correction of Long-Standing Errors in Agencies’
6 Unsustainable Procurements Act of 2009” or the
7 “CLEAN-UP Act”.

8 (b) TABLE OF CONTENTS.—The table of contents for
9 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Findings.

- Sec. 4. Purposes.
- Sec. 5. General personnel policy.
- Sec. 6. Consideration of in-house performance required for new work.
- Sec. 7. Transition to Federal employee performance of certain functions.
- Sec. 8. Establishment of inventories and reviews of contracts for services.
- Sec. 9. Identifying and addressing shortages of Federal employees.
- Sec. 10. Expedited hiring authority for performance of certain functions by Federal employees.
- Sec. 11. Establishment of business process reengineering projects as a preferred alternative to the OMB Circular A-76 process.
- Sec. 12. Reforms to the OMB Circular A-76 process.
- Sec. 13. Establishment of temporary suspension on use of OMB Circular A-76 process until reforms required in this Act have been substantially implemented.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) INHERENTLY GOVERNMENTAL FUNC-
 4 TIONS.—The term “inherently governmental func-
 5 tions” has the meaning given the term under section
 6 5 of the Federal Activities Inventory Act of 1998
 7 (31 U.S.C. 1501 note) and subpart 7.5 of part 7 of
 8 the Federal Acquisition Regulation.

9 (2) FUNCTIONS CLOSELY ASSOCIATED WITH IN-
 10 HERENTLY GOVERNMENTAL FUNCTIONS.—The term
 11 “functions closely associated with inherently govern-
 12 mental functions” means the functions described in
 13 section 7.503(d) of the Federal Acquisition Regula-
 14 tion that are recurring.

15 (3) MISSION-ESSENTIAL FUNCTIONS.—The
 16 term “mission-essential functions” refers to func-
 17 tions that, although neither necessarily inherently
 18 governmental nor necessarily closely related to an in-
 19 herently governmental function, are nevertheless

1 considered by executive agency officials to be more
2 appropriate for performance by Federal employees.

3 (4) BUSINESS PROCESS REENGINEERING
4 PROJECT.—The term “business process re-
5 engineering project” refers to a process whereby an
6 existing organization is reinvented, consolidated, or
7 expanded to result in a new organization whose per-
8 formance exceeds that of previous and comparable
9 performers, whether performed by Federal employ-
10 ees or contractors or a combination of Federal em-
11 ployees and contractors.

12 (5) EXECUTIVE AGENCY.—The term “executive
13 agency” has the meaning given the term in section
14 4 of the Office of Federal Procurement Policy Act
15 (41 U.S.C. 403).

16 (6) PERSONAL SERVICES CONTRACT.—The
17 term “personal services contract” has the meaning
18 given to the term under section 37.104 of the Fed-
19 eral Acquisition Regulation, unless the functions to
20 be performed under the contract are included in
21 statutory exceptions, including sections 1296 and
22 1091 of title 10, United States Code.

23 (7) STANDARD STUDY.—The term “standard
24 study” has the meaning given to the specific type of
25 cost-comparison study outlined in attachment B in

1 the OMB Circular A-76 process, as revised in May
2 2003.

3 **SEC. 3. FINDINGS.**

4 Congress makes the following findings:

5 (1) Functions that should have been performed
6 by Federal employees because they are inherently
7 governmental functions, functions that are closely
8 related to inherently governmental functions and re-
9 curring, or mission-essential functions have been
10 wrongly outsourced, including preparing budgets, de-
11 veloping policy, supporting acquisition, developing
12 and interpreting regulations, developing reorganiza-
13 tions, and developing and implementing “competitive
14 sourcing” plans.

15 (2) Federal agencies have been pushed to
16 outsource significant amounts of work with little
17 competition, while Federal employees, despite having
18 won 83 percent of the OMB Circular A-76 privat-
19 ization reviews conducted since the circular was re-
20 vised in 2003, are rarely given opportunities to per-
21 form new work or outsourced work.

22 (3) The capacity of the Federal Government to
23 oversee contractors and the OMB Circular A-76 pri-
24 vatization process continues to decline, as dem-
25 onstrated in scandals involving reconstruction efforts

1 in Iraq, Hurricane Katrina recovery efforts, and
2 conditions at Walter Reed Army Medical Center.
3 The Government Accountability Office (GAO), in
4 two 2008 reports on the use of “competitive
5 sourcing” in different agencies, determined that
6 costs of A-76 privatization reviews often exceeded
7 savings because of systematically bad direction from
8 the Office of Management and Budget. In the latter
9 report, on the Department of Labor, GAO wrote,
10 “Without a better system to assess performance and
11 track all of the costs associated with competitive
12 sourcing, DoL cannot reliably assess whether com-
13 petitive sourcing truly provides the best deal for the
14 taxpayers.”.

15 (4) The OMB Circular A-76 process retains
16 fundamental inequities. The minimum cost differen-
17 tial fails to take into account the quantifiable costs
18 (such as hiring consultants and diverting Federal
19 employees from their regular duties) of carrying out
20 A-76 privatization studies. All in-house bids are
21 charged 12 percent of their personnel costs for over-
22 head costs, even though a Department of Defense
23 Inspector General study revealed that overhead costs
24 may not differ significantly, if at all, whether the
25 functions are kept in-house or contracted out, even

1 in the case of studies of large numbers of Federal
2 employees. Despite time limits established in law
3 and as part of the OMB Circular process A-76 proc-
4 ess, privatization studies are allowed to continue in-
5 definitely. The longer an A-76 privatization study
6 lasts, the more it costs to conduct, the less likely
7 there are to be savings from that study, and the
8 more likely it will cost taxpayers more than it will
9 save. In fact, given the costs and controversies asso-
10 ciated with the OMB Circular A-76 privatization
11 process, OMB should be encouraging agencies to use
12 internal reengineering efforts, as OMB finally did,
13 during the last year of George W. Bush's presidency.

14 **SEC. 4. PURPOSES.**

15 The purposes of this Act are as follows:

16 (1) To build upon the foundation established by
17 the 110th Congress that suspended the use of the
18 OMB Circular A-76 privatization process, required
19 all executive agencies to develop policies to promote
20 the insourcing of new work and outsourced work,
21 and required the Department of Defense to develop
22 a comprehensive inventory of its service contracts.

23 (2) To establish a policy that provides that—

24 (A) Federal employees must perform inher-
25 ently governmental functions, functions closely

1 related to inherently governmental functions,
2 and mission essential functions;

3 (B) other functions may be performed by
4 Federal employees or contractors, depending on
5 the needs of executive agencies and all relevant
6 public-private competition requirements; and

7 (C) Federal employees should not be sub-
8 ject to headcounts, personnel ceilings, or con-
9 straints, which force executive agencies to con-
10 tract out functions without public-private com-
11 petition.

12 (3) To prevent executive agencies from con-
13 tracting out new functions if those new functions
14 should be performed by Federal employees and re-
15 quire agencies to explain in annual reports to Con-
16 gress why functions ultimately contracted out were
17 not considered for performance by Federal employ-
18 ees.

19 (4) To require executive agencies—

20 (A) to determine which of their functions
21 must actually be performed by Federal employ-
22 ees because the work is inherently govern-
23 mental, closely related to inherently govern-
24 mental work, or mission essential, and how

1 many contractor employees are currently per-
2 forming those functions;

3 (B) to report on how wrongly contracted
4 out work will be insourced; and

5 (C) to incrementally insource over several
6 years 70 percent of the wrongly contracted out
7 workload.

8 (5) To require civilian agencies to establish in-
9 ventories to track the cost and quality, among other
10 features, of specific contracts, based on the inven-
11 tory that the 110th Congress required the Depart-
12 ment of Defense to establish.

13 (6) To require executive agencies to determine
14 if they are now experiencing or will experience short-
15 ages of Federal employees and what their plans are
16 for addressing these personnel shortfalls.

17 (7) To encourage the use of a regulated alter-
18 native to the often costly and controversial OMB
19 Circular A-76 process, including business process
20 reengineering, which is commonly used by executive
21 agencies to generate efficiencies through internal re-
22 organizations.

23 (8) To direct the President to undertake several
24 reforms of the OMB Circular A-76 privatization
25 process, including imposing time limitations on how

1 long privatization studies can last, charging in-house
2 bids only for actual overhead costs, and considering
3 quantifiable costs of conducting A-76 privatization
4 studies in the minimum differential.

5 (9) To impose a temporary suspension on the
6 use of the OMB Circular A-76 privatization process
7 until the reforms required by this Act have been
8 substantially implemented, consistent with the tem-
9 porary suspension on the same process enacted in
10 the 110th Congress.

11 **SEC. 5. GENERAL PERSONNEL POLICY.**

12 (a) REQUIRED PERFORMANCE OF INHERENTLY GOV-
13 ERNMENTAL FUNCTIONS BY FEDERAL EMPLOYEES.—
14 The head of each executive agency shall ensure that inher-
15 ently governmental functions, functions closely related to
16 inherently governmental functions, and mission-essential
17 functions are performed by Federal employees.

18 (b) PERFORMANCE OF OTHER FUNCTIONS BY MORE
19 EFFICIENT WORKFORCE IN ACCORDANCE WITH PUBLIC-
20 PRIVATE COMPETITION REQUIREMENTS.—The head of
21 each executive agency shall ensure that functions that are
22 not inherently governmental functions, functions closely
23 related to inherently governmental functions, or mission-
24 essential functions are performed by the more efficient
25 form of personnel, whether Federal employees, contrac-

1 tors, or, in the case of the Department of Defense, mili-
2 tary personnel, consistent with requirements for quality
3 and reliability and other needs of that executive agency
4 and with all public-private competition requirements.

5 (c) USE OF MOST EFFICIENT WORKFORCE.—Not-
6 withstanding any other provision of law, the heads of exec-
7 utive agencies shall not be constrained by any in-house
8 personnel ceiling, headcount, or staffing limitation in en-
9 suring that functions are performed in the most efficient
10 manner possible.

11 (d) SHIFTING FUNCTIONS BETWEEN
12 WORKFORCES.—In developing personnel authorization re-
13 quests to Congress and in carrying out personnel policies
14 generally, the head of each executive agency shall consider
15 particularly the advantages of converting from one form
16 of personnel (Federal or private contract personnel, or in
17 the case of the Department of Defense, Federal, private
18 contract, or military personnel) to another form of per-
19 sonnel for the performance of functions that are not inher-
20 ently governmental functions, functions closely related to
21 inherently governmental functions, or mission-essential
22 functions using any relevant public-private competition
23 processes.

1 **SEC. 6. CONSIDERATION OF IN-HOUSE PERFORMANCE RE-**
2 **QUIRED FOR NEW WORK.**

3 (a) FINDING.—Pursuant to section 739 of the Finan-
4 cial Services and General Government Appropriations Act,
5 2008 (division D of Public Law 110–161; 31 U.S.C. 501
6 note) each covered executive agency is required to devise
7 and implement guidelines and procedures to ensure that
8 consideration is given to using, on a regular basis, Federal
9 employees to perform new functions.

10 (b) CERTIFICATION REQUIRED BEFORE AWARDING
11 A SERVICE CONTRACT.—The Chief Acquisition Officer of
12 each executive agency, or, if no such position exists, the
13 executive agency’s representative on the Chief Acquisition
14 Officers Council, shall, with respect to each service con-
15 tract entered into by such agency for the performance of
16 a function or functions, including the award or placement
17 of a task or delivery order or the exercise of an option
18 under an existing contract, certify, together with sup-
19 porting rationales, that—

20 (1) each function to be performed under such
21 contract is not an inherently governmental function,
22 a function closely related to an inherently govern-
23 mental function, or a mission-essential function;

24 (2) the contract is not actually an unauthorized
25 personal services contract; and

(3) performance by employees of the agency of the function to be performed by a contractor was explicitly considered, with particular consideration given if such function is comparable to functions already performed by Federal employees in the executive agency or another executive agency, either currently or within the last 10 years.

(c) REPORTS REQUIRED.—

(1) IN GENERAL.—Not later than November 1, 2009, and annually thereafter, the head of each covered executive agency shall submit to the Director of the Office of Management and Budget a report on each of the service contracts for new work entered into during the previous fiscal year.

(2) CONTENT.—Each report submitted under paragraph (1) shall describe the following:

(A) Each function or functions performed under a contract with a contractor, the approximate number of employees used by contractors under each such contract, the date each such contract was entered into, the duration of each contract, and each certification required under subsection (b).

(B) Each new function that was assigned by the executive agency to employees of the

1 agency, including, for each function, a brief de-
2 scription of the work, a determination of the
3 dollar value, and the number of new Federal
4 employees who were hired or transferred from
5 the performance of other functions.

6 (C) Any obstacles to assigning new func-
7 tions to Federal employees, as well as rec-
8 ommendations for legislation to overcome those
9 obstacles.

10 (d) PUBLICATION OF REPORTS REQUIRED.—The Di-
11 rector of the Office of Management and Budget shall
12 promptly publish in the Federal Register information
13 about obtaining each report prepared under subsection (c),
14 including the names, addresses, and telephone numbers of
15 the officials from whom the reports may be obtained. The
16 reports shall also be made available on a publicly available
17 Internet website. The Director shall remove proprietary
18 and confidential information from reports made available
19 pursuant to this section.

20 **SEC. 7. TRANSITION TO FEDERAL EMPLOYEE PERFORM-**
21 **ANCE OF CERTAIN FUNCTIONS.**

22 (a) REPORT ON FUNCTIONS THAT SHOULD BE PER-
23 FORMED BY FEDERAL EMPLOYEES.—

24 (1) REPORT REQUIRED.—Not later than 180
25 days after the date of the enactment of this Act, the

1 head of each executive agency shall submit to the
2 Director of the Office of Management and Budget a
3 report, to be known as the “Functions At Risk Re-
4 port”, that—

5 (A) describes any function that is, in whole
6 or in part, an inherently governmental function,
7 a function closely related to an inherently gov-
8 ernmental function, or a mission-essential func-
9 tion and which, despite the requirement that
10 such function only be performed by Federal em-
11 ployees, is actually performed, in whole or in
12 part, by a contractor (in this section referred to
13 as an “at-risk function”);

14 (B) describes the number of contractor em-
15 ployees performing the function, in whole or in
16 part, and the nature of their work;

17 (C) includes a plan for ensuring that the
18 function is performed by Federal employees;

19 (D) identifies any impediments to carrying
20 out such plan; and

21 (E) includes any recommendations for ad-
22 ditional legislation necessary to implement this
23 section.

24 (2) LIMITATION ON DESIGNEE.—The head of
25 an affected executive agency may not assign respon-

1 sibility for compliance with the report requirement
2 established by this subsection below the level of an
3 assistant secretary.

4 (3) PUBLICATION OF REPORTS REQUIRED.—

5 The Director of the Office of Management and
6 Budget shall promptly publish in the Federal Reg-
7 ister information about obtaining each report pre-
8 pared under paragraph (1), including the names, ad-
9 dresses, and telephone numbers of the officials from
10 whom the reports may be obtained. The reports shall
11 also be made available on a publicly available Inter-
12 net website. The Director shall remove proprietary
13 and confidential information from reports made
14 available pursuant to this section.

15 (b) REQUIREMENT TO REDUCE NUMBER OF AT-

16 RISK FUNCTIONS.—The head of each executive agency
17 shall reduce the total number of contractor employees re-
18 ported in that executive agency's Functions At Risk Re-
19 port by—

20 (1) 5 percent within 1 year after the date of the
21 enactment of this Act;

22 (2) 10 percent within 2 years after the date of
23 the enactment of this Act;

24 (3) 20 percent within 3 years after the date of
25 the enactment of this Act;

1 (4) 40 percent within 4 years after the date of
2 the enactment of this Act;

3 (5) 60 percent within 5 years after the date of
4 the enactment of this Act; and

5 (6) 70 percent within 6 years after the date of
6 the enactment of this Act.

7 (c) EVALUATION OF SCHEDULE.—The Comptroller
8 General of the United States shall—

9 (1) evaluate the success of the incremental
10 schedule required under subsection (b) in ensuring
11 that functions that should be performed by Federal
12 employees are actually performed by Federal em-
13 ployees; and

14 (2) provide recommendations for future legisla-
15 tion, particularly with respect to addresses remain-
16 ing at-risk functions.

17 (d) SUSPENSION OF REDUCTION SCHEDULE RE-
18 QUIREMENT.—The Director of the Office of Management
19 and Budget may suspend the requirement to reduce posi-
20 tions pursuant to subsection (b) for a particular executive
21 agency for a specific period of time upon certifying to the
22 Committee on Government Oversight and Reform of the
23 House of Representatives and the Committee on Home-
24 land Security and Governmental Affairs of the Senate that
25 compliance during that specific period of time would un-

1 dermine national security, homeland security, or patient
2 care.

3 **SEC. 8. ESTABLISHMENT OF INVENTORIES AND REVIEWS**
4 **OF CONTRACTS FOR SERVICES.**

5 (a) IN GENERAL.—Not later than June 30, 2010,
6 and annually thereafter, the head of each executive agency
7 subject to the Federal Activities Inventory Reform Act of
8 1998 (Public Law 105–270; 31 U.S.C. 1501 note), other
9 than the Department of Defense, shall submit to the Di-
10 rector of the Office of Management and Budget an annual
11 inventory of the activities performed during the preceding
12 fiscal year pursuant to contracts for services for or on be-
13 half of such agency.

14 (b) CONTENT.—The entry for an activity on an in-
15 ventory under this section shall include, for the fiscal year
16 covered by such entry, the following:

17 (1) The functions performed by the contractor.

18 (2) Information regarding the contractor, the
19 part of the executive agency administering the con-
20 tract, and the part of the agency whose require-
21 ments are being met through contractor performance
22 of the function.

23 (3) The funding source for the contract under
24 which the function is performed.

1 (4) The fiscal year for which the activity first
2 appeared on an inventory under this section.

3 (5) The number of full-time contractor employ-
4 ees (or its equivalent) compensated for the perform-
5 ance of the activity.

6 (6) Whether the contract has been performed
7 pursuant to a contract awarded on a noncompetitive
8 basis, either originally or upon a subsequent re-
9 newal.

10 (7) Whether the contract has been performed
11 poorly, as determined by a contracting officer, dur-
12 ing the 5-year period preceding the date of such de-
13 termination, because of excessive costs or inferior
14 quality.

15 (c) FORM.—The inventory required under this section
16 shall be submitted in unclassified form, but may include
17 a classified annex.

18 (d) PUBLICATION.—The Director of the Office of
19 Management and Budget shall promptly publish in the
20 Federal Register information about obtaining each report
21 prepared under subsection (a), including the names, ad-
22 dresses, and telephone numbers of the officials from whom
23 the reports may be obtained. The reports shall be made
24 available on a publicly available Internet website. The Di-

1 rector shall remove proprietary information from reports
2 made available pursuant to this subsection.

3 (e) REVIEW AND PLANNING REQUIREMENTS.—Not
4 later than 90 days after the date on which an inventory
5 is submitted under subsection (a), the head of each execu-
6 tive agency or an official designated personally by the
7 agency head shall—

8 (1) review the contracts and activities in the in-
9 ventory;

10 (2) ensure that—

11 (A) each contract on the list that is a per-
12 sonal services contract has been entered into,
13 and is being performed, in accordance with ap-
14 plicable laws and regulations;

15 (B) the activities on the list do not include
16 any inherently governmental functions; and

17 (C) to the maximum extent practicable, the
18 activities on the list do not include any func-
19 tions closely associated with inherently govern-
20 mental functions;

21 (3) identify activities that should be considered
22 for conversion to performance by civilian employees
23 of the executive agency pursuant to section 739 of
24 the Financial Services and General Government Ap-

1 appropriations Act, 2008 (division D of Public Law
2 110–161; 31 U.S.C. 501 note); and

3 (4) develop a plan to provide for appropriate
4 consideration of the conversion by June 30 of the
5 following year of the activities identified under para-
6 graph (3), which shall be included as an attachment
7 to the next required annual inventory.

8 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
9 tion shall be construed to authorize the performance of
10 personal services by a contractor except as otherwise pro-
11 vided by law.

12 (g) PRIORITY OF CONTRACTOR INVENTORY.—Not-
13 withstanding any other provision of law, prior to the sub-
14 mission to the Office of Management and Budget of an
15 inventory pursuant to the Federal Activities Inventory Re-
16 form Act of 1998 (Public Law 105–270; 31 U.S.C. 1501
17 note), OMB Circular A–76, or any other related adminis-
18 trative regulation, directive, or policy, or to publication in
19 the Federal Register, the head of an executive agency shall
20 submit the inventory required under this section to Con-
21 gress and the Director of the Office of Management and
22 Budget and shall publish the inventory required under this
23 section in the Federal Register.

1 **SEC. 9. IDENTIFYING AND ADDRESSING SHORTAGES OF**
2 **FEDERAL EMPLOYEES.**

3 (a) ANNUAL STRATEGIC HUMAN CAPITAL PLAN RE-
4 QUIRED.—Not later than 1 year after the date of the en-
5 actment of this Act, and annually thereafter, the head of
6 each executive agency shall submit to the Director of the
7 Office of Management and Budget a strategic human cap-
8 ital plan to ensure the capability of the Federal employee
9 workforce of the executive agency to perform its functions.

10 (b) CONTENT.—Each strategic human capital plan
11 submitted under subsection (a) shall include the following:

12 (1) An assessment of—

13 (A) the critical skills and competencies in
14 the Federal employee workforce that will be
15 needed to perform the executive agency's func-
16 tions over the next 10 years, based on expected
17 losses due to retirement and other attrition; and

18 (B) gaps in the capability of the Federal
19 employee workforce, both existing and pro-
20 jected, to perform the executive agency's func-
21 tions over that period.

22 (2) A plan of action for developing the Federal
23 employee workforce of the executive agency to ad-
24 dress the current or anticipated gaps, including—

1 (A) specific hiring, promoting, and reten-
 2 tion schedules, including the funding needed to
 3 achieve such schedules; and

4 (B) specific strategies for developing,
 5 training, and promoting the Federal employee
 6 workforce of the executive agency, including the
 7 funding needed to implement such strategies.

8 (c) ENHANCEMENT OF HUMAN CAPITAL PLAN-
 9 NING.—All human capital planning efforts should be con-
 10 sidered through any existing labor-management partner-
 11 ship arrangements.

12 (d) ADDRESSING GAPS IN FEDERAL
 13 WORKFORCES.—

14 (1) IN GENERAL.—The head of an executive
 15 agency may not conduct a public-private competition
 16 under Office of Management and Budget Circular
 17 A–76 or any other provision of law of any function
 18 that has been identified in the strategic human cap-
 19 ital plan of such agency as one that either is experi-
 20 encing or will experience a gap in its Federal em-
 21 ployee workforce.

22 (2) SHORTCOMINGS CONSTITUTING GAPS IN
 23 WORKFORCE.—For purposes of this section, gaps in
 24 the workforce include shortcomings—

1 (A) in the skills and competencies of em-
 2 ployees;

3 (B) in the number of employees possessing
 4 such skills and competencies; and

5 (C) in the skills and competencies of em-
 6 ployees or in the number of employees that
 7 would make it difficult to effectively supervise a
 8 contractor and intelligently oversee its perform-
 9 ance or reconstitute that function for perform-
 10 ance within the agency in the event of con-
 11 tractor nonperformance.

12 (e) PUBLICATION.—The Director of the Office of
 13 Management and Budget shall promptly publish in the
 14 Federal Register information about obtaining each report
 15 prepared under subsection (a), including the names, ad-
 16 dresses, and telephone numbers of the officials from whom
 17 the reports may be obtained. The reports shall be made
 18 available on a publicly available Internet website.

19 **SEC. 10. EXPEDITED HIRING AUTHORITY FOR PERFORM-**
 20 **ANCE OF CERTAIN FUNCTIONS BY FEDERAL**
 21 **EMPLOYEES.**

22 (a) EXPEDITED HIRING AUTHORITY.—For purposes
 23 of sections 3304, 5333, and 5753 of title 5, United States
 24 Code, the head of an executive agency may—

1 (1) designate any category of professional posi-
2 tions within the agency as shortage category posi-
3 tions; and

4 (2) utilize the authorities in such sections to re-
5 cruit and appoint highly qualified persons directly to
6 positions so designated,

7 in order to comply with the requirements of this Act, and
8 section 739 of the Financial Services and General Govern-
9 ment Appropriations Act, 2008 (division D of Public Law
10 110–161; 31 U.S.C. 501 note), which requires each cov-
11 ered executive agency to devise and implement guidelines
12 and procedures to ensure that consideration is given to
13 using, on a regular basis, Federal employees to perform
14 new functions as well as functions that are currently per-
15 formed by contractors.

16 (b) VETERANS PREFERENCE.—In using the author-
17 ity provided under this section, the head of an executive
18 agency shall apply the principles of preference for the hir-
19 ing of veterans and other persons established in sub-
20 chapter 1 of chapter 33 of title 5, United States Code.

21 (c) TERMINATION OF AUTHORITY.—Expedited hiring
22 authority may not be used to appoint a person to a posi-
23 tion of employment under this section after the date that
24 is 6 years after the date of the enactment of this Act.

1 (d) REPORT ON THE USE OF EXPEDITED HIRING
2 AUTHORITY.—Not later than December 31, 2009, and an-
3 nually thereafter for three years, the Office of Personnel
4 Management shall submit to the Committee on Govern-
5 ment Oversight and Reform of the House of Representa-
6 tives and the Committee on Homeland Security and Gov-
7 ernmental Affairs of the Senate a report on the use by
8 executive agencies of the expedited hiring authority under
9 this section consistent with merit principles, including rec-
10 ommendations for how authority for expedited hiring
11 might be improved.

12 **SEC. 11. ESTABLISHMENT OF BUSINESS PROCESS RE-**
13 **ENGINEERING PROJECTS AS A PREFERRED**
14 **ALTERNATIVE TO THE OMB CIRCULAR A-76**
15 **PROCESS.**

16 (a) STATEMENT OF POLICY.—Each executive agency
17 should constantly strive to generate efficiencies and im-
18 provements through business process reengineering, even
19 if such efforts reduce or increase the need for Federal em-
20 ployees and contractors.

21 (b) GUIDELINES.—The Director of the Office of
22 Management and Budget shall develop guidelines for the
23 establishment of business process reengineering projects.
24 Such guidelines shall ensure consideration and assessment
25 of the following:

1 (1) The number of Federal employees and con-
2 tractor employees to be affected by the initiative,
3 and how they will be affected.

4 (2) The resources needed to conduct the initia-
5 tive.

6 (3) The location or locations where the initia-
7 tive will be performed, and the location of the af-
8 fected Federal and contractor employees if different
9 from the initiative location or locations.

10 (4) The functions to be included in the initia-
11 tive.

12 (5) The timeline for development and imple-
13 mentation of the initiative.

14 (6) The estimated duration of the initiative if
15 such initiative is deemed to be temporary.

16 (7) The anticipated budget savings and pro-
17 grammatic improvements.

18 (c) PRE-IMPLEMENTATION REPORT.—Not later than
19 45 days before beginning implementation of a business
20 process reengineering project, the head of the executive
21 agency shall submit to the Committee on Government
22 Oversight and Reform of the House of Representatives
23 and the Committee on Homeland Security and Govern-
24 mental Affairs of the Senate a report on the proposed

1 project, including the information described in subsection
2 (b).

3 (d) CONSISTENCY WITH EXISTING LAW.—All busi-
4 ness process reengineering projects shall be implemented
5 in a manner that is consistent with paragraphs (2) and
6 (3) of section 7106(b) of title 5, United States Code. Such
7 projects shall not result in a change of the collective bar-
8 gaining status of affected Federal employees in the execu-
9 tive agency or in the representation status of a labor orga-
10 nization with exclusive representation status, as provided
11 under section 7114 of title 5, United States Code.

12 (e) ENHANCEMENT OF FEDERAL EMPLOYEE BUY-
13 IN.—The head of an executive agency shall, in order to
14 promote the active cooperation of affected Federal employ-
15 ees—

16 (1) consider all business process reengineering
17 projects through any labor-management partnership
18 arrangements;

19 (2) provide any reports required under sub-
20 section (c) to any labor organization with national
21 consultation rights under section 7113 of title 5,
22 United States Code, at least 60 days before they are
23 provided to Congress under such subsection; and

24 (3) involve discussions and bargaining over the
25 impact of implementation of any projects upon any

1 bargaining unit with the exclusive representatives of
2 the executive agency's Federal workforce, as pro-
3 vided under section 7114 and sections 7106(b)(2)
4 and (b)(3) of title 5, United States Code.

5 (f) PERSONNEL INCREASES OR REDUCTIONS.—Any
6 personnel increases or reductions in the Federal employee
7 or contractor workforces must be based on the require-
8 ments of a specific business process reengineering project
9 and not on unrelated or predetermined cost and savings
10 assumptions.

11 (g) ANNUAL EVALUATION.—Not later than October
12 31, 2010, and annually thereafter, the Director of the Of-
13 fice of Management and Budget shall conduct a perform-
14 ance review of ongoing business process reengineering
15 projects and submit a report on such review to the Com-
16 mittee on Government Oversight and Reform of the House
17 of Representatives and the Committee on Homeland Secu-
18 rity and Governmental Affairs of the Senate. Each busi-
19 ness process reengineering project shall be evaluated with
20 respect to the level of performance in the following areas:

- 21 (1) Costs, savings, and overall financial per-
22 formance of the organization.
- 23 (2) Organic knowledge, skills or expertise.
- 24 (3) Efficiency and effectiveness of key functions
25 or processes.

1 (4) Efficiency and effectiveness of the overall
2 organization.

3 **SEC. 12. REFORMS TO THE OMB CIRCULAR A-76 PROCESS.**

4 (a) SENSE OF CONGRESS.—It is the sense of Con-
5 gress that, with respect to Office of Management and
6 Budget Circular A-76 or any other related administrative
7 regulation, directive, or policy, the following policies and
8 procedures should be implemented:

9 (1) A standard study shall last no longer than
10 2 years, from the beginning of the preliminary plan-
11 ning process to the rendering of the award decision,
12 which period shall be calculated as follows:

13 (A) Any days during which a standard
14 study is suspended because of bid protests on
15 behalf of the affected Federal employees shall
16 not be included when determining the length of
17 a standard study.

18 (B) However, any days during which a
19 standard study is extended because of addi-
20 tional activity that is either required by the
21 Government Accountability Office, directed by
22 the contracting officer subsequent to an appeal
23 to the Government Accountability Office or the
24 dismissal or denial of a protest to the Govern-
25 ment Accountability Office shall be included

1 when determining the length of a standard
2 study.

3 (C) No executive agency may stop and re-
4 start a standard study in order to avoid compli-
5 ance with this paragraph. Similarly, an execu-
6 tive agency may not subject a function to a
7 standard study if it was earlier subjected to a
8 standard study that had to be stopped because
9 of the length limitation under this paragraph.

10 (2) The conversion differential shall be—

11 (A) significantly increased in order to in-
12 clude the large costs that are currently excluded
13 from consideration, including preliminary plan-
14 ning costs, consultants costs, costs of Federal
15 employees diverted from their actual jobs to
16 work on studies, transition costs, post-competi-
17 tion reviews costs, and proportional costs for
18 agencies' privatization bureaucracies (including
19 both Federal employees and contractors); and

20 (B) doubled when a standard study begins
21 its thirteenth month, which period shall be cal-
22 culated as follows:

23 (i) Any days during which a standard
24 study is suspended because of bid protests
25 on behalf of the affected Federal employees

1 shall not be included when determining the
2 length of a standard study for purposes of
3 doubling the cost differential.

4 (ii) However, any days during which a
5 standard study is extended because of ad-
6 ditional activity that is either required by
7 the Government Accountability Office, di-
8 rected by the contracting officer subse-
9 quent to an appeal to the Government Ac-
10 countability Office or the dismissal or de-
11 nial of a protest to the Government Ac-
12 countability Office shall be included when
13 determining the length of a standard
14 study.

15 (3) Bids or tenders filed on behalf of Federal
16 employees shall include only the overhead costs actu-
17 ally incurred for those Federal employees performing
18 the specific functions being reviewed, and may not
19 include an assessment of an automatic charge for
20 overhead.

21 (4) A reliable system to track costs, savings,
22 and quality from OMB Circular A-76 studies that
23 has been implemented, tested, and determined to be
24 accurate and reliable over a long-term and a short-
25 term period should be established. The system estab-

lished should also take into account the possibility for greater efficiencies and programmatic improvements that can be generated through business process reengineering projects, pursuant to section 10.

(5) NO RECOMPETITION REQUIRED.—No Federal employee workforce should be recompeted under OMB Circular A–76 unless the head of the relevant executive agency, without delegation—

(A) has signed a certification that such workforce failed to fulfill the terms of the letter of obligation or other agreement, as applicable, pursuant to an earlier OMB Circular A–76 study; and

(B) published that certification on fedbizopps.gov before the end of the expiration of the performance period.

(b) GAO REPORT.—

(1) REPORT REQUIRED.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Government Oversight and Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report with recommendations for executive agencies (other than the Office of Man-

1 agement and Budget) to more fairly, effectively, ex-
2 peditiously, transparently, and apolitically oversee
3 studies conducted under the Office of Management
4 and Budget Circular A-76 or any other related ad-
5 ministrative regulation, directive, or policy, and en-
6 force the rules that govern those studies.

7 (2) CLARIFICATION OF SCOPE OF REPORT.—
8 This subsection does not require the Government
9 Accountability Office to examine the rule-making au-
10 thority of the Office of Management and Budget
11 with regard to OMB Circular A-76 or any other re-
12 lated administrative regulation, directive, or policy.

13 (3) CONSULTATION WITH AGENCIES AND
14 STAKEHOLDERS.—In preparing the report under
15 this subsection, the Comptroller General of the
16 United States should consult with personnel of the
17 Office of Management and Budget, staffing and
18 manpower personnel of other executive agencies, per-
19 sonnel in the offices of other agencies' inspectors
20 general, and representatives from Federal employee
21 unions and contractor associations.

1 **SEC. 13. ESTABLISHMENT OF TEMPORARY SUSPENSION ON**
2 **USE OF OMB CIRCULAR A-76 PROCESS UNTIL**
3 **REFORMS REQUIRED IN THIS ACT HAVE**
4 **BEEN SUBSTANTIALLY IMPLEMENTED.**

5 No study or public-private competition regarding the
6 conversion to contractor performance of any function per-
7 formed by Federal employees pursuant to Office of Man-
8 agement and Budget Circular A-76 or any other adminis-
9 trative regulation, directive, or policy, may be prepared
10 for, announced, undertaken, continued, or finished until
11 the Director of the Office of Management and Budget, in
12 consultation with the inspectors general of the 5 largest
13 Federal departments in terms of annual budgets as of the
14 date of the enactment of this Act, determines that—

15 (1) at least three-fourths of all executive agen-
16 cies have made substantial progress in the imple-
17 mentation of all the reforms—

18 (A) required in sections 6, 7, 8, and 9 of
19 this Act; and

20 (B) enacted pursuant to section 739 of the
21 Financial Services and General Government Ap-
22 propriations Act, 2008 (division D of Public
23 Law 110-161; 31 U.S.C. 501 note), under
24 which each covered executive agency is required
25 to devise and implement guidelines and proce-
26 dures to ensure that consideration is given to

1 using, on a regular basis, Federal employees to
2 perform new functions as well as functions that
3 are currently performed by contractors; and
4 (2) the Office of Management and Budget has
5 implemented the reforms to the OMB Circular A-76
6 described under section 12.

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