

Calendar No. 44

116TH CONGRESS
1ST SESSION

S. 394

[Report No. 116–13]

To amend the Presidential Transition Act of 1963 to improve the orderly transfer of the executive power during Presidential transitions.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2019

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

MARCH 25, 2019

Reported by Mr. JOHNSON, with amendments

[Omit the part struck through and insert the part printed in italics]

A BILL

To amend the Presidential Transition Act of 1963 to improve the orderly transfer of the executive power during Presidential transitions.

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 “Presidential Transition
5 Enhancement Act of 2019”.

1 **SEC. 2. PRESIDENTIAL TRANSITION ENHANCEMENTS.**

2 (a) IN GENERAL.—Section 3 of the Presidential
3 Transition Act of 1963 (3 U.S.C. 102 note) is amended—

4 (1) in subsection (a)—

5 (A) in the matter preceding paragraph (1),
6 by striking “upon request,” and all that follows
7 through “including” and inserting “upon re-
8 quest, to each President-elect, each Vice-Presi-
9 dent-elect, and, for up to 60 days after the date
10 of the inauguration of the President-elect and
11 Vice-President-elect, each President and Vice
12 President, for use in connection with the prep-
13 arations for the assumption of official duties as
14 President or Vice President necessary services
15 and facilities, including”; and

16 (B) in paragraph (2)—

17 (i) by inserting “, or an employee of
18 a committee of either House of Congress,
19 a joint committee of the Congress, or an
20 individual Member of Congress,” after
21 “any branch of the Government”; and

22 (ii) by inserting “, or in the case of an
23 employee in a position in the legislative
24 branch, with the consent of the supervising
25 Member of Congress” after “with the con-
26 sent of the head of the agency”;

1 (2) by striking subsection (b) and inserting the
2 following:

3 “(b) The Administrator shall expend funds for the
4 provision of services and facilities under this section—

5 “(1) in connection with any obligation incurred
6 by the President-elect or Vice-President-elect, or
7 after the inauguration of the President-elect as
8 President and the inauguration of the Vice-Presi-
9 dent-elect as Vice President incurred by the Presi-
10 dent or Vice President, during the period—

11 “(A) beginning on the day after the date
12 of the general elections held to determine the
13 electors of the President and Vice President
14 under section 1 or 2 of title 3, United States
15 Code; and

16 “(B) ending on the date that is 60 days
17 after the date of such inauguration; and

18 “(2) without regard to whether the President-
19 elect, Vice-President-elect, President, or Vice Presi-
20 dent submits to the Administrator a request for pay-
21 ment regarding services or facilities before the end
22 of such period.”;

23 (3) in subsection (h)(2)(B)(ii), by striking
24 “computers” and inserting “information tech-
25 nology”; and

1 (4) By adding at the end the following:

2 “(i) MEMORANDUMS OF UNDERSTANDING.—

3 “(1) IN GENERAL.—Not later than September
4 1 of a year during which a Presidential election oc-
5 curs, the Administrator shall, to the maximum ex-
6 tent practicable, enter into a memorandum of under-
7 standing with each eligible candidate, which shall in-
8 clude, at a minimum, the conditions for the adminis-
9 trative support services and facilities described in
10 subsection (a).

11 “(2) EXISTING RESOURCES.—To the maximum
12 extent practicable, a memorandum of understanding
13 entered into under paragraph (1) shall be based on
14 memorandums of understanding relating to previous
15 Presidential transitions.

16 “(3) TRANSITION REPRESENTATIVE.—

17 “(A) DESIGNATION OF REPRESENTATIVE
18 FOR INQUIRIES.—Each memorandum of under-
19 standing entered into under this subsection
20 shall designate a representative of the eligible
21 candidate to whom the Administrator shall di-
22 rect any inquiries or legal instruments regard-
23 ing the records of the eligible candidate that are
24 in the custody of the Administrator.

1 “(B) CHANGE IN TRANSITION REPRESENT-
2 ATIVE.—The designation of a new individual as
3 the transition representative of an eligible can-
4 didate shall not require the execution of a new
5 memorandum of understanding under this sub-
6 section.

7 “(C) TERMINATION OF DESIGNATION.—
8 The designation of a transition representative
9 under a memorandum of understanding shall
10 terminate—

11 “(i) not later than September 30 of
12 the year during which the inauguration of
13 the President-elect as President and the
14 inauguration of the Vice-President-elect as
15 Vice President occurs; or

16 “(ii) before the date described in
17 clause (i), upon request of the President-
18 elect or the Vice-President-elect or, after
19 such inauguration, upon request of the
20 President or the Vice President.

21 “(4) AMENDMENTS.—Any amendment to a
22 memorandum of understanding entered into under
23 this subsection shall be agreed to in writing.

24 “(5) PRIOR NOTIFICATION OF DEVIATION.—
25 Each party to a memorandum of understanding en-

1 tered into under this subsection shall provide written
2 notice, except to the extent prohibited under another
3 provision of law, not later than 3 days before taking
4 any action that deviates from the terms and condi-
5 tions agreed to in the memorandum of under-
6 standing.

7 “(6) DEFINITION.—In this subsection, the term
8 ‘eligible candidate’ has the meaning given that term
9 in subsection (h)(4).”.

10 (b) AGENCY TRANSITIONS.—Section 4 of the Presi-
11 dential Transition Act of 1963 (3 U.S.C. 102 note) is
12 amended—

13 (1) in subsection (a)—

14 (A) in paragraph (3), by striking “and” at
15 the end;

16 (B) by redesignating paragraph (4) as
17 paragraph (5); and

18 (C) by inserting after paragraph (3) the
19 following:

20 “(4) the term ‘nonpublic information’—

21 “(A) means information from the Federal
22 Government that a member of a transition team
23 obtains as part of the employment of the mem-
24 ber that such member knows or reasonably

1 should know has not been made available to the
2 general public; and

3 “(B) includes information that a member
4 of the transition team knows or reasonably
5 should know—

6 “(i) is exempt from disclosure under
7 section 552 of title 5, United States Code,
8 or otherwise protected from disclosure by
9 law; and

10 “(ii) is not authorized by the appro-
11 priate government agency or officials to be
12 released to the public; and”;

13 (2) in subparagraphs (C) and (D) of subsection
14 (e)(3), by inserting “serving in a career position”
15 after “senior representative”;

16 (3) by striking subsection (f)(2) and inserting
17 the following:

18 “(2) ACTING OFFICERS.—Not later than Sep-
19 tember 15 of a year during which a Presidential
20 election occurs, and in accordance with subchapter
21 III of chapter 33 of title 5, United States Code, the
22 head of each agency shall ensure that a succession
23 plan is in place for each senior noncareer position in
24 the agency.”; and

25 (4) in subsection (g)—

1 (A) in paragraph (1), by striking “Novem-
2 ber 1” and inserting “October 1”; and

3 (B) by adding at the end the following:

4 “(3) ETHICS PLAN.—

5 “(A) IN GENERAL.—Each memorandum of
6 understanding under paragraph (1) shall in-
7 clude an agreement that the eligible candidate
8 will implement and enforce an ethics plan to
9 guide the conduct of the transition beginning on
10 the date on which the eligible candidate be-
11 comes the President-elect.

12 “(B) CONTENTS.—The ethics plan shall
13 include, at a minimum—

14 “(i) a description of the ethics re-
15 quirements that will apply to all members
16 of the transition team, including any spe-
17 cific requirement for transition team mem-
18 bers who will have access to nonpublic or
19 classified information;

20 “(ii) a description of how the transi-
21 tion team will—

22 “(I) address the role on the tran-
23 sition team of—

24 “(aa) lobbyists registered
25 under the Lobbying Disclosure

1 Act of 1995 (2 U.S.C. 1601 et
2 seq.) and individuals who were
3 former lobbyists registered under
4 that Act; and

5 “(bb) persons registered
6 under the Foreign Agents Reg-
7 istration Act of 1938 (22 U.S.C.
8 611 et seq.), foreign nationals,
9 and other foreign agents;

10 “(II) prohibit a transition team
11 member with conflicts of interest simi-
12 lar to those applicable to Federal em-
13 ployees under section 2635.402(a)
14 and section 2635.502(a) of title 5,
15 Code of Federal Regulations, related
16 to current or former employment, af-
17 filiations, clients, or investments, from
18 working on particular matters involv-
19 ing specific parties that affect the in-
20 terests of such member; and

21 “(III) address how the covered
22 eligible candidate will address his or
23 her own conflicts of interest during a
24 Presidential term if the covered eligi-

1 ble candidate becomes the President-
2 elect;

3 “(iii) a Code of Ethical Conduct,
4 which each member of the transition team
5 will sign and be subject to, that reflects
6 the content of the ethics plans under this
7 paragraph and at a minimum requires
8 transition team members to—

9 “(I) seek authorization from
10 transition team leaders or their des-
11 ignees before seeking, on behalf of the
12 transition, access to any nonpublic in-
13 formation;

14 “(II) keep confidential any non-
15 public information provided in the
16 course of the duties of the member
17 with the transition and exclusively use
18 such information for the purposes of
19 the transition; and

20 “(III) not use any nonpublic in-
21 formation provided in the course of
22 transition duties, in any manner, for
23 personal or private gain for the mem-
24 ber or any other party at any time
25 during or after the transition; and

1 “(iv) a description of how the transi-
2 tion team will enforce the Code of Ethical
3 Conduct, including the names of the mem-
4 bers of the transition team responsible for
5 enforcement, oversight, and compliance.

6 “(C) PUBLICLY AVAILABLE.—The transi-
7 tion team shall make the ethics plan described
8 in this paragraph publicly available on the
9 ~~Internet~~ *internet* website of the General Serv-
10 ices Administration the earlier of—

11 “(i) the day on which the memo-
12 randum of understanding is completed; or

13 “(ii) October 1.”.

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