

their lands similar to Native people here and in Alaska. The Native Hawaiians here have similar needs to those whom I just explained.

The cost of housing in Hawaii is a significant barrier for Native Hawaiians. Reauthorizing the Native Hawaiian provisions will provide stability and assurances to keep housing programs for Native Hawaiians moving forward. For these reasons, I object to that modification.

The PRESIDING OFFICER. There is an objection to the modification.

Is there a further objection to the original request?

Mr. LEE. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. TESTER. I am disappointed that we cannot pass this legislation. This bill would not only reauthorize Indian housing programs with HUD but would streamline cumbersome environmental requirements and allow for more flexibility to build more modern, sustainable housing. This legislation would also reauthorize housing programs, as I said, for the Native Hawaiians, where the need exists in a big way.

I should also mention that the exact same provision was included in a bill that passed the Republican-controlled House of Representatives last week on a voice vote.

Finally, this legislation will make the HUD-VASH Program available to tribally designated housing authorities through the Indian housing block grant. These funds will be specifically used for housing assistance for homeless, Native veterans, as well as those who are at risk of becoming homeless.

As many of my colleagues know, American Indians serve at higher rates per capita than any other population in the military and continue to be one of the most underserved groups of veterans.

With all these good things in it, I am extremely disappointed that we cannot get this bill across the finish line. Housing Native people should be a priority for Congress as we wrap up this session.

It is frustrating to see a bill get through the House only to have potentially a couple of Senators here hoping to get a better report card from a group such as the Heritage Foundation.

I am sorry we cannot pass the bill today. This is disappointing for any country and the Senate. I am more than willing to talk about germane changes, but the bottom line is this: Many folks here do not understand the trust responsibilities we have to our Native American people. If we are going to start carving folks out such as the Native Hawaiians, we are going to be making two classes of Native American people in this country. I don't think that is fair to them, nor do I think it is fair to this country.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

## FOIA IMPROVEMENT ACT OF 2014

Mr. LEAHY. Mr. President, I am about to propound a unanimous consent request, but I should explain why. It is on the Freedom of Information Act, one of our Nation's most important laws. For nearly 50 years, FOIA has given Americans a way to access government information, ensuring their right to know what their government is doing. Today, the Senate is now poised to build on that important legacy with passage of the bipartisan Leahy-Cornyn FOIA Improvement Act.

The FOIA Improvement Act will codify what the President laid out in his historic executive order in 2009. This legislation will require Federal agencies to adopt a "Presumption of Openness", and make it a priority of the people's interest in what their government is doing. Our bill will reduce the overuse of exemptions to withhold information where there is no foreseeable harm. It will make information available for public inspection, and make frequently requested documents available online. It will provide the Office of Government Information Services (OGIS), with additional independence and authority to carry out its work. I believe this legislation reaffirms the fundamental premise of FOIA, that government information belongs to all Americans.

Passage of FOIA will help open the government to more than 300 million Americans whom the government is supposed to serve. The bill is supported by 70 public interest groups that advocate for government transparency. The Sunshine in Government Initiative said the Leahy-Cornyn bill "strengthens government transparency by limiting the ability of agencies to hide decades old documents from the public."

We reported this legislation out of the Judiciary Committee to the full Senate with unanimous support. Ranking Member GRASSLEY said the FOIA Improvement Act "opens wide the curtains and provides more sunlight on the Federal Government." Senator CORNYN has been my partner for many years on government transparency and noted our bipartisan efforts "open up the government and make it more consumer and customer friendly." I thank them both for their work on this legislation.

Today I ask that the Senate pass S. 2520, the bipartisan FOIA Improvement Act of 2014. We often talk about the need for government transparency, and many also note how rare it is that Democrats and Republicans can come together on any legislation. Today, we can accomplish both of those things but time is running out. We drafted this bill in a bipartisan fashion after a long and thoughtful process of consultation. It has broad support from a range of stakeholders.

I urge all Senators to support passage of this legislation today, so it can be taken up by the House, and sent to the President to be signed into law before the end of this Congress.

Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 605, S. 2520.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2520) to improve the Freedom of Information Act.

The Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

S. 2520

### SECTION 1. SHORT TITLE.

*This Act may be cited as the "FOIA Improvement Act of 2014".*

### SEC. 2. AMENDMENTS TO FOIA.

*Section 552 of title 5, United States Code, is amended—*

*(1) in subsection (a)—*

*(A) in paragraph (2)—*

*(i) in the matter preceding subparagraph (A), by striking "for public inspection and copying" and inserting "for public inspection in an electronic format";*

*(ii) by striking subparagraph (D) and inserting the following:*

*"(D) copies of all records, regardless of form or format—*

*"(i) that have been released to any person under paragraph (3); and*

*"(ii)(I) that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or*

*"(II) that have been requested not less than 3 times; and"; and*

*(iii) in the undesignated matter following subparagraph (E), by striking "public inspection and copying current" and inserting "public inspection in an electronic format current";*

*(B) in paragraph (4)(A), by striking clause (viii) and inserting the following:*

*"(viii)(I) Except as provided in subclause (II), an agency shall not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) under this subparagraph if the agency has failed to comply with any time limit under paragraph (6).*

*"(II)(aa) If an agency has determined that unusual circumstances apply (as the term is defined in paragraph (6)(B)) and the agency provided a timely written notice to the requester in accordance with paragraph (6)(B), a failure described in subclause (I) is excused for an additional 10 days. If the agency fails to comply with the extended time limit, the agency may not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees).*

*"(bb) If an agency has determined that unusual circumstances apply and more than 50,000 pages are necessary to respond to the request, an agency may charge search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) if the agency has provided a timely written notice to the requester in accordance with paragraph (6)(B) and the agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with paragraph (6)(B)(ii).*

*"(cc) If a court has determined that exceptional circumstances exist (as that term is defined in paragraph (6)(C)), a failure described in subclause (I) shall be excused for the length of time provided by the court order.";*

(C) in paragraph (6)—

(i) in subparagraph (A)(i), by striking “making such request” and all that follows through “determination; and” and inserting the following: “making such request of—”

“(I) such determination and the reasons therefor;

“(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and

“(III) in the case of an adverse determination—

“(aa) the right of such person to appeal to the head of the agency, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and

“(bb) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services; and”;

(ii) in subparagraph (B)(ii), by striking “the agency.” and inserting “the agency, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services.”; and

(D) by adding at the end the following:

“(B)(A) An agency—

“(i) shall—

“(I) withhold information under this section only if—

“(aa) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b) or other provision of law; or

“(bb) disclosure is prohibited by law; and

“(II)(aa) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and

“(bb) take reasonable steps necessary to segregate and release nonexempt information; and

“(ii) may not—

“(I) withhold information requested under this section merely because the agency can demonstrate, as a technical matter, that the records fall within the scope of an exemption described in subsection (b); or

“(II) withhold information requested under this section merely because disclosure of the information may be embarrassing to the agency or because of speculative or abstract concerns.

“(B) Nothing in this paragraph requires disclosure of information that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure under subsection (b)(3).”;

(2) in subsection (b), by amending paragraph (5) to read as follows:

“(5) inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, if the requested record or information was created less than 25 years before the date on which the request was made;”;

(3) in subsection (e)

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting “and to the Director of the Office of Government Information Services” after “United States”;

(ii) in subparagraph (N), by striking “and” at the end;

(iii) in subparagraph (O), by striking the period at the end and inserting a semicolon; and

(iv) by adding at the end the following:

“(P) the number of times the agency denied a request for records under subsection (c); and

“(Q) the number of records that were made available for public inspection in an electronic format under subsection (a)(2).”;

(B) by striking paragraph (3) and inserting the following:

“(3) Each agency shall make each such report available for public inspection in an electronic format. In addition, each agency shall make the raw statistical data used in each report available in a timely manner for public inspection in

an electronic format, which shall be made available—

“(A) without charge, license, or registration requirement;

“(B) in an aggregated, searchable format; and

“(C) in a format that may be downloaded in bulk.”;

(C) in paragraph (4)—

(i) by striking “Government Reform and Oversight” and inserting “Oversight and Government Reform”;

(ii) by inserting “Homeland Security and” before “Governmental Affairs”; and

(iii) by striking “April” and inserting “March”; and

(D) by striking paragraph (6) and inserting the following:

“(6)(A) The Attorney General of the United States shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Judiciary of the Senate, and the President a report on or before March 1 of each calendar year, which shall include for the prior calendar year—

“(i) a listing of the number of cases arising under this section;

“(ii) a listing of—

“(I) each subsection, and any exemption, if applicable, involved in each case arising under this section;

“(II) the disposition of each case arising under this section; and

“(III) the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4); and

“(iii) a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

“(B) The Attorney General of the United States shall make—

“(i) each report submitted under subparagraph (A) available for public inspection in an electronic format; and

“(ii) the raw statistical data used in each report submitted under subparagraph (A) available for public inspection in an electronic format, which shall be made available—

“(I) without charge, license, or registration requirement;

“(II) in an aggregated, searchable format; and

“(III) in a format that may be downloaded in bulk.”;

(4) in subsection (g), in the matter preceding paragraph (1), by striking “publicly available upon request” and inserting “available for public inspection in an electronic format”;

(5) in subsection (h)—

(A) in paragraph (1), by adding at the end the following: “The head of the Office shall be the Director of the Office of Government Information Services.”;

(B) in paragraph (2), by striking subparagraph (C) and inserting the following:

“(C) identify procedures and methods for improving compliance under this section.”;

(C) by striking paragraph (3) and inserting the following:

“(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation and may issue advisory opinions at the discretion of the Office or upon request of any party to a dispute.”; and

(D) by adding at the end the following:

“(4)(A) Not less frequently than annually, the Director of the Office of Government Information Services shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President—

“(i) a report on the findings of the information reviewed and identified under paragraph (2);

“(ii) a summary of the activities of the Office of Government Information Services under paragraph (3), including—

“(I) any advisory opinions issued; and

“(II) the number of times each agency engaged in dispute resolution with the assistance of the Office of Government Information Services or the FOIA Public Liaison; and

“(iii) legislative and regulatory recommendations, if any, to improve the administration of this section.

“(B) The Director of the Office of Government Information Services shall make each report submitted under subparagraph (A) available for public inspection in an electronic format.

“(C) The Director of the Office of Government Information Services shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States, including the Department of Justice, the Archivist of the United States, or the Office of Management and Budget before submitting to Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments, if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

“(5) The Director of the Office of Government Information Services may directly submit additional information to Congress and the President as the Director determines to be appropriate.

“(6) Not less frequently than annually, the Office of Government Information Services shall conduct a meeting that is open to the public on the review and reports by the Office and shall allow interested persons to appear and present oral or written statements at the meeting.”;

(6) by striking subsections (i), (j), and (k), and inserting the following:

“(i) The Government Accountability Office shall—

“(1) not later than 1 year after the date of enactment of the FOIA Improvement Act of 2014 and every 2 years thereafter, conduct audits of 3 or more administrative agencies on compliance with and implementation of the requirements of this section and issue reports detailing the results of such audits;

“(2) not later than 1 year after the date of enactment of the FOIA Improvement Act of 2014 and every 2 years thereafter, issue a report cataloging the number of exemptions described in paragraphs (3) and (5) of subsection (b) and the use of such exemptions by each agency;

“(3) not later than 1 year after the date of enactment of the FOIA Improvement Act of 2014, conduct a study on the methods Federal agencies use to reduce the backlog of requests under this section and issue a report on the effectiveness of those methods; and

“(4) submit copies of all reports and audits described in this subsection to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on the Judiciary of the Senate.

“(j)(1) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

“(2) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—

“(A) have agency-wide responsibility for efficient and appropriate compliance with this section;

“(B) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency’s performance in implementing this section;

“(C) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

“(D) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency’s performance in implementing this section;

“(E) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency’s handbook issued under subsection (g), and the agency’s annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply;

“(F) offer training to agency staff regarding their responsibilities under this section;

“(G) serve as the primary agency liaison with the Office of Government Information Services and the Office of Information Policy; and

“(H) designate 1 or more FOIA Public Liaisons.

“(3) The Chief FOIA Officer of each agency shall review, not less frequently than annually, all aspects of the administration of this section by the agency to ensure compliance with the requirements of this section, including—

“(A) agency regulations;

“(B) disclosure of records required under paragraphs (2) and (8) of subsection (a);

“(C) assessment of fees and determination of eligibility for fee waivers;

“(D) the timely processing of requests for information under this section;

“(E) the use of exemptions under subsection (b); and

“(F) dispute resolution services with the assistance of the Office of Government Information Services or the FOIA Public Liaison.

“(k)(1) There is established in the executive branch the Chief FOIA Officers Council (referred to in this subsection as the ‘Council’).

“(2) The Council shall be comprised of the following members:

“(A) The Deputy Director for Management of the Office of Management and Budget.

“(B) The Director of the Office of Information Policy at the Department of Justice.

“(C) The Director of the Office of Government Information Services.

“(D) The Chief FOIA Officer of each agency.

“(E) Any other officer or employee of the United States as designated by the Co-Chairs.

“(3) The Director of the Office of Information Policy at the Department of Justice and the Director of the Office of Government Information Services shall be the Co-Chairs of the Council.

“(4) The Administrator of General Services shall provide administrative and other support for the Council.

“(5)(A) The duties of the Council shall include the following:

“(i) Develop recommendations for increasing compliance and efficiency under this section.

“(ii) Disseminate information about agency experiences, ideas, best practices, and innovative approaches related to this section.

“(iii) Identify, develop, and coordinate initiatives to increase transparency and compliance with this section.

“(iv) Promote the development and use of common performance measures for agency compliance with this section.

“(B) In performing the duties described in subparagraph (A), the Council shall consult on a regular basis with members of the public who make requests under this section.

“(6)(A) The Council shall meet regularly and such meetings shall be open to the public unless the Council determines to close the meeting for reasons of national security or to discuss information exempt under subsection (b).

“(B) Not less frequently than annually, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present oral and written statements to the Council.

“(C) Not later than 10 business days before a meeting of the Council, notice of such meeting shall be published in the Federal Register.

“(D) Except as provided in subsection (b), the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to

or prepared for or by the Council shall be made publicly available.

“(E) Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Council. The minutes shall be redacted as necessary and made publicly available.”; and

(7) by adding at the end the following:

“(m)(1) The Director of the Office of Management and Budget, in consultation with the Attorney General, shall ensure the operation of a consolidated online request portal that allows a member of the public to submit a request for records under subsection (a) to any agency from a single website. The portal may include any additional tools the Director of the Office of Management and Budget finds will improve the implementation of this section.

“(2) This subsection shall not be construed to alter the power of any other agency to create or maintain an independent online portal for the submission of a request for records under this section. The Director of the Office of Management and Budget shall establish standards for interoperability between the portal required under paragraph (1) and other request processing software used by agencies subject to this section.”.

### SEC. 3. REVIEW AND ISSUANCE OF REGULATIONS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the head of each agency (as defined in section 551 of title 5, United States Code) shall review the regulations of such agency and shall issue regulations on procedures for the disclosure of records under section 552 of title 5, United States Code, in accordance with the amendments made by section 2.

(b) REQUIREMENTS.—The regulations of each agency shall include procedures for engaging in dispute resolution through the FOIA Public Liaison and the Office of Government Information Services.

### SEC. 4. PROACTIVE DISCLOSURE THROUGH RECORDS MANAGEMENT.

Section 3102 of title 44, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4); and

(2) by inserting after paragraph (1) the following:

“(2) procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format.”.

### SEC. 5. NO ADDITIONAL FUNDS AUTHORIZED.

No additional funds are authorized to carry out the requirements of this Act or the amendments made by this Act. The requirements of this Act and the amendments made by this Act shall be carried out using amounts otherwise authorized or appropriated.

Mr. LEAHY. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be agreed to; the bill, as amended, be read a third time and passed; and the motion to reconsider be laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee-reported amendment in the nature of a substitute was agreed to.

The bill (S. 2520), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. LEAHY. Mr. President, I see other Senators seeking the floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

### McFERRAN NOMINATION

Mr. HARKIN. Mr. President, I speak in support of the nomination of Lauren McFerran to fill an approaching vacancy on the National Labor Relations Board. I was heartened by the recent cloture vote in support of the McFerran nomination and urge my colleagues in just a short while to vote in favor of her confirmation.

Ms. McFerran is well known to most of us as a senior staffer on the HELP Committee, where she has long served as chief labor counsel and more recently as deputy staff director. She has been nominated to fill a vacancy that will result from the departure later this month of a current Board Member, Nancy Schiffer. I would like to take this opportunity to publicly thank Ms. Schiffer for her dedicated service to the National Labor Relations Board. She has been a highly respected Board Member and I wish her every success in her future endeavors.

I also want to say a word about the previous nominee to the Board, Sharon Block, whose nomination was withdrawn at the insistence of Senate Republicans. Although I have no doubt that Ms. McFerran will serve with fairness and distinction, it is unfortunate that Sharon Block, a dedicated public servant, will not have the opportunity to serve further on the National Labor Relations Board. Ms. Block was an extraordinarily qualified nominee who was widely respected by both Democrats and Republicans alike. Ms. Block’s nomination was withdrawn as a result of circumstances wholly beyond her control. But her qualifications and experience are undiminished and untarnished by the circumstances that led to the withdrawal of her nomination.

The National Labor Relations Board is an agency that is absolutely critical to our country, to our economy, and to our middle class. Over 75 years ago, Congress enacted the National Labor Relations Act, guaranteeing American workers the right to form and join a union and to bargain for a better life. That act sets forth a national policy to encourage collective bargaining—to encourage collective bargaining. That is the national policy of this government, and has been since 1935.

Let me read what the act specifically states:

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.