

Calendar No. 304

116TH CONGRESS
1ST SESSION

S. 1877

[Report No. 116–158]

To establish procedures and consequences in the event of a failure to complete regular appropriations.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2019

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

NOVEMBER 12, 2019

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To establish procedures and consequences in the event of a failure to complete regular appropriations.

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 “Government Shutdown
5 Accountability Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act—

3 (1) the term “covered officer or employee”
4 means—

5 (A) an officer or employee of the Office of
6 Management and Budget;

7 (B) an individual serving in a position on
8 level I of the Executive Schedule under section
9 5312 of title 5, United States Code;

10 (C) a Member of Congress; or

11 (D) an employee of the personal office of
12 a Member of Congress; a committee of either
13 House of Congress; or a joint committee of
14 Congress;

15 (2) the term “emergency legislation” means leg-
16 islation—

17 (A) providing assistance for an area with
18 respect to which the President has declared a
19 major disaster under section 401 of the Robert
20 T. Stafford Disaster Relief and Emergency As-
21 sistance Act (42 U.S.C. 5170);

22 (B) directly addressing a national emer-
23 gency declared by the President under title II
24 of the National Emergencies Act (50 U.S.C.
25 1621 et seq.); or

1 (C) that, if not enacted, would be inimical
2 to the national security of the United States;

3 ~~(3)~~ the term “Government shutdown” means a
4 lapse in appropriations for 1 or more Federal agen-
5 cies or departments as a result of a failure to enact
6 a regular appropriations bill or continuing resolu-
7 tion;

8 (4) the term “Member of Congress” has the
9 meaning given that term in section 2106 of title 5,
10 United States Code; and

11 ~~(5)~~ the term “National Capital region” has the
12 meaning given that term in section 8702 of title 40,
13 United States Code.

14 **SEC. 3. DESIGNATING CERTAIN FEHBP-RELATED SERVICES**

15 **AS EXCEPTED SERVICES UNDER THE ANTI-**
16 **DEFICIENCY ACT.**

17 ~~(a)~~ IN GENERAL.—Section 8905 of title 5, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

20 “(i) In the event of a lapse in appropriations, the Di-
21 rector of the Office of Personnel Management shall des-
22 ignate any officer or employee who performs services relat-
23 ing to enrolling individuals in a health benefits plan under
24 this chapter, or changing the enrollment of an individual
25 already so enrolled due to a qualifying life event, as an

1 excepted employee (as defined in section 1341(c) of title
2 31).”.

3 (b) APPLICATION.—The amendment made by sub-
4 section (a) shall apply to any lapse in appropriations be-
5 ginning on or after the date of enactment of this Act.

6 **SEC. 4. EMPLOYMENT DURING A GOVERNMENT SHUT-**
7 **DOWN.**

8 (a) OUTSIDE EMPLOYMENT PERMITTED.—

9 (1) IN GENERAL.—Notwithstanding any other
10 law, rule, or regulation, and subject to paragraph
11 (3), during any lapse in appropriations beginning on
12 or after December 22, 2018, any Federal employee
13 of an agency with respect to which appropriations
14 have lapsed and who is furloughed or excepted from
15 furlough and working without pay may, during such
16 lapse, seek and obtain employment outside the Fed-
17 eral Government.

18 (2) PRIOR APPROVAL NOT REQUIRED.—An em-
19 ployee subject to this subsection may seek and ob-
20 tain such employment without prior approval from
21 the employee’s employing agency.

22 (3) LIMITATIONS.—This subsection shall not be
23 construed to waive any restrictions or requirement
24 with respect to conflicts of interest, including section

1 208 of title 18, United States Code, or part 2635 of
2 title 5, Code of Federal Regulations.

3 ~~(b) BACKPAY.—Any compensation received by an em-~~
4 ~~ployee by operation of subsection (a) shall not be taken~~
5 ~~into account for purposes of determining the amount of~~
6 ~~backpay such employee is entitled to under section 1341(e)~~
7 ~~of title 31, United States Code.~~

8 **SEC. 5. LIMITS ON TRAVEL EXPENDITURES.**

9 ~~(a) LIMITS ON OFFICIAL TRAVEL.—~~

10 ~~(1) LIMITATION.—Except as provided in para-~~
11 ~~graph (2), during a Government shutdown no~~
12 ~~amounts may be obligated or expended for official~~
13 ~~travel by a covered officer or employee.~~

14 ~~(2) EXCEPTIONS.—~~

15 ~~(A) RETURN TO DC.—If a covered officer~~
16 ~~or employee is away from the seat of Govern-~~
17 ~~ment on the date on which a Government shut-~~
18 ~~down begins, funds may be obligated and ex-~~
19 ~~pended for official travel by the covered officer~~
20 ~~or employee to return to the seat of Govern-~~
21 ~~ment.~~

22 ~~(B) TRAVEL IN NATIONAL CAPITAL RE-~~
23 ~~GION.—During a Government shutdown,~~
24 ~~amounts may be obligated and expended for of-~~
25 ~~ficial travel by a covered officer or employee~~

1 from one location in the National Capital region
 2 to another location in the National Capital re-
 3 gion.

4 (b) RESTRICTION ON USE OF CAMPAIGN FUNDS.—
 5 Section 313 of the Federal Election Campaign Act of
 6 1971 (52 U.S.C. 30114) is amended—

7 (1) in subsection (a)(2), by striking “for ordi-
 8 nary” and inserting “except as provided in sub-
 9 section (d), for ordinary”; and

10 (2) by adding at the end the following:

11 “(d) RESTRICTION ON USE OF CAMPAIGN FUNDS
 12 FOR OFFICIAL TRAVEL DURING LAPSE IN APPROPRIA-
 13 TIONS.—

14 “(1) IN GENERAL.—Except as provided in para-
 15 graph (2), during a Government shutdown (as de-
 16 fined in section 2 of the Government Shutdown Ac-
 17 countability Act), a contribution or donation de-
 18 scribed in subsection (a) may not be obligated or ex-
 19 pended for travel in connection with duties of the in-
 20 dividual as a holder of Federal office.

21 “(2) RETURN TO DC.—If the individual is away
 22 from the seat of Government on the date on which
 23 a Government shutdown (as so defined) begins, a
 24 contribution or donation described in subsection (a)

1 may be obligated and expended for travel by the in-
 2 dividual to return to the seat of Government.”.

3 **SEC. 6. PROCEDURES IN THE SENATE AND HOUSE OF REP-**
 4 **RESENTATIVES.**

5 (a) IN GENERAL.—During a Government shutdown,
 6 in the Senate and the House of Representatives—

7 (1) it shall not be in order to move to proceed
 8 to any matter except for—

9 (A) a measure making appropriations for
 10 the fiscal year during which the Government
 11 shutdown begins;

12 (B) emergency legislation; or

13 (C) a motion relating to determining or ob-
 14 taining the presence of a quorum;

15 (2) it shall not be in order to move to recess or
 16 adjourn for a period of more than 23 hours; and

17 (3) at noon each day, the Presiding Officer
 18 shall direct the clerk to determine whether a quorum
 19 is present.

20 (b) WAIVER.—Subsection (a) may only be waived or
 21 suspended upon an affirmative vote of two-thirds of the
 22 Members of the applicable House of Congress, duly chosen
 23 and sworn.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Prevent Government*
 3 *Shutdowns Act of 2019”.*

4 **SEC. 2. AUTOMATIC CONTINUING APPROPRIATIONS.**

5 (a) *IN GENERAL.*—Chapter 13 of title 31, United
 6 States Code, is amended by adding at the end the following:

7 **“§ 1311. Automatic continuing appropriations**

8 “(a)(1)(A) *On and after the first day of each fiscal*
 9 *year, if an appropriation Act for such fiscal year with re-*
 10 *spect to the account for a program, project, or activity has*
 11 *not been enacted and continuing appropriations are not in*
 12 *effect with respect to the program, project, or activity, there*
 13 *are appropriated such sums as may be necessary to con-*
 14 *tinue, at the rate for operations specified in subparagraph*
 15 *(B), the program, project, or activity if funds were provided*
 16 *for the program, project, or activity during the preceding*
 17 *fiscal year.*

18 “(B)(i) *Except as provided in clause (ii), the rate for*
 19 *operations specified in this subparagraph with respect to*
 20 *a program, project, or activity is the rate for operations*
 21 *for the preceding fiscal year for the program, project, or*
 22 *activity—*

23 “(I) *provided in the corresponding appropria-*
 24 *tion Act for such preceding fiscal year;*

25 “(II) *if the corresponding appropriation bill for*
 26 *such preceding fiscal year was not enacted, provided*

1 *in the law providing continuing appropriations for*
2 *such preceding fiscal year; or*

3 “(III) *if the corresponding appropriation bill*
4 *and a law providing continuing appropriations for*
5 *such preceding fiscal year were not enacted, provided*
6 *under this section for such preceding fiscal year.*

7 “(ii) *For entitlements and other mandatory payments*
8 *whose budget authority was provided for the previous fiscal*
9 *year in appropriations Acts, under a law other than this*
10 *section providing continuing appropriations for such pre-*
11 *vious year, or under this section, and for activities under*
12 *the Food and Nutrition Act of 2008, appropriations and*
13 *funds made available during a fiscal year under this section*
14 *shall be at the rate necessary to maintain program levels*
15 *under current law, under the authority and conditions pro-*
16 *vided in the applicable appropriations Act.*

17 “(2) *Appropriations and funds made available, and*
18 *authority granted, for any fiscal year pursuant to this sec-*
19 *tion for a program, project, or activity shall be available*
20 *for the period beginning with the first day of any lapse*
21 *in appropriations during such fiscal year and ending with*
22 *the date on which the applicable regular appropriation bill*
23 *for such fiscal year is enacted (whether or not such law pro-*
24 *vides appropriations for such program, project, or activity)*

1 *or a law making continuing appropriations for the pro-*
 2 *gram, project, or activity is enacted, as the case may be.*

3 “(3) *Notwithstanding section 251(a)(1) of the Bal-*
 4 *anced Budget and Emergency Deficit Control Act of 1985*
 5 *(2 U.S.C. 901(a)(1)) and the timetable in section 254(a)*
 6 *of such Act (2 U.S.C. 904(a)), for any fiscal year for which*
 7 *appropriations and funds are made available under this*
 8 *section, the final sequestration report for such fiscal year*
 9 *pursuant to section 254(f)(1) of such Act (2 U.S.C.*
 10 *904(f)(1)) and any order for such fiscal year pursuant to*
 11 *section 254(f)(5) of such Act (2 U.S.C. 901(f)(5)) shall be*
 12 *issued—*

13 “(A) *for the Congressional Budget Office, 10*
 14 *days after the date on which all regular appropria-*
 15 *tion Acts for such fiscal year or continuing appro-*
 16 *priations through the end of such fiscal year have*
 17 *been enacted; and*

18 “(B) *for the Office of Management and Budget,*
 19 *15 days after the date on which all regular appro-*
 20 *priation Acts for such fiscal year or continuing ap-*
 21 *propriations through the end of such fiscal year have*
 22 *been enacted.*

23 “(b) *An appropriation or funds made available, or au-*
 24 *thority granted, for a program, project, or activity for any*
 25 *fiscal year pursuant to this section shall be subject to the*

1 *terms and conditions imposed with respect to the appro-*
 2 *priation made or funds made available for the preceding*
 3 *fiscal year, or authority granted for such program, project,*
 4 *or activity under current law.*

5 “(c) *Expenditures made for a program, project, or ac-*
 6 *tivity for any fiscal year pursuant to this section shall be*
 7 *charged to the applicable appropriation, fund, or authoriza-*
 8 *tion whenever a regular appropriation Act, or a law mak-*
 9 *ing continuing appropriations until the end of such fiscal*
 10 *year, for such program, project, or activity is enacted.*

11 “(d) *This section shall not apply to a program, project,*
 12 *or activity during a fiscal year if any other provision of*
 13 *law (other than an authorization of appropriations)—*

14 “(1) *makes an appropriation, makes funds avail-*
 15 *able, or grants authority for such program, project, or*
 16 *activity to continue for such period; or*

17 “(2) *specifically provides that no appropriation*
 18 *shall be made, no funds shall be made available, or*
 19 *no authority shall be granted for such program,*
 20 *project, or activity to continue for such period.”.*

21 (b) *CLERICAL AMENDMENT.—The table of sections for*
 22 *chapter 13 of title 31, United States Code, is amended by*
 23 *adding at the end the following:*

“1311. Automatic continuing appropriations.”.

1 **SEC. 3. TIMELY ENACTMENT OF REGULAR APPROPRIATION**

2 **ACTS.**

3 (a) *DEFINITIONS.—In this section—*

4 (1) *the term “covered officer or employee”*
5 *means—*

6 (A) *an officer or employee of the Office of*
7 *Management and Budget;*

8 (B) *an individual serving in a position on*
9 *level I of the Executive Schedule under section*
10 *5312 of title 5, United States Code;*

11 (C) *a Member of Congress, as defined in sec-*
12 *tion 2106 of title 5, United States Code; or*

13 (D) *an employee of the personal office of a*
14 *Member of Congress, a committee of either House*
15 *of Congress, or a joint committee of Congress;*

16 (2) *the term “covered period” means any period*
17 *on and after the first day of a fiscal year, if all reg-*
18 *ular appropriation Acts for such fiscal year have not*
19 *been enacted;*

20 (3) *the term “emergency legislation” means legis-*
21 *lation—*

22 (A) *providing assistance for an area with*
23 *respect to which the President has declared a*
24 *major disaster under section 401 of the Robert T.*
25 *Stafford Disaster Relief and Emergency Assist-*
26 *ance Act (42 U.S.C. 5170);*

1 (B) directly addressing a national emer-
 2 gency declared by the President under title II of
 3 the National Emergencies Act (50 U.S.C. 1621 et
 4 seq.); or

5 (C) that, if not enacted, would be inimical
 6 to the national security of the United States;

7 (4) the term “Member of Congress” has the
 8 meaning given that term in section 2106 of title 5,
 9 United States Code; and

10 (5) the term “National Capital Region” has the
 11 meaning given that term in section 8702 of title 40,
 12 United States Code.

13 (b) *LIMITS ON TRAVEL EXPENDITURES.*—

14 (1) *LIMITS ON OFFICIAL TRAVEL.*—

15 (A) *LIMITATION.*—Except as provided in
 16 subparagraph (B), during a covered period no
 17 amounts may be obligated or expended for offi-
 18 cial travel by a covered officer or employee.

19 (B) *EXCEPTIONS.*—

20 (i) *RETURN TO DC.*—If a covered offi-
 21 cer or employee is away from the seat of
 22 Government on the date on which a covered
 23 period begins, funds may be obligated and
 24 expended for official travel for a single re-

turn trip to the seat of Government by the covered officer or employee.

(ii) *TRAVEL IN NATIONAL CAPITAL REGION.*—During a covered period, amounts may be obligated and expended for official travel by a covered officer or employee from one location in the National Capital Region to another location in the National Capital Region.

(2) *RESTRICTION ON USE OF CAMPAIGN FUNDS.*—Section 313 of the Federal Election Campaign Act of 1971 (52 U.S.C. 30114) is amended—

(A) in subsection (a)(2), by striking “for ordinary” and inserting “except as provided in subsection (d), for ordinary”; and

(B) by adding at the end the following:

“(d) *RESTRICTION ON USE OF CAMPAIGN FUNDS FOR OFFICIAL TRAVEL DURING LAPSE IN APPROPRIATIONS.*—

“(1) *IN GENERAL.*—Except as provided in paragraph (2), during a covered period (as defined in section 3 of the Prevent Government Shutdowns Act of 2019), a contribution or donation described in subsection (a) may not be obligated or expended for travel in connection with duties of the individual as a holder of Federal office.

1 “(2) *RETURN TO DC.*—If the individual is away
 2 from the seat of Government on the date on which a
 3 covered period (as so defined) begins, a contribution
 4 or donation described in subsection (a) may be obli-
 5 gated and expended for travel by the individual to re-
 6 turn to the seat of Government.”.

7 (c) *PROCEDURES IN THE SENATE AND HOUSE OF*
 8 *REPRESENTATIVES.*—

9 (1) *IN GENERAL.*—During a covered period, in
 10 the Senate and the House of Representatives—

11 (A) it shall not be in order to move to pro-
 12 ceed to any matter except for—

13 (i) a measure making appropriations
 14 for the fiscal year during which the covered
 15 period begins;

16 (ii) emergency legislation; or

17 (iii) a motion relating to determining
 18 or obtaining the presence of a quorum;

19 (B) it shall not be in order to move to recess
 20 or adjourn for a period of more than 23 hours;
 21 and

22 (C) at noon each day, the Presiding Officer
 23 shall direct the clerk to determine whether a
 24 quorum is present.

25 (2) *WAIVER.*—

1 (A) *LIMITATION ON PERIOD.*—*It shall not*
 2 *be in order in the Senate or the House of Rep-*
 3 *resentatives to move to waive any provision of*
 4 *paragraph (1) for a period that is longer than*
 5 *7 days.*

6 (B) *SUPERMAJORITY VOTE.*—*A provision of*
 7 *paragraph (1) may only be waived or suspended*
 8 *upon an affirmative vote of two-thirds of the*
 9 *Members of the applicable House of Congress,*
 10 *duly chosen and sworn.*

11 **SEC. 4. PROHIBITING PAYING MEMBERS OF CONGRESS IF**
 12 **AUTOMATIC CONTINUING APPROPRIATIONS**
 13 **ARE IN EFFECT.**

14 (a) *DEFINITIONS.*—*In this section—*

15 (1) *the term “lapse in normal appropriations”*
 16 *means appropriations are in effect for 1 or more Fed-*
 17 *eral agencies or departments under section 1311 of*
 18 *title 31, United States Code, as added by this Act (re-*
 19 *lating to automatic continuing appropriations);*

20 (2) *the term “Member of Congress” means an in-*
 21 *dividual serving in a position covered under subpara-*
 22 *graph (A), (B), or (C) of section 601(a)(1) of the Leg-*
 23 *islative Reorganization Act of 1946 (2 U.S.C.*
 24 *4501(1)); and*

1 (3) the term “payroll administrator”, with re-
2 spect to a House of Congress, means—

3 (A) in the case of the House of Representa-
4 tives, the Chief Administrative Officer of the
5 House of Representatives, or an employee of the
6 Office of the Chief Administrative Officer who is
7 designated by the Chief Administrative Officer to
8 carry out this section; and

9 (B) in the case of the Senate, the Secretary
10 of the Senate, or an employee of the Office of the
11 Secretary of the Senate who is designated by the
12 Secretary to carry out this section.

13 (b) *PROHIBITION.*—

14 (1) *HOLDING SALARIES IN ESCROW.*—If on any
15 day during a pay period a lapse in normal appro-
16 priations is in effect, the payroll administrator of
17 each House of Congress shall—

18 (A) deposit in an escrow account and ex-
19 clude from the payments otherwise required to be
20 made with respect to that pay period for the
21 compensation of each Member of Congress who
22 serves in that House of Congress an amount
23 equal to the product of—

24 (i) the daily rate of pay of the Member
25 of Congress under section 601(a) of the Leg-

1 *islative Reorganization Act of 1946 (2*
 2 *U.S.C. 4501); and*

3 *(ii) the number of 24-hour periods dur-*
 4 *ing the pay period during which the lapse*
 5 *in normal appropriations is in effect; and*

6 *(B) release amounts deposited in an escrow*
 7 *account under subparagraph (A) to such Member*
 8 *of Congress only upon the expiration of the pe-*
 9 *riod described in paragraph (2).*

10 *(2) PERIOD DESCRIBED.—The period described*
 11 *in this paragraph is the period that—*

12 *(A) begins on the first day on which the ap-*
 13 *plicable lapse in normal appropriations is in ef-*
 14 *fect; and*

15 *(B) ends on the earlier of—*

16 *(i) the date on which the applicable*
 17 *lapse in normal appropriations is no longer*
 18 *in effect; or*

19 *(ii) the last day of the Congress during*
 20 *which the applicable lapse in normal ap-*
 21 *propriations began.*

22 *(3) WITHHOLDING AND REMITTANCE OF*
 23 *AMOUNTS FROM PAYMENTS HELD IN ESCROW.—The*
 24 *payroll administrator of each House of Congress shall*
 25 *provide for the same withholding and remittance with*

1 *respect to a payment deposited in an escrow account*
2 *under paragraph (1) that would apply to the pay-*
3 *ment if the payment were not subject to paragraph*
4 *(1).*

5 *(c) ROLE OF SECRETARY OF THE TREASURY.—The*
6 *Secretary of the Treasury shall provide the payroll admin-*
7 *istrator of each House of Congress with such assistance as*
8 *may be necessary to enable the payroll administrator to*
9 *carry out this section.*

Calendar No. 304

116TH CONGRESS
1ST Session

S. 1877

[Report No. 116-158]

A BILL

To establish procedures and consequences in the event of a failure to complete regular appropriations.

NOVEMBER 12, 2019

Reported with an amendment