

106TH CONGRESS
2D SESSION

S. 2242

To amend the Federal Activities Inventory Reform Act of 1998 to improve the process for identifying the functions of the Federal Government that are not inherently governmental functions, for determining the appropriate organizations for the performance of such functions on the basis of competition, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2000

Mr. THOMAS introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend the Federal Activities Inventory Reform Act of 1998 to improve the process for identifying the functions of the Federal Government that are not inherently governmental functions, for determining the appropriate organizations for the performance of such functions on the basis of competition, 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,*

1 **SECTION 1. SHORT TITLE; REFERENCES TO FAIR ACT OF**
2 **1998.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
4 “Federal Activities Inventory Reform Act Amendments of
5 2000”.

6 (b) **REFERENCES.**—Except as otherwise expressly
7 provided, whenever in this Act an amendment or repeal
8 is expressed in terms of an amendment to, or repeal of,
9 a section or other provision, the reference shall be consid-
10 ered to be made to a section or other provision of the Fed-
11 eral Activities Inventory Reform Act of 1998 (Public Law
12 105–270; 112 Stat. 2382; 31 U.S.C. 501 note).

13 **SEC. 2. ANNUAL LISTS OF GOVERNMENT ACTIVITIES.**

14 (a) **LISTS TO INCLUDE INHERENTLY GOVERN-**
15 **MENTAL ACTIVITIES.**—Subsection (a) of section 2 is
16 amended by inserting before the period at the end of the
17 first sentence the following: “and those activities per-
18 formed by Federal Government sources for the executive
19 agency that, in that official’s judgment, are inherently
20 governmental functions”.

21 (b) **DESCRIPTIVE AND EXPLANATORY MATTERS TO**
22 **BE INCLUDED.**—Such subsection is further amended—

23 (1) by redesignating paragraph (3) as para-
24 graph (5);

25 (2) by inserting after paragraph (2) the fol-
26 lowing new paragraphs (3) and (4):

1 “(3) A description of the activity, including—
2 “(A) a narrative description of the activity;
3 “(B) the product or service code, if any,
4 that would be assigned to the activity under the
5 Federal Procurement Data System if the activ-
6 ity were performed in the private sector; and
7 “(C) the Standard Industrial Classification
8 code, if any, that would be assigned to the ac-
9 tivity if the activity were performed in the pri-
10 vate sector.

11 “(4) The organization within the executive
12 agency that is performing the activity, or for which
13 the activity is performed, and the location of that or-
14 ganization.”; and

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

16 “(6) The identity of any provision of law or
17 other authority that, except for subsection (f), would
18 expressly or impliedly exempt the executive agency
19 from the requirements of this section or of Office of
20 Management and Budget Circular A-76 with respect
21 to any activity that is not an inherently govern-
22 mental activity, together with a discussion of the ra-
23 tionale for that exemption.”.

24 (c) DEADLINES FOR PUBLICATION OF LISTS AND
25 CHANGES.—Subsection (c) of such section is amended—

1 (1) in paragraph (1)(B), by striking “promptly”
 2 and inserting “, not later than 30 working days
 3 after receiving the list,”; and

4 (2) in paragraph (2)(B), by inserting after
 5 “(B)” the following: “not later than 30 working
 6 days after the date of the final decision to make the
 7 change,”.

8 **SEC. 3. NOTIFICATION OF AFFECTED EMPLOYEES.**

9 Section 2 is further amended by adding at the end
 10 the following:

11 “(f) NOTIFICATION OF AFFECTED EMPLOYEES.—At
 12 the same time that the Director of the Office of Manage-
 13 ment and Budget publishes a notice of the availability of
 14 a list of an executive agency under subsection (c)(1), the
 15 head of the executive agency shall notify each employee
 16 of the executive agency employed in an activity listed as
 17 not being an inherently governmental function that the ac-
 18 tivity may be converted to performance by a private sector
 19 source.”.

20 **SEC. 4. COMPETITION REQUIREMENTS.**

21 (a) USE OF COMPETITIVE PROCEDURES.—

22 (1) REQUIREMENT.—The second sentence of
 23 section 2(d) is amended by striking “use a competi-
 24 tive process” and all that follows and inserting “se-

1 lect the source using competitive procedures applica-
2 ble to the executive agency’s procurements.”

3 (2) COMPETITIVE PROCEDURES DEFINED.—

4 Section 5 is amended by adding at the end the fol-
5 lowing:

6 “(3) COMPETITIVE PROCEDURES.—The term
7 ‘competitive procedures’ has the meaning given that
8 term in section 2302(2) of title 10, United States
9 Code, and section 309(b) of the Federal Property
10 and Administrative Services Act of 1949 (41 U.S.C.
11 259(b)).”

12 (b) COST COMPARISONS.—Section 2(e) is amended to
13 read as follows:

14 “(e) COST COMPARISONS.—

15 “(1) REALISTIC AND FAIR COST COMPARI-
16 SONS.—Before determining to contract with a pri-
17 vate sector source for the performance of an execu-
18 tive agency activity on the basis of a comparison of
19 the costs of procuring services from such a source
20 with the cost of performing that activity by the exec-
21 utive agency, the head of the executive agency shall
22 ensure that—

23 “(A) the cost comparison was conducted in
24 accordance with—

1 “(i) Office of Management and Budget
2 Circular A-76; and

3 “(ii) any provision of law that is ap-
4 plicable to the cost comparison, including
5 (if applicable) title IX of the Federal Prop-
6 erty and Administrative Services Act of
7 1949 (40 U.S.C. 541 et seq.) relating to
8 architectural and engineering services (in-
9 cluding surveying and mapping services);

10 “(B) all costs have been considered, includ-
11 ing the costs of quality assurance, technical
12 monitoring of the performance of such activity,
13 liability insurance, employee retirement and dis-
14 ability benefits, and all other overhead costs;
15 and

16 “(C) the costs considered are realistic and
17 fair.

18 “(2) EXEMPTION.—Notwithstanding any other
19 provision of law, the performance of an activity that
20 is not an inherently governmental function may be
21 converted to performance by a private sector source
22 without a cost comparison if the activity is per-
23 formed by fewer than 10 full-time employees of the
24 United States (or the equivalent in part-time em-

1 ployees or in a combination of full-time and part-
 2 time employees).”.

3 **SEC. 5. INAPPLICABILITY OF EXEMPTIONS IN OTHER LAWS.**

4 Section 2 is amended by adding at the end the fol-
 5 lowing:

6 “(f) EXEMPTIONS INAPPLICABLE.—The head of each
 7 executive agency shall carry out this Act notwithstanding
 8 any other provision of law that expressly or impliedly ex-
 9 empts that executive agency from developing an inventory
 10 of activities that are not inherently governmental func-
 11 tions and are performed by the executive agency or by
 12 Federal Government sources for the executive agency. The
 13 head of the executive agency shall include in the annual
 14 list prepared under subsection (a) a notation of each such
 15 exemption that, except for the preceding sentence, would
 16 otherwise apply to the executive agency or any such func-
 17 tion.”.

18 **SEC. 6. PERFORMANCE FOR OTHER GOVERNMENTAL OR-**
 19 **GANIZATIONS.**

20 (a) LIMITATIONS.—Section 2, as amended by section
 21 5, is further amended by adding at the end the following:

22 “(g) LIMITATIONS ON PERFORMANCE FOR OTHER
 23 GOVERNMENTAL ORGANIZATIONS.—

24 “(1) FEDERAL AGENCIES.—An activity that is
 25 not an inherently governmental function may not be

1 performed for an executive agency by another Fed-
2 eral Government source under section 1535 of title
3 31, United States Code, unless, within three years
4 before the order for that activity is placed with the
5 other Federal Government source under that section,
6 performance of that activity by the executive agency
7 has been justified pursuant to a competition carried
8 out under Office of Management and Budget Cir-
9 cular A-76.

10 “(2) STATE AND LOCAL GOVERNMENTS.—The
11 head of an executive agency may not take any action
12 under section 6505 of title 31, United State Code,
13 to perform for the benefit of an agency of a State
14 or a political subdivision of a State an activity that
15 is not an inherently governmental function unless
16 the head of the executive agency has first—

17 “(A) solicited offers for the performance of
18 that activity in accordance with section 18 of
19 the Office of Federal Procurement Policy Act
20 (41 U.S.C. 416) and section 8(e) of the Small
21 Business Act (15 U.S.C. 637(e)); and

22 “(B) determined on the basis of the re-
23 sponse to the solicitation that no responsible
24 private sector source is available to meet the

1 needs of the executive agency for the perform-
2 ance of that activity for the executive agency.”.

3 (b) STATE DEFINED.—Section 5, as amended by sec-
4 tion 4(a)(2) of this Act, is further amended by adding at
5 the end the following:

6 “(4) STATE.—The term ‘State’, includes the
7 District of Columbia, the Commonwealth of Puerto
8 Rico, and the United States Virgin Islands.”.

9 **SEC. 7. CHALLENGES TO THE LIST.**

10 (a) MATTERS SUBJECT TO CHALLENGE.—Section
11 3(a) is amended by striking “or an inclusion of a par-
12 ticular activity on,” and inserting “an inclusion of a par-
13 ticular activity on, or the classification of any activity on”.

14 (b) REVISION OF DEADLINES.—Section 3 is
15 amended—

16 (1) in subsection (c), by striking “30 days” and
17 inserting “90 working days”;

18 (2) in subsection (d), by striking “28 days” and
19 inserting “28 working days”; and

20 (3) in subsection (e)(2), by striking “10 days”
21 and inserting “10 working days”.

22 (c) PUBLICATION OF RESOLUTION OF CHAL-
23 LENGES.—Section 3 is amended by adding at the end the
24 following:

1 “(f) PUBLICATION OF RESOLUTION OF CHAL-
 2 LENGES.—Not later than 30 working days after the head
 3 of an executive agency makes a decision on an appeal
 4 under subsection (e), the head of the executive agency
 5 shall publish in the Federal Register the following:

6 “(1) FINAL LIST.—A final version of the list
 7 that was challenged.

8 “(2) SCHEDULE FOR REVIEW OF LIST.—A
 9 schedule for the review to be conducted of such list
 10 under section 2(d), together with a description of the
 11 intended review.”.

12 (d) WORKING DAYS DEFINED.—Section 5, as amend-
 13 ed by section 6(b) of this Act, is further amended by add-
 14 ing at the end the following:

15 “(5) WORKING DAY.—The term ‘working day’,
 16 in the administration of sections 2 and 3 with re-
 17 spect to a list of an executive agency, means a day
 18 on which the headquarters of the executive agency is
 19 open for the conduct of the executive agency’s busi-
 20 ness.”.

21 **SEC. 8. PROHIBITION ON CONVERSION TO PERFORMANCE**
 22 **BY FEDERAL PRISON INDUSTRIES.**

23 Section 4 is amended by adding at the end the fol-
 24 lowing:

1 “(c) PROHIBITED CONVERSION.—The performance
 2 of an activity of an executive agency that is not an inher-
 3 ently government function may not be converted to per-
 4 formance by a government corporation provided for under
 5 chapter 307 of title 18, United States Code.”.

6 **SEC. 9. INHERENTLY GOVERNMENTAL FUNCTION NOT TO**
 7 **INCLUDE RESEARCH AND DEVELOPMENT.**

8 Section 5(2)(C) is amended—

- 9 (1) by striking “or” at the end of clause (i);
 10 (2) by striking the period at the end of clause
 11 (ii) and inserting “; or”; and
 12 (3) by adding at the end the following:

13 “(iii) the conduct of research and de-
 14 velopment.”.

15 **SEC. 10. PRIVATE SECTOR SOURCE DEFINED.**

16 Section 5, as amended by section 7(d) of this Act,
 17 is further amended by adding at the end the following:

18 “(6) PRIVATE SECTOR SOURCE.—The term ‘pri-
 19 vate sector source’ means a person lawfully engaged
 20 in business for profit in the United States.”.

21 **SEC. 11. REPORT ON PORTABILITY OF FEDERAL PENSION**
 22 **BENEFITS.**

23 (a) REQUIREMENT.—Not later than 180 days after
 24 the date of the enactment of this Act, the Director of the
 25 Office of Management and Budget shall submit to Con-

1 gress a report on the portability of Federal pension bene-
2 fits. The report shall contain—

3 (1) an evaluation of current Federal law, poli-
4 cies, and procedures relating to the conversion by
5 Federal Government employees of their Federal pen-
6 sion benefits to private sector pension plans upon
7 the transition of such employees from Federal Gov-
8 ernment employment to private sector employment;

9 (2) a discussion of any impediments to the con-
10 version of Federal pension benefits as described in
11 paragraph (1);

12 (3) an analysis of the scoring, under the Con-
13 gressional Budget Act of 1974, of the conversion of
14 Federal pension benefits as so described; and

15 (4) recommendations of the Director for any
16 legislation required to permit the ready conversion of
17 Federal pension benefits as so described.

18 (b) CONSULTATION.—The Director of the Office of
19 Management and Budget shall consult with the Director
20 of the Office of Personnel Management and other appro-
21 priate interested parties in preparing the report required
22 by subsection (a).

○