

Calendar No. 667

115TH CONGRESS
2D SESSION**S. 3137****[Report No. 115–381]**

To provide for reforming agencies of the Federal Government to improve efficiency and effectiveness.

IN THE SENATE OF THE UNITED STATES

JUNE 26, 2018

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

NOVEMBER 26, 2018

Reported by Mr. JOHNSON, with amendments

[Omit the part struck through and insert the part printed in *italie*]**A BILL**

To provide for reforming agencies of the Federal Government to improve efficiency and effectiveness.

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 “Reforming Government
5 Act of 2018”.

1 **SEC. 2. PROVIDING CONSOLIDATION AUTHORITY.**

2 (a) DEFINITIONS.—Section 902 of title 5, United
3 States Code, is amended—

4 (1) by redesignating paragraph (2) as para-
5 graph (4) and moving that paragraph to appear
6 after paragraph (3);

7 (2) by inserting after paragraph (1) the fol-
8 lowing:

9 “(2) ‘efficiency-enhancing plan’ means a reorga-
10 nization plan that the Director of the Office of Man-
11 agement and Budget determines will result in, or is
12 likely to result in—

13 “(A) a decrease in the number of agencies;

14 or

15 “(B) cost savings in performing the func-
16 tions that are the subject of that plan;”;

17 (3) in paragraph (3), by striking the period and
18 inserting “; and”; and

19 (4) in paragraph (4), as so redesignated—

20 (A) by striking “or abolition” and insert-
21 ing “abolition, or creation”; and

22 (B) by striking “; and” and inserting a pe-
23 riod.

24 (b) MODERNIZING REORGANIZATION AUTHORITY.—

25 (1) LIMITATION ON POWERS.—Section 905(a)
26 of title 5, United States Code, is amended—

1 (A) by amending paragraph (1) to read as
 2 follows:

3 “(1) abolishing or transferring an independent
 4 regulatory agency, or all the functions thereof, or
 5 consolidating 2 or more independent regulatory
 6 agencies, or all the functions thereof;”;

7 (B) by striking paragraph (5); and

8 (C) by redesignating paragraphs (6) and
 9 (7) as paragraphs (5) and (6), respectively.

10 ~~(2) REORGANIZATION PLANS.—Section 903(a)~~
 11 ~~of title 5, United States Code, is amended—~~

12 ~~(A) in paragraph (5), by striking “or”;~~

13 ~~(B) in paragraph (6), by striking the pe-~~
 14 ~~riod and inserting “; or”;~~ and

15 ~~(C) by inserting after paragraph (6) the~~
 16 ~~following:~~

17 ~~“(7) the creation of a new agency that is not~~
 18 ~~a component or part of an existing executive depart-~~
 19 ~~ment or independent agency.”~~

20 ~~(2) REORGANIZATION PLANS.—Chapter 9 of title~~
 21 ~~5, United States Code, is amended—~~

22 ~~(A) in section 903—~~

23 ~~(i) in the section heading by inserting~~
 24 ~~“; **permissible actions**” after “**Reor-**~~
 25 ~~**ganization plans**”;~~

1 (ii) in subsection (a)—

2 (I) by striking “(a) Whenever”
3 and inserting “Whenever”;

4 (II) in paragraph (5), by striking
5 “or”;

6 (III) in paragraph (6), by strik-
7 ing the period and inserting “; or”;

8 (IV) by inserting after paragraph
9 (6) following:

10 “(7) the creation of a new agency that is not a
11 component or part of an existing executive depart-
12 ment or independent agency.”; and

13 (V) by striking the matter fol-
14 lowing paragraph (7), as so added;
15 and

16 (iii) by striking subsections (b) and
17 (c); and

18 (B) in section 904—

19 (i) by striking the section heading and
20 inserting “**Contents of reorganiza-**
21 **tion plans; amendment proce-**
22 **dures**”;

23 (ii) by striking the matter preceding
24 paragraph (1) and inserting the following:

1 “(a) *A reorganization plan prepared by the President*
 2 *under section 903—*”

3 (iii) *in subsection (a), as so added—*

4 (I) *by redesignating paragraphs*
 5 (1) *and (2) as paragraphs (9) and*
 6 (10), *respectively;*

7 (II) *in paragraph (4), by striking*
 8 “*and*” *at the end;*

9 (III) *in paragraph (5), by strik-*
 10 *ing the period at the end and inserting*
 11 *a semicolon;*

12 (IV) *by redesignating paragraphs*
 13 (3), (4), *and (5) as paragraphs (6),*
 14 (7), *and (8), respectively;*

15 (V) *by inserting after the matter*
 16 *preceding paragraph (9), as so redesign-*
 17 *ated, the following:*

18 “(1) *shall be transmitted by the President (bear-*
 19 *ing an identification number) to Congress together*
 20 *with a declaration that, with respect to each reorga-*
 21 *nization included in the plan, the President has*
 22 *found, in consultation with the affected agencies, that*
 23 *the reorganization is necessary to carry out a policy*
 24 *set forth in section 901(a);*

1 “(2) shall be delivered to both Houses on the
2 same day and to each House while it is in session;

3 “(3) shall specify, with respect to each transfer,
4 consolidation, coordination, authorization, abolition,
5 or creation of a function included in the plan, the
6 statutory authority for the exercise of the function;

7 “(4) shall—

8 “(A) provide a financial analysis esti-
9 mating any reduction or increase in expendi-
10 tures (itemized so far as practicable) associated
11 with maximizing the net benefits of implementa-
12 tion of the plan, using both quantitative and
13 qualitative measures, according to cost-benefit
14 analysis practices set by Executive orders and
15 the Office of Management and Budget; and

16 “(B) describe any improvements in man-
17 agement, delivery of Federal services, or execu-
18 tion of the laws and any increases in efficiency
19 of Government operations that are expected to be
20 realized as a result of the reorganizations in-
21 cluded in the plan;

22 “(5) shall include an implementation section
23 that shall—

24 “(A) describe in detail—

1 “(i) the actions necessary or planned
2 to complete the reorganization;

3 “(ii) the anticipated nature and sub-
4 stance of any orders, directives, or other ad-
5 ministrative or operational actions that are
6 expected to be required for completing or
7 implementing the reorganization; and

8 “(iii) any preliminary actions that
9 have been taken in the implementation
10 process;

11 “(B) contain a projected timetable for com-
12 pletion of the implementation process; and

13 “(C) describe how the affected agencies and
14 the Office of Management and Budget will meas-
15 ure performance of the implementation of the re-
16 organization plan;”;

17 (VI) in paragraph (7), as so re-
18 designated—

19 (aa) by striking “such unex-
20 pended” and inserting “unex-
21 pended”; and

22 (bb) by striking “reorganiza-
23 tion, as the President” and insert-
24 ing the following: “reorganization,
25 to the extent—

1 “(A) with respect to unexpended balances,
 2 the balances will be used for the purposes for
 3 which the appropriation was originally made;
 4 and

5 “(B) the President”;

6 (VII) by transferring paragraphs
 7 (9) and (10), as so redesignated, to ap-
 8 pear after paragraph (8), as so redesign-
 9 nated;

10 (VIII) in paragraph (9), as redes-
 11 ignated and transferred, by inserting
 12 “and” at the end;

13 (IX) in paragraph (10), as redes-
 14 ignated and transferred, by striking
 15 the semicolon and inserting a period;
 16 and

17 (X) by striking the matter fol-
 18 lowing paragraph (10), as redesignated
 19 and transferred; and

20 (iv) by adding at the end the following:

21 “(b) Not later than 30 days after the date of the re-
 22 quest, the President shall submit to Congress any back-
 23 ground or other information requested by Congress in con-
 24 nection with its consideration of a reorganization plan.

1 “(c) *Any time during the period of 60 calendar days*
2 *of continuous session of Congress after the date on which*
3 *a reorganization plan is transmitted to Congress, unless a*
4 *resolution described in section 909 relating to the plan has*
5 *been ordered reported in either House, the President may*
6 *make amendments or modifications to the plan, consistent*
7 *with sections 903 and 905 and this section, which modifica-*
8 *tions or revisions shall thereafter be treated as a part of*
9 *the reorganization plan originally transmitted and shall*
10 *not affect the time limits otherwise provided for in this*
11 *chapter. The President may withdraw the plan any time*
12 *before the end of the period of 90 calendar days of contin-*
13 *uous session of Congress following the date on which the*
14 *plan is submitted to Congress.*

15 “(d) *A reorganization plan transmitted by the Presi-*
16 *dent in accordance with subsection (a)(10)—*

17 “(1) *may not eliminate an enforcement function*
18 *or statutory program;*

19 “(2) *may provide that the head of an agency be*
20 *an individual or a commission or board with more*
21 *than 1 member; and*

22 “(3) *in the case of an appointment of the head*
23 *of such an agency—*

24 “(A) *may not fix the term of office at more*
25 *than 4 years;*

1 “(B) may not fix the rate of basic pay to
2 be in excess of the amount found by the President
3 to be applicable to comparable officers in the ex-
4 ecutive branch; and

5 “(C) if the appointment is not to a position
6 in the competitive service, shall require appoint-
7 ment to the position to be by the President, by
8 and with the advice and consent of the Senate.

9 “(e) Not more than 3 reorganization plans may be
10 pending before Congress at 1 time.”.

11 (3) *TECHNICAL AND CONFORMING AMEND-*
12 *MENTS.—Chapter 9 of title 5, United States Code, is*
13 *amended—*

14 (A) in section 910(a), by striking “903”
15 and inserting “904”; and

16 (B) in the table of sections, by striking the
17 items relating to sections 903 and 904 and in-
18 serting the following:

 “903. Reorganization plans; permissible actions.

 “904. Contents of reorganization plans; amendment procedures.”.

19 **SEC. 3. DURATION AND SCOPE OF AUTHORITY.**

20 (a) **IN GENERAL.**—~~Section 905(b)~~

21 (1) *TRANSMISSION TO CONGRESS.*—*Section*
22 *905(b) of title 5, United States Code, is amended by*
23 striking “if the plan” and all that follows and insert-
24 ing the following: “if the plan is—

1 “(1) transmitted to Congress (in accordance
2 with ~~section 903(b)~~ *section 904*) on or before the
3 date that is 2 years after the date of enactment of
4 the Reforming Government Act of 2018; and

5 “(2) an efficiency-enhancing plan.”.

6 (2) *APPROVAL.—Section 905 of title 5, United*
7 *States Code, is amended by adding at the end the fol-*
8 *lowing:*

9 “(c) *Any reorganization plan prepared by the Presi-*
10 *dent (in accordance section 903 and subsection (a) of this*
11 *section) that purports to advance the policies described in*
12 *section 901(a) shall be subject to the approval process under*
13 *this chapter, absent an independent statutory authority to*
14 *implement the plan. If the President implements a reorga-*
15 *nization plan that advances policies described in section*
16 *901(a) and relies on an independent statutory authority,*
17 *the President shall transmit to Congress an explanation of*
18 *the plan and its independent statutory authority consistent*
19 *with the requirements of sections 903 and 904 and this sec-*
20 *tion, which Congress may use, at its discretion, to conduct*
21 *oversight of the reorganization plan for any purpose con-*
22 *sistent with the mandates of Congress under Article I of*
23 *the Constitution of the United States.*”.

1 (b) *EFFECTIVE DATE AND PUBLICATION OF REORGA-*
 2 *NIZATION PLANS.*—Section 906 of title 5, United States
 3 Code, is amended by adding at the end the following:

4 “(e) Not later than 1 year after the date on which a
 5 reorganization plan takes effect, and upon request by any
 6 Member of Congress, the President shall transmit to Con-
 7 gress a report describing in detail—

8 “(1) the steps taken to implement the reorganiza-
 9 tion plan;

10 “(2) any improvements to performance that oc-
 11 curred as a result of implementation of the reorga-
 12 nization plan;

13 “(3) the costs expended and amounts saved dur-
 14 ing the period beginning on the date on which the re-
 15 organization plan took effect and ending on the date
 16 on which the report is submitted; and

17 “(4) the costs projected to be expended and
 18 amounts projected to be saved during—

19 “(A) the period beginning on the date on
 20 which the reorganization plan took effect and
 21 ending on the date that is 5 years after that ef-
 22 fective date; and

23 “(B) the period beginning on the date on
 24 which the reorganization plan took effect and

1 *ending on the date that is 10 years after that ef-*
 2 *fective date.”.*

3 ~~(b)~~(c) EXERCISE OF RULEMAKING POWER.—Section
 4 908(1) of title 5, United States Code, is amended by strik-
 5 ing “*section 903(b) of this chapter*) on or before December
 6 31, 1984” and inserting “ ~~title~~ *section 904*) on or before
 7 the date that is 2 years after the date of enactment of
 8 the Reforming Government Act of 2018”.

9 ~~(c)~~(d) TERMS OF RESOLUTION.—Section 909 of title
 10 5, United States Code, is amended—

11 (1) by striking “the matter after the resolving
 12 clause” and all that follows through “such modifica-
 13 tions” and inserting “the matter after the resolving
 14 clause of which is as follows: ‘That Congress ap-
 15 proves the reorganization plan numbered
 16 _____ transmitted to Congress by the Presi-
 17 dent on _____.’, and includes
 18 such modifications”; and

19 ~~(2) by striking “chapter” and inserting “title”.~~

20 (2) *by striking “section 903(c) of this chapter”*
 21 *and inserting “section 904(c)”.*

22 (e) INTRODUCTION AND REFERENCE OF RESOLU-
 23 TION.—Section 910 of title 5, United States Code, is amend-
 24 ed—

25 (1) *in subsection (a)—*

1 (A) by striking “Government Operations
2 Committee of the House” and inserting “Com-
3 mittee on Oversight and Government Reform of
4 the House of Representatives”; and

5 (B) by striking “Governmental Affairs
6 Committee of the Senate” and inserting “Com-
7 mittee on Homeland Security and Governmental
8 Affairs of the Senate”;

9 (2) in subsection (b), by striking “Committee on
10 Governmental Affairs of the Senate and the Com-
11 mittee on Government Operations of the House” and
12 inserting “Committee on Homeland Security and
13 Governmental Affairs of the Senate and the Com-
14 mittee on Oversight and Government Reform of the
15 House of Representatives”; and

16 (3) by adding at the end the following:

17 “(c)(1) After a resolution with respect to a reorganiza-
18 tion plan is referred to committee under subsection (b), the
19 Congressional Budget Office shall perform a financial anal-
20 ysis of the reorganization plan.

21 “(2) The 75-day period under subsection (b) and sec-
22 tion 911 shall be tolled and it shall not be in order in the
23 Senate or House of Representatives for a committee to re-
24 port or for a Member to move to discharge a resolution until
25 the earlier of—

1 “(A) 45 days after the date on which the resolu-
2 tion was referred to the committee; or

3 “(B) the date on which the committee receives the
4 financial analysis of the Congressional Budget Of-
5 fice.”.

6 (f) *PROCEDURE AFTER REPORT OR DISCHARGE OF*
7 *COMMITTEE, DEBATE, VOTE ON FINAL PASSAGE.*—Section
8 912 of title 5, United States Code, is amended—

9 (1) in subsection (b)—

10 (A) in the first sentence, by striking “ten”
11 and inserting “30”; and

12 (B) in the second sentence, by striking “is
13 in order and not debatable” and inserting “is
14 not in order”; and

15 (2) by striking subsection (c) and inserting the
16 following:

17 “(c)(1)(A) In the Senate, immediately following the
18 conclusion of the period of debate on a resolution relating
19 to a reorganization plan under subsection (b), including
20 any debate on any motions and appeals, and a single
21 quorum call at the conclusion of the debate, if requested in
22 accordance with the rules of the Senate, the Senate shall
23 vote on passage of the resolution.

24 “(B) A vote under subparagraph (A) shall be agreed
25 to only upon the affirmative vote of three-fifths of the Mem-

1 *bers, duly chosen and sworn, unless the resolution is cospon-*
 2 *sored by not less than 5 Senators who are members of, or*
 3 *caucus with, the party in the minority in the Senate and*
 4 *by not less than 5 Senators who are members of, or caucus*
 5 *with, the party in the majority in the Senate, in which*
 6 *case the resolution shall be agreed to upon an affirmative*
 7 *vote of a majority of those voting, a quorum being present.*

8 *“(2) In the House of Representatives, immediately fol-*
 9 *lowing the conclusion of the debate on the resolution with*
 10 *respect to a reorganization plan, and a single quorum call*
 11 *at the conclusion of the debate if requested in accordance*
 12 *with the rules of the House of Representatives, the House*
 13 *of Representatives shall vote on passage of the resolution.”.*

14 **SEC. 4. SEVERABILITY.**

15 If any provision of this Act, an amendment made by
 16 this Act, or the application of such provision or amend-
 17 ment to any person or circumstance is held to be unconsti-
 18 tutional, the remainder of this Act, the amendments made
 19 by this Act, and the application of the provisions of such
 20 to any person or circumstance shall not be affected there-
 21 by.

Calendar No. 667

115TH CONGRESS
2D Session

S. 3137

[Report No. 115-381]

A BILL

To provide for reforming agencies of the Federal Government to improve efficiency and effectiveness.

NOVEMBER 26, 2018

Reported with amendments