

115TH CONGRESS
1ST SESSION

S. 760

To expand the Government’s use and administration of data to facilitate transparency, effective governance, and innovation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2017

Mr. SCHATZ (for himself and Mr. SASSE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To expand the Government’s use and administration of data to facilitate transparency, effective governance, and innovation, 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 “Open, Public, Elec-
5 tronic, and Necessary Government Data Act” or the
6 “OPEN Government Data Act”.

7 **SEC. 2. FINDINGS.**

8 (a) FINDINGS.—Congress finds the following:

1 (1) Federal Government data is a valuable na-
2 tional resource. Managing Federal Government data
3 to make it open, available, discoverable, and usable
4 to the general public, businesses, journalists, aca-
5 demies, and advocates promotes efficiency and effec-
6 tiveness in Government, creates economic opportuni-
7 ties, promotes scientific discovery, and most impor-
8 tantly, strengthens our democracy.

9 (2) Maximizing the usefulness of Federal Gov-
10 ernment data that is appropriate for release rests
11 upon making it readily available, discoverable, and
12 usable—in a word: open. Information presumptively
13 should be available to the general public unless the
14 Federal Government reasonably foresees that disclo-
15 sure could harm a specific, articulable interest pro-
16 tected by law or the Federal Government is other-
17 wise expressly prohibited from releasing such data
18 due to statutory requirements.

19 (3) The Federal Government has the responsi-
20 bility to be transparent and accountable to its citi-
21 zens.

22 (4) Data controlled, collected, or created by the
23 Federal Government should be originated, trans-
24 mitted, and published in modern, open, and elec-
25 tronic format, to be as readily accessible as possible,

1 consistent with data standards under this Act or
2 otherwise permitted by law.

3 (5) The effort to inventory Government data
4 will have additional benefits, including identifying
5 opportunities within agencies to reduce waste, in-
6 crease efficiencies, and save taxpayer dollars. As
7 such, this effort should involve many types of data,
8 including data generated by applications, devices,
9 networks, and equipment, which can be harnessed to
10 improve operations, lower energy consumption, re-
11 duce costs, and strengthen security.

12 (6) Communication, commerce, and data tran-
13 scend national borders. Global access to Government
14 information is often essential to promoting innova-
15 tion, scientific discovery, entrepreneurship, edu-
16 cation, and the general welfare.

17 **SEC. 3. DEFINITION.**

18 In this Act, the term “agency” has the meaning given
19 the term in section 3561 of title 44, United States Code,
20 as added by section 4.

21 **SEC. 4. OPEN GOVERNMENT DATA.**

22 (a) IN GENERAL.—Chapter 35 of title 44, United
23 States Code, is amended by adding at the end the fol-
24 lowing:

1 **“Subchapter III—Open Government Data**

2 **“§ 3561. Definitions**

3 “As used in this subchapter—

4 “(1) the term ‘agency’—

5 “(A) has the meaning given the term in
6 section 3502; and

7 “(B) includes the Federal Election Com-
8 mission;

9 “(2) the term ‘data’ means recorded informa-
10 tion, regardless of form or the media on which the
11 data is recorded;

12 “(3) the term ‘data asset’ means a collection of
13 data elements or data sets that may be grouped to-
14 gether;

15 “(4) the term ‘Director’ means the Director of
16 the Office of Management and Budget;

17 “(5) the term ‘Enterprise Data Inventory’
18 means the data inventory developed and maintained
19 pursuant to section 3563;

20 “(6) the terms ‘information resources manage-
21 ment’, ‘information system’, and ‘information tech-
22 nology’ have the meanings given those terms in sec-
23 tion 3502;

24 “(7) the term ‘machine-readable’ means a for-
25 mat in which information or data can be easily proc-

1 essed by a computer without human intervention
2 while ensuring no semantic meaning is lost;

3 “(8) the term ‘metadata’ means structural or
4 descriptive information about data such as content,
5 format, source, rights, accuracy, provenance, fre-
6 quency, periodicity, granularity, publisher or respon-
7 sible party, contact information, method of collec-
8 tion, and other descriptions;

9 “(9) the term ‘nonpublic data asset’—

10 “(A) means a data asset that may not be
11 made available to the public for privacy, secu-
12 rity, confidentiality, regulation, or other reasons
13 as determined by law; and

14 “(B) includes data provided by contractors
15 that is protected by contract, license, patent,
16 trademark, copyright, confidentiality, regula-
17 tion, or other restriction;

18 “(10) the term ‘open Government data asset’
19 means a data asset maintained by the Federal Gov-
20 ernment that is—

21 “(A) machine-readable;

22 “(B) available in an open format;

23 “(C) not encumbered by restrictions that
24 would impede use or reuse; and

1 “(D) based on an underlying open stand-
2 ard that is maintained by a standards organiza-
3 tion;

4 “(11) the term ‘open license’ means a legal
5 guarantee applied to a public data asset that the
6 data asset is made available—

7 “(A) at no cost to the public; and

8 “(B) with no restrictions on copying, pub-
9 lishing, distributing, transmitting, citing, or
10 adapting; and

11 “(12) the term ‘public data asset’ means a data
12 asset maintained by the Federal Government that—

13 “(A) may be released to the public;

14 “(B) has been released to the public in an
15 open format and is discoverable through a
16 search of Data.gov or any successor to
17 Data.gov; or

18 “(C) is part of the worldwide public do-
19 main or, if necessary, published with an open li-
20 cense.

21 **“§ 3562. Requirements for Government data**

22 “(a) MACHINE-READABLE DATA REQUIRED.—Open
23 Government data assets made available by an agency shall
24 be published as machine-readable data.

1 “(b) OPEN BY DEFAULT.—When not otherwise pro-
2 hibited by law, and to the extent practicable, public data
3 assets and nonpublic data assets maintained by the Fed-
4 eral Government shall—

5 “(1) be available in an open format; and

6 “(2) be available under open licenses.

7 “(c) OPEN LICENSE OR WORLDWIDE PUBLIC DO-
8 MAIN DEDICATION REQUIRED.—When not otherwise pro-
9 hibited by law, and to the extent practicable, open Govern-
10 ment data assets published by or for an agency shall be
11 made available under an open license or, if not made avail-
12 able under an open license and appropriately released,
13 shall be considered to be published as part of the world-
14 wide public domain.

15 “(d) INNOVATION.—Each agency may engage with
16 nongovernmental organizations, citizens, nonprofit organi-
17 zations, colleges and universities, private and public com-
18 panies, and other agencies to explore opportunities to le-
19 verage the public data assets of the agency in a manner
20 that may provide new opportunities for innovation in the
21 public and private sectors in accordance with law and reg-
22 ulation.

23 **“§ 3563. Enterprise data inventory**

24 “(a) AGENCY DATA INVENTORY REQUIRED.—

1 “(1) IN GENERAL.—In order to develop a clear
2 and comprehensive understanding of the data assets
3 in the possession of an agency, the head of each
4 agency, in consultation with the Director, shall de-
5 velop and maintain an enterprise data inventory (in
6 this section referred to as the ‘Enterprise Data In-
7 ventory’) that accounts for any data asset created,
8 collected, under the control or direction of, or main-
9 tained by the agency after the effective date of this
10 section, with the goal of including all data assets, to
11 the extent practicable.

12 “(2) CONTENTS.—The Enterprise Data Inven-
13 tory shall include each of the following:

14 “(A) Data assets used in agency informa-
15 tion systems (including program administration,
16 statistics, and financial activity) generated by
17 applications, devices, networks, facilities, and
18 equipment, categorized by source type.

19 “(B) Data assets shared or maintained
20 across agency programs and bureaus.

21 “(C) Data assets that are shared among
22 agencies or created by more than 1 agency.

23 “(D) A clear indication of all data assets
24 that can be made publicly available under sec-

1 tion 552 of title 5 (commonly known as the
2 ‘Freedom of Information Act’).

3 “(E) A description of whether the agency
4 has determined that an individual data asset
5 may be made publicly available and whether the
6 data asset is available to the public.

7 “(F) Nonpublic data assets.

8 “(G) Open Government data assets.

9 “(b) PUBLIC AVAILABILITY.—The Chief Information
10 Officer of each agency shall use the standards provided
11 by the Director issued pursuant to subsection (c) to make
12 public data assets included in the Enterprise Data Inven-
13 tory publicly available in an open format and under an
14 open license.

15 “(c) STANDARDS FOR ENTERPRISE DATA INVEN-
16 TORY.—The Director shall issue standards for the Enter-
17 prise Data Inventory, including—

18 “(1) a requirement that the Enterprise Data
19 Inventory include a compilation of metadata about
20 agency data assets; and

21 “(2) criteria that the head of each agency shall
22 use in determining whether to make a particular
23 data asset publicly available in a manner that takes
24 into account—

1 “(A) the expectation of confidentiality as-
2 sociated with an individual data asset;

3 “(B) security considerations, including the
4 risk that information in an individual data asset
5 in isolation does not pose a security risk but
6 when combined with other available information
7 may pose such a risk;

8 “(C) the cost and benefits to the public of
9 converting the data into a manner that could be
10 understood and used by the public;

11 “(D) the expectation that all data assets
12 that would otherwise be made available under
13 section 552 of title 5 (commonly known as the
14 ‘Freedom of Information Act’) be disclosed; and

15 “(E) any other considerations that the Di-
16 rector determines to be relevant.

17 “(d) NONPUBLIC DATA ASSETS.—Nonpublic data as-
18 sets included in the Enterprise Data Inventory may be
19 maintained in a nonpublic section of the inventory.

20 “(e) AVAILABILITY OF ENTERPRISE DATA INVEN-
21 TORY.—The Chief Information Officer of each agency—

22 “(1) shall make the Enterprise Data Inventory
23 available to the public on Data.gov;

1 “(2) shall ensure that access to the Enterprise
2 Data Inventory and the data contained therein is
3 consistent with applicable law and regulation; and

4 “(3) may implement paragraph (1) in a manner
5 that maintains a nonpublic portion of the Enterprise
6 Data Inventory.

7 “(f) REGULAR UPDATES REQUIRED.—The Chief In-
8 formation Officer of each agency shall—

9 “(1) to the extent practicable, complete the En-
10 terprise Data Inventory for the agency not later
11 than 1 year after the date of enactment of this sec-
12 tion; and

13 “(2) add additional data assets to the Enter-
14 prise Data Inventory for the agency not later than
15 90 days after the date on which the data asset is
16 created or identified.

17 “(g) USE OF EXISTING RESOURCES.—When prac-
18 ticable, the Chief Information Officer of each agency shall
19 use existing procedures and systems to compile and pub-
20 lish the Enterprise Data Inventory for the agency.

21 **“§ 3564. Federal agency responsibilities**

22 “(a) INFORMATION RESOURCES MANAGEMENT.—
23 With respect to general information resources manage-
24 ment, each agency shall—

1 “(1) improve the integrity, quality, and utility
2 of information to all users within and outside the
3 agency by—

4 “(A) using open format for any new open
5 Government data asset created or obtained on
6 the date that is 1 year after the date of enact-
7 ment of this section; and

8 “(B) to the extent practicable, encouraging
9 the adoption of open format for all open Gov-
10 ernment data assets created or obtained before
11 the date of enactment of this section; and

12 “(2) in consultation with the Director, develop
13 an open data plan that, at a minimum and to the
14 extent practicable—

15 “(A) requires the agency to develop proc-
16 esses and procedures that—

17 “(i) require each new data collection
18 mechanism to use an open format; and

19 “(ii) allow the agency to collaborate
20 with non-Government entities, researchers,
21 businesses, and private citizens for the
22 purpose of understanding how data users
23 value and use open Government data as-
24 sets;

1 “(B) identifies and implements methods
2 for collecting and analyzing digital information
3 on data asset usage by users within and outside
4 of the agency, including designating a point of
5 contact within the agency to assist the public
6 and to respond to quality issues, usability, rec-
7 ommendations for improvements, and com-
8 plaints about adherence to open data require-
9 ments;

10 “(C) develops and implements a process to
11 evaluate and improve the timeliness, complete-
12 ness, accuracy, usefulness, and availability of
13 open Government data assets;

14 “(D) requires the agency to update the
15 plan at an interval determined by the Director;

16 “(E) includes requirements for meeting the
17 goals of the agency open data plan including
18 technology, training for employees, and imple-
19 menting procurement standards, in accordance
20 with existing law, that allow for the acquisition
21 of innovative solutions from the public and pri-
22 vate sectors; and

23 “(F) prohibits the dissemination and acci-
24 dental disclosure of nonpublic data assets.

1 “(b) INFORMATION DISSEMINATION.—With respect
2 to information dissemination, each agency—

3 “(1) shall provide access to open Government
4 data assets online;

5 “(2) shall take the necessary precautions to en-
6 sure that the agency maintains the production and
7 publication of data assets which are directly related
8 to activities that protect the safety of human life or
9 property, as identified by the open data plan of the
10 agency required under subsection (a)(2); and

11 “(3) may engage the public in using open Gov-
12 ernment data assets and encourage collaboration
13 by—

14 “(A) publishing information on open Gov-
15 ernment data assets usage in regular, timely in-
16 tervals, but not less than annually;

17 “(B) receiving public input regarding pri-
18 orities for the analysis and disclosure of data
19 assets to be published;

20 “(C) assisting civil society groups and
21 members of the public working to expand the
22 use of open Government data assets; and

23 “(D) hosting challenges, competitions,
24 events, or other initiatives designed to create

1 additional value from open Government data as-
2 sets.

3 **“§ 3565. Additional Chief Information Officer respon-**
4 **sibilities**

5 “The Chief Information Officer of each agency, or
6 other appropriate official designated by the head of an
7 agency, is responsible for—

8 “(1) data asset management, format standard-
9 ization, sharing of data assets, and publication of
10 data assets for the agency;

11 “(2) the compilation and publication of the En-
12 terprise Data Inventory for the agency required
13 under section 3563;

14 “(3) ensuring that agency data conforms with
15 open data best practices;

16 “(4) engaging agency employees, the public,
17 and contractors in using open Government data as-
18 sets and encourage collaborative approaches to im-
19 proving data use;

20 “(5) supporting the agency Performance Im-
21 provement Officer in generating data to support the
22 function of the Performance Improvement Officer
23 described in section 1124(a)(2) of title 31;

24 “(6) reviewing the information technology infra-
25 structure of the agency and the impact of the infra-

1 structure on making data assets accessible to reduce
2 barriers that inhibit data asset accessibility;

3 “(7) ensuring that, to the extent practicable,
4 the agency is maximizing its own use of data, includ-
5 ing data assets used in agency information systems
6 (including program administration, statistics, and fi-
7 nancial activity) generated by applications, devices,
8 networks, facilities, and equipment, categorized by
9 source type, and such use is not otherwise prohib-
10 ited, to reduce costs, improve operations, and
11 strengthen security and privacy protections; and

12 “(8) identifying points of contact for roles and
13 responsibilities related to open data use and imple-
14 mentation as required by the Director.

15 **“§ 3566. Technology portal**

16 “(a) DATA.GOV REQUIRED.—The Administrator of
17 General Services shall maintain a single public interface
18 online as a point of entry dedicated to sharing open Gov-
19 ernment data assets with the public.

20 “(b) COORDINATION WITH AGENCIES.—The Director
21 shall determine, after consultation with the head of each
22 agency and the Administrator of General Services, the
23 method to access any open Government data assets pub-
24 lished through the interface described in subsection (a).”.

25 (b) SPECIAL PROVISIONS.—

1 (1) EFFECTIVE DATE.—Notwithstanding sec-
 2 tion 8, section 3562 of title 44, United States Code,
 3 as added by subsection (a), shall take effect on the
 4 date that is 1 year after the date of enactment of
 5 this Act and shall apply with respect to any contract
 6 entered into by an agency on or after such effective
 7 date.

8 (2) USE OF OPEN DATA ASSETS.—Not later
 9 than 1 year after the date of enactment of this Act,
 10 the head of each agency shall ensure that any activi-
 11 ties by the agency or any new contract entered into
 12 by the agency meet the requirements of section 3562
 13 of title 44, United States Code, as added by sub-
 14 section (a).

15 (3) DEADLINE FOR TECHNOLOGY PORTAL.—
 16 Not later than 180 days after the effective date of
 17 this Act, the Administrator of General Services shall
 18 meet the requirements of section 3566 of title 44,
 19 United States Code, as added by subsection (a).

20 (c) TECHNICAL AND CONFORMING AMENDMENT.—
 21 The table of sections for chapter 35 of title 44, United
 22 States Code, is amended by adding at the end the fol-
 23 lowing:

“SUBCHAPTER III—OPEN GOVERNMENT DATA

“3561. Definitions.

“3562. Requirements for Government data.

“3563. Enterprise data inventory.

“3564. Federal agency responsibilities.

“3565. Additional Chief Information Officer responsibilities.

“3566. Technology portal.”.

1 **SEC. 5. EVALUATION OF AGENCY ANALYTICAL CAPABILI-**
2 **TIES.**

3 (a) **AGENCY REVIEW OF EVALUATION AND ANALYSIS**
4 **CAPABILITIES; REPORT.**—Not later than 3 years after the
5 date of enactment of this Act, the Chief Operating Officer
6 of each agency shall submit to the Committee on Home-
7 land Security and Governmental Affairs of the Senate, the
8 Committee on Oversight and Government Reform of the
9 House of Representatives, and the Director of the Office
10 of Management and Budget a report on the review de-
11 scribed in subsection (b).

12 (b) **REQUIREMENTS OF AGENCY REVIEW.**—The re-
13 port required under subsection (a) shall assess the cov-
14 erage, quality, methods, effectiveness, and independence of
15 the evaluation, research, and analysis efforts of an agency,
16 including each of the following:

17 (1) A list of the activities and operations of the
18 agency that are being evaluated and analyzed and
19 the activities and operations that have been evalu-
20 ated and analyzed during the previous 5 years.

21 (2) The extent to which the evaluations, re-
22 search, and analysis efforts and related activities of
23 the agency support the needs of various divisions
24 within the agency.

1 (3) The extent to which the evaluation research
2 and analysis efforts and related activities of the
3 agency address an appropriate balance between
4 needs related to organizational learning, ongoing
5 program management, performance management,
6 strategic management, interagency and private sec-
7 tor coordination, internal and external oversight, and
8 accountability.

9 (4) The extent to which the agency uses meth-
10 ods and combinations of methods that are appro-
11 priate to agency divisions and the corresponding re-
12 search questions being addressed, including an ap-
13 propriate combination of formative and summative
14 evaluation research and analysis approaches.

15 (5) The extent to which evaluation and research
16 capacity is present within the agency to include per-
17 sonnel, agency process for planning and imple-
18 menting evaluation activities, disseminating best
19 practices and findings, and incorporating employee
20 views and feedback.

21 (6) The extent to which the agency has the ca-
22 pacity to assist front-line staff and program offices
23 to develop the capacity to use evaluation research
24 and analysis approaches and data in the day-to-day
25 operations.

1 (c) GAO REVIEW OF AGENCY REPORTS.—Not later
2 than 4 years after the date of enactment of this Act, the
3 Comptroller General of the United States shall submit to
4 Congress a report that summarizes agency findings and
5 highlights trends from the reports submitted pursuant to
6 subsection (a) and, if appropriate, recommends actions to
7 further improve agency capacity to use evaluation tech-
8 niques and data to support evaluation efforts.

9 **SEC. 6. ONLINE REPOSITORY AND ADDITIONAL REPORTS.**

10 (a) REPOSITORY.—The Director of the Office of
11 Management and Budget shall collaborate with the Office
12 of Government Information Services and the Adminis-
13 trator of General Services to develop and maintain an on-
14 line repository of tools, best practices, and schema stand-
15 ards to facilitate the adoption of open data practices,
16 which shall—

17 (1) include definitions, regulation and policy,
18 checklists, and case studies related to open data, this
19 Act, and the amendments made by this Act; and

20 (2) facilitate collaboration and the adoption of
21 best practices across the Federal Government relat-
22 ing to the adoption of open data practices.

23 (b) GAO REPORT.—Not later than 3 years after the
24 date of enactment of this Act, the Comptroller General
25 of the United States shall submit to the Committee on

1 Homeland Security and Governmental Affairs of the Sen-
2 ate and the Committee on Oversight and Government Re-
3 form of the House of Representatives a report that identi-
4 fies—

5 (1) the value of information made available to
6 the public as a result of this Act and the amend-
7 ments made by this Act;

8 (2) whether it is valuable to expand the publicly
9 available information to any other data assets; and

10 (3) the completeness of the Enterprise Data In-
11 ventory at each agency required under section 3563
12 of title 44, United States Code, as added by section
13 4.

14 (c) BIENNIAL OMB REPORT.—Not later than 1 year
15 after the effective date of this Act, and every 2 years
16 thereafter, the Director of the Office of Management and
17 Budget shall electronically publish a report on agency per-
18 formance and compliance with this Act and the amend-
19 ments made by this Act.

20 (d) AGENCY CIO REPORT.—Not later than 1 year
21 after the effective date of this Act and every year there-
22 after, the Chief Information Officer of each agency shall
23 submit to the Committee on Homeland Security and Gov-
24 ernmental Affairs of the Senate and the Committee on
25 Homeland Security of the House of Representatives a re-

1 port on compliance with the requirements of this Act and
2 the amendments made by this Act, including information
3 on the requirements that the agency could not meet and
4 what the agency needs to comply with those requirements.

5 **SEC. 7. RULE OF CONSTRUCTION.**

6 Nothing in this Act, or the amendments made by this
7 Act, shall be construed to require the disclosure of infor-
8 mation or records that are exempt from public disclosure
9 under section 552 of title 5, United States Code (com-
10 monly known as the “Freedom of Information Act”).

11 **SEC. 8. EFFECTIVE DATE.**

12 This Act, and the amendments made by this Act,
13 shall take effect on the date that is 180 days after the
14 date of enactment of this Act.

○