

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.**

**S. 5109**

To amend section 3520A of title 44, United States Code, to extend the Chief Data Officer Council’s sunset and add new authorities for improving Federal agency data governance, including to enable reliable and secure adoption of emerging technologies and artificial intelligence, 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 “Modernizing Data  
5 Practices to Improve Government Act”.

6 **SEC. 2. AMENDMENTS.**

7 Section 3520A of title 44, United States Code, is  
8 amended—

9 (1) by striking subsections (d) and (e);

1           (2) by redesignating subsections (a) through (c)  
2 as subsections (b) through (d), respectively;

3           (3) by inserting before subsection (b), as so re-  
4 designated, the following:

5           “(a) DEFINITIONS.—In this section:

6           “(1) ARTIFICIAL INTELLIGENCE.—The term  
7 ‘artificial intelligence’—

8           “(A) has the meaning given that term in  
9 section 5002 of the National Artificial Intel-  
10 ligence Initiative Act of 2020 (15 U.S.C. 9401);  
11 and

12           “(B) includes the artificial systems and  
13 techniques described in paragraphs (1) through  
14 (5) of section 238(g) of the John S. McCain  
15 National Defense Authorization Act for Fiscal  
16 Year 2019 (Public Law 115–232; 10 U.S.C.  
17 4061 note prec.).

18           “(2) DATA GOVERNANCE.—The term ‘data gov-  
19 ernance’—

20           “(A) means the approach of an agency to  
21 managing data during the lifecycle of the data;  
22 and

23           “(B) includes—

1                   “(i) agency responsibilities and re-  
2                   quirements to ensure data is secure, pri-  
3                   vate, accurate, available, and usable; and

4                   “(ii) authorities, roles, responsibilities,  
5                   organizational structures, policies, proce-  
6                   dures, standards, and resources for the  
7                   definition, stewardship, production, secu-  
8                   rity provenance, dissemination, and use of  
9                   data.”.

10                   (4) in subsection (c), as so redesignated—

11                   (A) by redesignating paragraph (5) as  
12                   paragraph (6);

13                   (B) in paragraph (4), by striking the  
14                   “and” at the end; and

15                   (C) by inserting after paragraph (4) the  
16                   following:

17                   “(5) identify opportunities and procedures to  
18                   improve data governance to—

19                   “(A) ensure that publicly available data of  
20                   agencies are transparent, accessible, and of suf-  
21                   ficient quality for the intended use of the data;  
22                   and

23                   “(B) support agency heads and their ef-  
24                   forts to reliably and securely leverage emerging  
25                   technologies and artificial intelligence, including

1 to ensure mission outcomes and improve oper-  
2 ational efficiency across agencies; and”;

3 (5) in subsection (d)(4), as so redesignated, by  
4 striking “and Evaluation Officers” through “mem-  
5 ber of the Council” and inserting “, a representative  
6 from all Chief Artificial Intelligence Officers, and a  
7 representative for all Chief Privacy Officers, and  
8 such representatives shall serve as non-voting ex  
9 officio members of the Council”; and

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

11 “(e) COUNCIL STAFF.—The Council may enter into  
12 an interagency agreement with the Administrator of Gen-  
13 eral Services for shared services for the purpose of staffing  
14 the Council.

15 “(f) DATA GOVERNANCE REPORTS.—The Council  
16 shall submit to the Director, the Committee on Homeland  
17 Security and Governmental Affairs of the Senate, and the  
18 Committee on Oversight and Accountability of the House  
19 of Representatives—

20 “(1) a biennial report on the work of the Coun-  
21 cil, including any updates to the recommendations  
22 provided in the report required under paragraph (2)  
23 of this subsection and an explanation of the work to  
24 ensure progress on each of the objectives in sub-  
25 section (c);

1           “(2) not later than 1 year after the date of en-  
2           actment of this subsection, a report with rec-  
3           ommendations and best practices for agencies (tak-  
4           ing into account that the recommendations may not  
5           apply to all agencies or to all agencies equally, based  
6           on the unique missions and capabilities of each  
7           agency) for developing datasets, data governance  
8           policies, and infrastructure, including to enable  
9           adoption and use of emerging technologies and arti-  
10          ficial intelligence, such as for use in training, test-  
11          ing, and operation of artificial intelligence within  
12          agencies, which shall include—

13                 “(A) an assessment of key data governance  
14                 and sharing challenges, including those that  
15                 prevent adoption of emerging technologies and  
16                 artificial intelligence across agencies;

17                 “(B) an assessment, as applicable, of ways  
18                 to strengthen and clarify the roles and respon-  
19                 sibilities relating to data governance of agency  
20                 officials, in addition to the Chief Data Officer;

21                 “(C) recommendations for data governance  
22                 best practices, including—

23                         “(i) best practices to ensure data used  
24                         is reliable, fit for purpose, transparent,  
25                         high quality, protects privacy and person-

1 ally identifiable information, and protects  
2 confidentiality of individuals and other sen-  
3 sitive information, including data used for  
4 testing, training, and operation of artificial  
5 intelligence; and

6 “(ii) defining key data standards, in-  
7 cluding data quality;

8 “(D) a prioritization of existing and future  
9 agency artificial intelligence use cases that ad-  
10 dress a critical need across the Federal Govern-  
11 ment, for which new or shared datasets are  
12 needed to support adoption;

13 “(E) identification of existing data avail-  
14 able to 1 or more agencies that would benefit  
15 other such agencies if the data were shared or  
16 made available;

17 “(F) recommendations for ways Chief  
18 Data Officers should work with relevant agency  
19 officials to assist in addressing increases in  
20 risks associated with—

21 “(i) the potential for misuse of, mis-  
22 management of, and unauthorized access  
23 to data and personally identifiable informa-  
24 tion of individuals when an agency  
25 leverages data for use in artificial intel-

1                   ligence, including identification of software  
2                   or hardware solutions, technical processes,  
3                   techniques, or other technological means of  
4                   mitigating privacy risks arising from data  
5                   processing; and

6                   “(ii) increasing access to the data of  
7                   the agency for the purposes of supporting  
8                   a cross-Government mission;

9                   “(G) recommendations for data ownership  
10                  and retention policies and procedures, including  
11                  how Chief Data Officers can support Chief Pro-  
12                  curement Officers and relevant officials in en-  
13                  suring that agency contracts to procure emerg-  
14                  ing technology or artificial intelligence include  
15                  any necessary clauses to ensure that the Fed-  
16                  eral Government—

17                  “(i) retains sufficient rights to data,  
18                  and any modifications to that data;

19                  “(ii) avoids vendor lock-in and retains  
20                  the ability to facilitate or conduct the con-  
21                  tinued design, development, testing, and  
22                  operation of data by the Federal Govern-  
23                  ment;

1                   “(iii) can conduct pre-procurement re-  
2                   views of artificial intelligence to assess po-  
3                   tential error issues; and

4                   “(iv) maximizes the use of and access  
5                   to open data, open source software, and  
6                   public access research to improve trans-  
7                   parency, knowledge sharing, and interoper-  
8                   ability.

9                   “(H) criteria agencies should consider  
10                  when using data to train artificial intelligence  
11                  used by agencies, including recommendations  
12                  for—

13                  “(i) ways to increase transparency of  
14                  training data for the public and for agency  
15                  employees using the relevant artificial in-  
16                  telligence system software; and

17                  “(ii) processes and procedures to ana-  
18                  lyze and test training data for potential  
19                  risks;

20                  “(I) recommendations for ways to expand  
21                  public access to Federal data assets in a ma-  
22                  chine-readable format while also taking into ac-  
23                  count the criteria listed under section  
24                  3511(a)(2)(E);





1 internally to relevant Federal employ-  
2 ees and externally to the public;

3 “(iii) opportunities across the Federal  
4 Government and within specific agencies  
5 for using synthetic data;

6 “(iv) circumstances when agencies  
7 should not use synthetic data; and

8 “(v) opportunities for the Federal  
9 Government to partner with public and  
10 private sector entities in the development  
11 and sharing of data, including synthetic  
12 data, including to help in the adoption of  
13 emerging technologies and artificial intel-  
14 ligence, while also taking into account the  
15 criteria under section 3511(a)(2)(E); and

16 “(K) for subparagraphs (A) through (J),  
17 an indication of how agencies can incorporate  
18 the respective recommendations and best prac-  
19 tices into existing agency processes and statu-  
20 tory requirements.

21 “(g) DATA GOVERNANCE GUIDANCE.—The Director,  
22 upon receipt of a report required under subsection (f),  
23 may issue guidance to agencies with respect to the imple-  
24 mentation of the recommendations of the report.

1       “(h) DATA MANAGEMENT REPORT.—Not later than  
2 270 days after the date of enactment of this subsection,  
3 the Director, in consultation with the Council, shall—

4               “(1) submit to Congress and make available on  
5 a public website a report with recommendations to  
6 clarify and enhance the roles of the Chief Data Offi-  
7 cers across the Federal Government relating to data  
8 governance, including for artificial intelligence and  
9 including recommendations for suggested collabora-  
10 tion opportunities between the Council, other inter-  
11 agency councils, and additional Federal Government  
12 entities the Council determines relevant; and

13               “(2) make available on a public website, not  
14 less frequently than annually—

15                       “(A) a list of all Chief Data Officers of  
16 agencies, including, with respect to each Chief  
17 Data Officer—

18                               “(i) any additional roles or titles the  
19 Chief Data Officer holds at the agency;  
20 and

21                               “(ii) the respective roles, responsibil-  
22 ities, and statutory authorities of the Chief  
23 Data Officer at the agency relating to data  
24 and artificial intelligence; and

1           “(B) an identification of skills and re-  
2           sources needed by Chief Data Officers and their  
3           staffs, including to support artificial intelligence  
4           system adoption at agencies.

5           “(i) EVALUATION.—Not later than 2 years after the  
6           date of enactment of this subsection, and not less fre-  
7           quently than once every 2 years thereafter, the Comp-  
8           troller General shall submit to Congress a report on—

9           “(1) whether the duties of the Council improved  
10          the use of evidence and data in the Federal Govern-  
11          ment; and

12          “(2) any barriers or challenges preventing the  
13          Council from accomplishing the objectives under this  
14          section or the amendments made by the Modernizing  
15          Data Practices to Improve Government Act.

16          “(j) RULE OF CONSTRUCTION.—Nothing in this sec-  
17          tion shall be construed to require an agency to implement  
18          any recommendation developed pursuant to subsection (f)  
19          or (h).

20          “(k) SUNSET.—Beginning on the date that is 7 years  
21          after the date of enactment of this subsection, this section  
22          shall have no force or effect.”.

23       **SEC. 3. NO ADDITIONAL FUNDS.**

24          No additional funds are authorized to be appro-  
25          priated for the purpose of carrying out this Act.