

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

S. 1865

To direct agencies to be transparent when using automated and augmented systems to interact with the public or make critical decisions, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. PETERS

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transparent Auto-

5 mated Governance Act” or the “TAG Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) AGENCY.—The term “agency” has the

9 meaning given the term in section 3502 of title 44,

10 United States Code.

1 (2) ARTIFICIAL INTELLIGENCE.—The term “ar-
2 tificial intelligence” has the meaning given the term
3 in section 238(g) of the John S. McCain National
4 Defense Authorization Act for Fiscal Year 2019 (10
5 U.S.C. note prec. 4061; Public Law 115–232).

6 (3) AUGMENTED CRITICAL DECISION PROC-
7 ESS.—The term “augmented critical decision proc-
8 ess” means the use by an agency, or by a third
9 party on behalf of the agency, of an automated sys-
10 tem to determine or substantially influence the out-
11 comes of critical decisions.

12 (4) AUTOMATED SYSTEM.—The term “auto-
13 mated system”—

14 (A) means a set of computational processes
15 derived from statistics or artificial intelligence
16 techniques, or that otherwise rely on data about
17 specific individuals or groups, to substantially
18 influence the outcome of critical decisions, in-
19 cluding computational processes that stand
20 alone or are embedded within another process,
21 system, or application, including paper-based
22 processes; and

23 (B) does not include computational proc-
24 esses or infrastructure the function of which is

1 not directly related to influencing or deter-
2 mining the outcome of critical decisions.

3 (5) CRITICAL DECISION.—The term “critical
4 decision” means an agency determination, including
5 the assignment of a score or classification, related to
6 the status, rights, property, or wellbeing of specific
7 individuals or groups, the outcome of which—

8 (A) is likely to meaningfully differ from
9 one individual or group to another; and

10 (B) meaningfully affects access to, or the
11 cost, terms, or availability of—

12 (i) education and vocational training;

13 (ii) employment;

14 (iii) essential utilities, including elec-
15 tricity, heat, water, and internet;

16 (iv) transportation;

17 (v) any benefits or assistance under
18 any Federal public assistance program or
19 under any State or local public assistance
20 program financed in whole or in part with
21 Federal funds;

22 (vi) financial services, including access
23 to credit or insurance;

24 (vii) asylum and immigration services;

25 (viii) healthcare;

1 (ix) housing, lodging, or public accom-
2 modations; and

3 (x) any other service, program, or op-
4 portunity a determination about which
5 would have a legal, material, or significant
6 effect on the life of an individual, as deter-
7 mined by the Director.

8 (6) DIRECTOR.—The term “Director” means
9 the Director of the Office of Management and Budg-
10 et.

11 (7) PLAIN LANGUAGE.—The term “plain lan-
12 guage” has the meaning given the term in section
13 1311(e)(3)(B) of the Patient Protection and Afford-
14 able Care Act (42 U.S.C. 18031(e)(3)(B)).

15 (8) TRANSPARENT AUTOMATED GOVERNANCE
16 GUIDANCE.—The term “transparent automated gov-
17 ernance guidance” means the guidance issued by the
18 Director pursuant to section 3(a).

19 **SEC. 3. TRANSPARENT AUTOMATED GOVERNANCE GUID-**
20 **ANCE.**

21 (a) IN GENERAL.—Not later than 270 days after the
22 date of enactment of this Act, the Director shall issue
23 guidance that—

1 (1) is consistent with relevant legal authorities
2 relating to privacy, civil rights, and civil liberties
3 protections; and

4 (2) requires agencies to provide disclosure and
5 opportunity for appeal when using certain auto-
6 mated systems and augmented critical decision proc-
7 esses.

8 (b) GUIDANCE.—The transparent automated govern-
9 ance guidance issued under subsection (a) shall include—

10 (1) an identification by the Director of any ad-
11 ditional services, programs, or opportunities relating
12 to critical decisions described in section 2(5)(B)(x),
13 if appropriate, for use by agencies with respect to
14 the requirements under this Act;

15 (2) a list of automated systems that may be
16 used in augmented critical decision processes, that,
17 as determined by the Director, are not subject to the
18 requirements of this Act;

19 (3) with respect to automated systems that con-
20 tribute to augmented critical decision processes and
21 interact with the public, guidance for how agencies
22 shall design, develop, procure, or update those auto-
23 mated systems to provide plain language notice to
24 individuals not later than the time and at the place

1 of interaction with such an automated system that
2 they are interacting with such an automated system;

3 (4) the proper contents of the notice described
4 in paragraph (3);

5 (5) examples of what the notice described in
6 paragraph (3) could look like in practice;

7 (6) with respect to augmented critical decision
8 processes, guidance for how agencies shall provide
9 plain language notice to individuals not later than
10 the time a critical decision is issued to an individual
11 that a critical decision concerning the individual was
12 made using an augmented critical decision process;

13 (7) the proper contents of the notice described
14 in paragraph (6);

15 (8) examples of what the notice described in
16 paragraph (6) could look like in practice;

17 (9) guidance for how agencies shall establish an
18 appeals process for critical decisions made by an
19 augmented critical decision process in which an indi-
20 vidual is harmed as a direct result of the use of an
21 automated system in the augmented critical decision
22 process;

23 (10) with respect to critical decisions made by
24 an augmented critical decision process, guidance for
25 how agencies should provide individuals with the op-

1 portunity for an alternative review, as appropriate,
2 by an individual working for or on behalf of the
3 agency with respect to the critical decision, inde-
4 pendent of the augmented critical decision process;
5 and

6 (11) criteria for information that each agency is
7 required to track and collect relating to issues that
8 arise during the use of augmented critical decision
9 processes—

10 (A) to ensure that the information col-
11 lected can be used to determine whether each
12 automated system and augmented critical deci-
13 sion process covered by this Act is accurate, re-
14 liable, and, to the greatest extent practicable,
15 explainable; and

16 (B) that the agency shall make accessible
17 for use by the agency, the Comptroller General
18 of the United States, and Congress.

19 (c) PUBLIC COMMENT.—Not later than 180 days
20 after the date of enactment of this Act, the Director shall
21 make a preliminary version of the transparent automated
22 governance guidance available for public comment for a
23 period of 30 days.

1 (d) CONSULTATION.—In developing the transparent
2 automated governance guidance, the Director shall con-
3 sider soliciting input from—

4 (1) the Government Accountability Office;

5 (2) the General Services Administration, includ-
6 ing on the topic of user experience;

7 (3) the private sector; and

8 (4) the nonprofit sector, including experts in
9 privacy, civil rights, and civil liberties.

10 (e) ARTIFICIAL INTELLIGENCE GUIDANCE.—The
11 guidance required by section 104 of the AI in Government
12 Act of 2020 (40 U.S.C. 11301 note) may be used to sat-
13 isfy the requirement for the transparent automated gov-
14 ernance guidance with respect to relevant automated sys-
15 tems and augmented critical decision processes, or a sub-
16 set thereof, if such guidance addresses each requirement
17 under subsection (b) of this section with respect to the
18 automated system or augmented critical decision process.

19 (f) UPDATES.—Not later than 2 years after the date
20 on which the Director issues the transparent automated
21 governance guidance, and biennially thereafter, the Direc-
22 tor shall issue updates to the guidance.

23 **SEC. 4. AGENCY IMPLEMENTATION.**

24 (a) AGENCY IMPLEMENTATION OF TRANSPARENT
25 AUTOMATED GOVERNANCE GUIDANCE.—Not later than

1 270 days after the date on which the Director issues the
2 transparent automated governance guidance, the head of
3 each agency shall implement the transparent automated
4 governance guidance to the extent that implementation
5 does not require rulemaking.

6 (b) **COMPTROLLER GENERAL REPORT.**—Not later
7 than 2 years after the date of enactment of this Act, and
8 biannually thereafter, the Comptroller General of the
9 United States shall review agency compliance with this Act
10 and submit to the Committee on Homeland Security and
11 Governmental Affairs of the Senate and the Committee
12 on Oversight and Accountability of the House of Rep-
13 resentatives a report with findings and recommendations.

14 **SEC. 5. SUNSET.**

15 Beginning on the date that is 10 years after the date
16 of enactment of this Act, this Act shall have no force or
17 effect.