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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R. _____

To amend section 1078 of the National Defense Authorization Act for Fiscal Year 2018 to increase the effectiveness of the Technology Modernization Fund, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. MACE introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend section 1078 of the National Defense Authorization Act for Fiscal Year 2018 to increase the effectiveness of the Technology Modernization Fund, and for other purposes.

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 “Modernizing Govern-
5 ment Technology Reform Act of 2023”.

1 **SEC. 2. REALIGNING USE OF FUNDS WITH ORIGINAL CON-**
2 **GRESSIONAL INTENT.**

3 Section 1078 of the National Defense Authorization
4 Act for Fiscal Year 2018 (Public Law 115–91; 40 U.S.C.
5 11301 note) is amended—

6 (1) in subsection (b)—

7 (A) by amending paragraph (3) to read as
8 follows:

9 “(3) USE OF FUNDS.—

10 “(A) IN GENERAL.—The Administrator
11 shall, in accordance with recommendations from
12 the Board, use amounts in the Fund for the fol-
13 lowing:

14 “(i) To transfer such amounts, to re-
15 main available until expended, to the head
16 of an agency for the acquisition, procure-
17 ment, and operation of information tech-
18 nology, or the development of information
19 technology when more efficient and cost ef-
20 fective, to—

21 “(I) modernize, retire, or replace
22 legacy information technology systems
23 used by the agency;

24 “(II) enhance cybersecurity and
25 privacy at the agency;

1 “(III) improve long-term effi-
2 ciency and effectiveness of agency in-
3 formation technology; or

4 “(IV) improve the ability of the
5 agency to perform the mission of the
6 agency and deliver services to the
7 public.

8 “(ii) To provide services or work per-
9 formed in support of—

10 “(I) the activities described in
11 clause (i); and

12 “(II) the Board and the Director
13 in carrying out the responsibilities de-
14 scribed in subsection (c)(2).

15 “(iii) To fund only programs, projects,
16 or activities, or to fund increases for any
17 programs, projects, or activities that have
18 not been denied or restricted by Congress.

19 “(iv) To transfer such amounts only
20 for programs, projects, or activities that
21 will be reimbursed to the Fund to the ex-
22 tent necessary to ensure total amounts in
23 the Fund are no less than the amounts
24 needed to keep the Fund operational until

1 the Fund sunsets pursuant to subsection
2 (g)(1).

3 “(B) TERMINATION OR SUSPENSION OF
4 FUNDS.—The Administrator shall, in accord-
5 ance with recommendations from the Board,
6 suspend or terminate funding for any project
7 with respect to which the head of an agency
8 provided fraudulent or misleading statements
9 about such project (including fraudulent state-
10 ments about technical design, the business case,
11 or program management with respect to the
12 project) in the application or proposal for
13 amounts from the Fund for such project.”;

14 (B) in paragraph (4)(A), by striking
15 “\$250,000,000” and inserting “\$50,000,000”
16 and by striking “fiscal years 2018 and 2019”
17 and inserting “fiscal years 2024 through
18 2030”;

19 (C) in paragraph (5)—

20 (i) in subparagraph (A)—

21 (I) in clause (i)—

22 (aa) by striking “or (B)”;

23 and

24 (bb) by striking “(3)(C)”

25 and inserting “(3)(A)(ii)”;

1 (II) in clause (ii), by striking “,
2 consistent with any applicable re-
3 programming law or guidelines of the
4 Committees on Appropriations of the
5 Senate and the House of Representa-
6 tives.”; and

7 (ii) in subparagraph (B)(i)—

8 (I) by striking “paragraph
9 (3)(C)” and inserting “paragraph
10 (3)(A)(ii)”;

11 (II) by striking “the solvency of
12 the Fund, including operating ex-
13 penses” and inserting the following:
14 “total amounts in the Fund are no
15 less than the amounts needed to keep
16 the Fund operational until the Fund
17 sunsets pursuant to subsection
18 (g)(1)”;

19 (D) in paragraph (6)—

20 (i) in subparagraph (A)—

21 (I) in the matter before clause
22 (i), by striking “subparagraphs (A)
23 and (B) of paragraph (3)” and insert-
24 ing the following: “paragraph
25 (3)(A)(i) and before any services or

1 work are provided under paragraph
2 (3)(A)(ii)(I)”;

3 (II) in clause (i)—

4 (aa) by striking “unless ap-
5 proved by the Director”; and

6 (bb) by striking “; and” and
7 inserting a semicolon;

8 (III) by redesignating clause (ii)
9 as clause (iv); and

10 (IV) by inserting after clause (i)
11 the following new clauses:

12 “(ii) which shall include terms of re-
13 payment that require the head of the agen-
14 cy to reimburse the Fund for funds trans-
15 ferred under paragraph (3)(A)(i) at a level
16 that ensures total amounts in the Fund
17 are no less than the amounts needed to
18 keep the Fund operational until the Fund
19 sunsets pursuant to subsection (g)(1);

20 “(iii) which shall include terms of re-
21 payment that require the head of the agen-
22 cy to fully reimburse the Fund for any
23 services or work provided under paragraph
24 (3)(A)(ii) in direct support of the project;”;
25 and”;

1 (ii) in subparagraph (B)—

2 (I) by striking clause (i) and in-
3 sserting the following:

4 “(i) for any funds transferred to an
5 agency under paragraph (3)(A)(i), in the
6 absence of compelling circumstances docu-
7 mented by the Administrator at the time of
8 transfer, that such funds shall be trans-
9 ferred only—

10 “(I) on an incremental basis, tied
11 to metric-based development mile-
12 stones achieved by the agency through
13 the use of rapid, iterative, develop-
14 ment processes; and

15 “(II) after the head of the agency
16 has provided the Director any infor-
17 mation the Director is required to re-
18 port pursuant to paragraph (7)(A)(i);
19 and”;

20 (II) in clause (ii)—

21 (aa) by striking “subpara-
22 graphs (A) and (B) of paragraph
23 (3)” and inserting “paragraph
24 (3)(A)(i)”; and

1 (bb) by striking “paragraph
2 (6)” and inserting “this para-
3 graph”;

4 (E) in paragraph (7)—

5 (i) in subparagraph (A)(i)—

6 (I) by inserting “the written
7 agreement entered into under para-
8 graph (6),” after “description of the
9 project,”; and

10 (II) by inserting “(including doc-
11 umented market research into com-
12 mercial products and services)” after
13 “used”;

14 (ii) in subparagraph (B)—

15 (I) in clause (i)—

16 (aa) by striking “estab-
17 lishing”; and

18 (bb) by striking “the cost
19 savings associated with the
20 projects funded both annually
21 and over the life of the acquired
22 products and services by the
23 Fund;” and inserting the fol-
24 lowing: “the amount repaid to
25 the Fund in accordance with the

1 terms established in the written
2 agreements described in para-
3 graph (6);”;

4 (II) in clause (ii)—

5 (aa) by striking “reliability
6 of the cost savings” and inserting
7 “total cost savings”; and

8 (bb) by striking the semi-
9 colon and inserting “; and”; and

10 (III) in clause (iii), by striking “;
11 and” and inserting a period; and

12 (IV) by striking clause (iv);

13 (2) in subsection (c)(2)—

14 (A) in subparagraph (A)—

15 (i) in clause (ii), by striking “the
16 greatest Governmentwide impact; and” and
17 inserting the following: “the greatest im-
18 pact on modernizing, retiring, or replacing
19 Federal legacy information technology sys-
20 tems; and”;

21 (ii) by redesignating clauses (i)
22 through (iii) as clauses (ii) through (iv),
23 respectively; and

24 (iii) by inserting before clause (ii), as
25 so redesignated, the following new clause:

1 “(i) the ability for the head of the
2 agency to ensure repayment of funds
3 transferred from the Fund to the head of
4 the agency, in accordance with subsection
5 (b);”;

6 (B) in subparagraph (D), by striking “to
7 improve or replace multiple information tech-
8 nology systems” and inserting the following: “to
9 modernize, retire, or replace legacy information
10 technology systems under subsection
11 (b)(3)(A)(i)”;

12 (C) in subparagraph (F), by inserting after
13 “subsection (b)(6)” the following: “or the iden-
14 tification of fraudulent or misleading state-
15 ments about the project (including fraudulent
16 statements about technical design, the business
17 case, or program management with respect to
18 the project) in the application or proposal for
19 amounts from the Fund for the project”;

20 (D) in subparagraph (G), by inserting
21 after “operating costs of the Fund” the fol-
22 lowing: “to ensure total amounts in the Fund
23 are no less than the amounts needed to keep
24 the Fund operational until the Fund sunsets
25 pursuant to subsection (g)(1)”;

1 (3) in subsection (c)—

2 (A) in paragraph (5)—

3 (i) in subparagraph (B) by striking
4 the period at the end and inserting “;
5 and”; and

6 (ii) by inserting after subparagraph
7 (B) the following;

8 “(C) a senior official from the Cybersecu-
9 rity and Infrastructure Security Agency of the
10 Department of Homeland Security, appointed
11 by the Director of the Cybersecurity and Infra-
12 structure Security Agency, with the approval of
13 the Director of the Office of Management and
14 Budget.”;

15 (B) in paragraph (6)(A)—

16 (i) by striking “shall be—” and in-
17 serting “shall be 4 employees of the Fed-
18 eral Government primarily having technical
19 expertise in information technology devel-
20 opment, financial management, cybersecu-
21 rity and privacy, and acquisition, ap-
22 pointed by the Director.”; and

23 (ii) by striking clauses (i) and (ii);
24 and

25 (4) in subsection (d)(2)—

1 (A) in subparagraph (A), by striking “sub-
2 section (b)(3)(A) and for products, services, and
3 acquisition vehicles funded under subsection
4 (b)(3)(B)” and inserting “subsection (b)(3)”;
5 and

6 (B) in subparagraph (C), by inserting after
7 “and reduce waste” the following: “and ensure
8 total amounts in the Fund are no less than the
9 amounts needed to keep the Fund operational
10 until the Fund sunsets pursuant to subsection
11 (g)(1)”;

12 (5) by redesignating subsections (e) and (f) as
13 subsections (f) and (g), respectively;

14 (6) by inserting after subsection (d) the fol-
15 lowing new subsection:

16 “(e) RESPONSIBILITIES OF THE FEDERAL CHIEF IN-
17 FORMATION OFFICER; AGENCY CHIEF INFORMATION OF-
18 FICERS.—

19 “(1) AGENCY INVENTORY.—An agency Chief
20 Information Officer, in coordination with stake-
21 holders and other agency officials, shall provide to
22 the Federal Chief Information Officer—

23 “(A) on or before the first September 30
24 that occurs after the date of the enactment of
25 the Modernizing Government Technology Re-

1 form Act of 2023, a list of high-risk legacy in-
2 formation technology systems used, operated, or
3 maintained by the agency, in accordance with
4 the guidance issued under paragraph (4); and

5 “(B) on or before September 30 of each
6 year after the first year in which the list is pro-
7 vided under subparagraph (A), any updates to
8 such list.

9 “(2) LEGACY FEDERAL IT INVENTORY.—The
10 Federal Chief Information Officer shall—

11 “(A) on or before the first December 30
12 that occurs after the date of the enactment of
13 the Modernizing Government Technology Re-
14 form Act of 2023, compile a Legacy Federal IT
15 Inventory on the basis of the each list provided
16 by an agency Chief Information Officers under
17 paragraph (1)(A) that includes information
18 about each high-risk legacy information tech-
19 nology system used, operated, or maintained by
20 an agency; and

21 “(B) on or before December 30 each year
22 after the year in which the Legacy Federal IT
23 Inventory is compiled, update such Inventory on
24 the basis of each update to the list provided by

1 an agency Chief Information Officer under
2 paragraph (1)(B).

3 “(3) PRIORITIZATION LIST.—

4 “(A) REQUIREMENT.—The Federal Chief
5 Information Officer shall—

6 “(i) not later than 90 days after the
7 date on which the Federal Chief Informa-
8 tion Officer receives the list required by
9 paragraph (1)(A) from each agency Chief
10 Information Officer, compile, on the basis
11 of each such list, a list of 10 legacy infor-
12 mation technology systems that present the
13 greatest security, privacy, and operational
14 risks to the Federal Government; and

15 “(ii) not later than 90 days after the
16 date on which the Federal Chief Informa-
17 tion Officer receives updates under para-
18 graph (1)(B) from each agency Chief In-
19 formation Officer, update the list required
20 by subparagraph (A) on the basis of each
21 updates to the list provided by agency
22 Chief information Officers under para-
23 graph (1)(B).

24 “(B) REPORT TO CONGRESS.—Not later
25 than 14 days after the date on which the Fed-

1 eral Chief Information Officer compiles the list
2 required by subparagraph (A), or updates such
3 list, the Director shall submit to the Committee
4 on Oversight and Accountability of the House
5 of Representatives, the Committee on Home-
6 land Security and Governmental Affairs of the
7 Senate, and the Comptroller General of the
8 United States, a report (which may include a
9 classified annex) containing—

10 “(i) such list (including any update
11 made to such list under subparagraph
12 (A)(ii)); and

13 “(ii) each list provided by an agency
14 Chief Information Officer under paragraph
15 (1)(A) (including any update made to any
16 such list under paragraph (1)(B)).

17 “(4) GUIDANCE.—

18 “(A) IN GENERAL.—Not later than 180
19 days after enactment of this Act, the Director
20 shall issue guidance on implementing the re-
21 quirements of this subsection that shall, at a
22 minimum—

23 “(i) prescribe an appropriate format
24 for list to be provided under paragraph
25 (1)(A);

1 “(ii) prescribe the information to be
2 included in the Legacy Federal IT Inven-
3 tory required by paragraph (2);

4 “(iii) provide guidance on how an
5 agency Chief Information Officer should
6 identify high-risk legacy information tech-
7 nology systems that, at least, requires
8 agency Chief Information Officers, in co-
9 ordination with other agency stakeholders,
10 to identify as a high risk legacy informa-
11 tion technology system any outdated or ob-
12 solete system of information technology
13 that is critical to the agency such that the
14 loss or degradation of the system would
15 create a security, operational, or privacy
16 risk to the agency or would otherwise im-
17 pact the ability of the agency to perform
18 the mission of the agency, effectively de-
19 liver programs, or conduct business; and

20 “(iv) provide guidance on how existing
21 reporting structures can be used to submit
22 the Legacy Federal IT inventory required
23 by paragraph (2).

1 “(B) UPDATES.—The Director may update
2 the guidance issued under subparagraph (A) as
3 the Director determines necessary.

4 “(5) DEFINITIONS.—In this subsection:

5 “(A) AGENCY CHIEF INFORMATION OFFI-
6 CER.—The term ‘agency Chief Information Of-
7 ficer’ means a Chief Information Officer des-
8 ignated under section 3506(a)(2) of title 44,
9 United States Code.

10 “(B) FEDERAL CHIEF INFORMATION OFFI-
11 CER.—The term ‘Federal Chief Information Of-
12 ficer’ means the Administrator of the Office of
13 Electronic Government.”; and

14 (7) in subsection (g)(1), as so redesignated, by
15 striking “On and after the date that is 2 years after
16 the date on which the Comptroller General of the
17 United States issues the third report required under
18 subsection (b)(7)(B),” and inserting “After Decem-
19 ber 31, 2030,”.