

116TH CONGRESS }
1st Session }

SENATE

{ REPORT
116-158

GOVERNMENT SHUTDOWN
ACCOUNTABILITY ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1877

TO ESTABLISH PROCEDURES AND CONSEQUENCES IN THE EVENT
OF A FAILURE TO COMPLETE REGULAR APPROPRIATIONS



NOVEMBER 12, 2019.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1877]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1877) to establish procedures and consequences in the event of a failure to complete regular appropriations, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 1877, the Prevent Government Shutdowns Act of 2019, seeks to end government shutdowns during a lapse in appropriations by providing for an automatic appropriation at current levels and providing incentives for Congress to pass regular appropriations while automatic appropriations are in place. The legislation limits official travel of Members of Congress and senior Executive Branch officials and holds Members' pay in escrow during a period of automatic appropriations. It also requires daily quorum calls and pro-

hibits business from being in order on the Senate and House floor other than appropriations bills.

II. BACKGROUND AND THE NEED FOR LEGISLATION

According to the Antideficiency Act, Federal agencies are unable to spend funds in the absence of appropriations except for activities involving “the safety of human life or the protection of property.”¹ Therefore, when Congress and the President fail to agree on any one of twelve appropriations bills or enact a continuing resolution, agencies are forced to cease certain activities, resulting in what is known as a “government shutdown.”² Since 2011, the United States has experienced three government shutdowns and passed 34 continuing resolutions to avoid a shutdown.³

Government shutdowns result in furloughs for Federal employees who do not perform duties excepted under the Antideficiency Act, and the withholding of pay from excepted employees while they work until Congress appropriates funds.⁴ The lack of funding has an irreversible impact on economic activity, government revenue, and homeland security.

Government shutdowns are harmful to the economy. The Congressional Budget Office recently estimated that the most recent shutdown—December 2018 to February 2019—cost the economy \$11 billion, including reducing the United States’ real gross domestic product (GDP).⁵ This is due to the unavailability of some government services, the temporary decrease in Federal spending on goods and services, and decreased output in the private sector due to temporary reduction in aggregate demand.⁶ Although a portion of the reduction in GDP is offset when the Federal Government resumes operations, the most recent government shutdown resulted in an estimated \$3 billion of forgone economic activity will never be recovered.⁷

Government shutdowns affect the collection of some fees and fines.⁸ In most cases, uncollected fees are eventually recovered upon resumption of funding. Some collections, however, are permanently lost due to their association with lack of economic activity during the shutdown.⁹ For example, the National Park Service reported that national parks lost about \$400,000 per day in fees during the 2018–19 government shutdown.¹⁰

Government shutdowns also pose a national security risk due to the lack of funding for agencies tasked with minimizing those risks.¹¹ Although most employees involved in the protection of the nation are excepted under the Antideficiency Act and therefore ex-

¹ 31 U.S.C. 1341–1342, 1511–1519.

² Cong. Research Serv., RS20348, Federal Funding Gaps: A Brief Overview (Feb. 4, 2019), <https://crsreports.congress.gov/product/pdf/RS/RS20348>.

³ Cong. Research Serv., R42647, Continuing Resolutions: Overview of Components and Practices (Apr. 19, 2019).

⁴ *Id.*

⁵ Cong. Budget Office, *The Effects of the Partial Shutdown Ending in January 2019*, at 6 (Jan. 2019), <https://www.cbo.gov/system/files?file=2019-01/54937-PartialShutdownEffects.pdf> [hereinafter CBO Report].

⁶ *Id.*

⁷ *Id.* at 6–7.

⁸ *Id.* at 5.

⁹ *Id.* at 5–6.

¹⁰ Denise Lu and Anjali Singhvi, *Government Shutdown Timeline: See how the Effects are Piling Up*, N.Y. TIMES (Jan. 28, 2019), <https://www.nytimes.com/interactive/2019/01/08/us/politics/government-shutdown-calendar.html>.

¹¹ CBO Report at 11.

pected to work without pay, during the 2018–19 government shutdown, a number of Transportation Security Administration (TSA) agents called out sick causing understaffing and security checkpoint closures.¹² In addition, a shortage of airport traffic controllers not only resulted in flight cancelations, plane rerouting and airport delays, it also exposed our nation to potential safety issues and threats.¹³

Government shutdowns have other indirect negative effects, such as the cancellation of thousands of immigration hearings, adding thousands of cases to an active case backlog.¹⁴

The Prevent Government Shutdowns Act of 2019 addresses the negative consequences of government shutdowns by preventing them altogether. The legislation provides that, in the event of a lapse in appropriations, Federal programs and activities are automatically appropriated at the most recent funding level. This ensures that the Federal Government can continue to operate until Congress passes and the President signs appropriations bills for the activities or a continuing resolution is enacted.

In order to ensure that Congress does not rely on automatic appropriations for an extended period of time, the legislation bans expenditures for official travel for Members of Congress and certain Executive Branch employees when an automatic appropriation is in place, holds Members' pay in escrow, and makes all business other than appropriations out of order in the House and Senate, except certain emergency legislation. The bill allows for waiver of this requirement with a two-thirds vote in order to proceed to any legislation or nomination in the event of a true emergency. The legislation also requires daily quorum calls to ensure Members are available to end the automatic appropriation and fund government through a regular appropriations measure.

III. LEGISLATIVE HISTORY

S. 1877, the Prevent Government Shutdowns Act of 2019, was introduced on June 18, 2019, by Senators James Lankford (R–OK), Maggie Hassan (D–NH) and Ron Johnson (R–WI). Senator Mike Braun later joined as a cosponsor. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1877 at a business meeting on June 19, 2019. Senators Lankford, Hassan, Johnson, Rosen, and Sinema offered a modified substitute amendment that changed the short title of the legislation and added a section imposing an automatic continuing appropriation in the event of a lapse in regular appropriations. The amendment was adopted, as modified, by unanimous consent.

Sen. Rand Paul offered an amendment to strike the text of S. 1877 and replace it with language that would, in the event of a lapse of any regular appropriations, provide for an immediate one

¹² Patrick McGeehan, *Government Shutdown Forces Airports to Rely on Backup Security Screeners*, N.Y. TIMES (Jan. 22, 2019), <https://www.nytimes.com/2019/01/22/nyregion/shutdown-airports-security.html>.

¹³ *Id.*; Patrick McGeehan, *Shutdown Sets Off Airport Delays as F.A.A. Announces Staffing Shortages*, N.Y. TIMES (Jan. 25, 2019), <https://www.nytimes.com/2019/01/25/nyregion/airports-shutdown-laguardia-faa.html>.

¹⁴ *CBO Report* at 8–9; TRAC Report, Inc. at Syracuse Univ., *Cancelled Immigration Court Hearings Grow as Shutdown Continues* (Jan. 14, 2019), <https://trac.syr.edu/immigration/reports/543/> (last visited Sept. 17, 2019).

percent reduction in spending, and an additional one percent reduction every 90 days thereafter during the lapse. Paul Amendment 1 was not adopted by roll call vote (2 Yeas, 12 Nays). Senators Paul and Enzi voted yea. Senators Johnson, Portman, Lankford, Romney, Scott, Hawley, Peters, Carper, Hassan, Sinema, and Rosen voted nay. Senator Harris voted nay by proxy.

Senator Rick Scott offered an amendment to restrict the pay of Members of Congress during a failure of Congress to pass a budget resolution or any regular appropriations bill. Senator Sinema offered a second degree amendment to Scott Amendment 1 to replace the Scott text with language that would instead hold the pay of Members of Congress in escrow during only a lapse in regular appropriations, to be returned to Members of Congress at the end of the lapse or the end of the Congress, whichever is earlier. The Sinema second degree amendment was adopted by voice vote with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Hassan, Sinema, and Rosen present. Scott Amendment 1, as amended by the Sinema second degree amendment, was adopted by roll call vote (9 Yeas, 5 Nays). Senators voting in the affirmative were Scott, Enzi, Hawley, Peters, Hassan, Sinema, Rosen, Carper (by proxy), and Harris (by proxy). Senators voting in the negative were Johnson, Portman, Paul, Lankford, and Romney.

The Committee ordered the bill, as amended, reported favorably by a roll call vote (10 Yeas, 2 Nays). Senators voting in the affirmative were Johnson, Lankford, Romney, Scott, Enzi, Hawley, Peters, Hassan, Sinema, and Rosen. Senators voting in the negative were Portman and Paul. For the record only, Senators Carper and Harris voted Yea by proxy.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section designates the short title of the bill as the “Prevent Government Shutdowns Act of 2019.”

Section 2. Automatic continuing appropriations

This section effectively ends government shutdowns. It imposes automatic continuing funding at the rate of the previous fiscal year’s funding in the event of a failure to pass one or more appropriation bills or a continuing resolution. This section also includes language to ensure that sequester is not inadvertently triggered in the case of an automatic continuing resolution.

This section makes clear that any funds made available by this section (during the lapse in regular appropriations) are subject to the terms and conditions imposed on such funds for the previous fiscal year or other authority grants for such program under current law, and charged to the appropriate appropriation or fund whenever a regular appropriation is enacted or a continuing appropriation resolution is passed.

Finally, this section clarifies that an automatic appropriation under this section will not occur with respect to any program, project or activity if any other provision of law has made funds available or granted authority for the program to continue, or specifically provided that no funds shall be made available.

Section 3. Timely enactment of regular appropriation acts

This section provides incentives to ensure Members of Congress work toward passing all regular appropriation bills during any lapse. Subsection (a) of this section includes definitions of the terms “covered officer or employee,” “covered period,” “emergency legislation,” “Member of Congress,” and “National Capital Region.”

Subsection (b) of this section limits official travel expenditures for Members of Congress and senior Executive Branch officials during a lapse in regular appropriations, to expenditures for return trips to Washington, D.C. and travel in the National Capital Region. This includes the use of campaign funds for official travel during a lapse in regular appropriations.

Subsection (c) of this section states that, during a lapse of regular appropriations, it shall be out of order to: proceed to any business on the House or Senate floor during a lapse in regular appropriations except for (1) a measure making appropriations for the fiscal year during which the lapse in regular appropriations begins; (2) certain emergency legislation; or (3) a motion to determine or obtain the presence of a quorum; and to move to recess or adjourn for more than 23 hours. It also requires the Presiding Officer to direct the clerk to determine whether a quorum is present at noon each day during a lapse in regular appropriations. Finally, subsection (c) provides for a waiver of these rules for not more than seven days with a two-thirds vote of the House or Senate.

Section 4. Prohibiting paying Members of Congress if automatic continuing appropriations are in effect

This section defines the terms “lapse in normal appropriations,” “Member of Congress,” and “payroll administrator.”

This section directs the payroll administrator of each House of Congress to hold the salary of each Member of Congress in an escrow account during the period of lapse in regular appropriations. Salary pay shall be released to Members of Congress on the earlier of the date on which the lapse of regular appropriations ends or the last day of the Congress during which the lapse began.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 2019.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1877, the Prevent Government Shutdowns Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 1877, Prevent Government Shutdowns Act of 2019			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on June 19, 2019			
By Fiscal Year, TRILLIONS of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	5.8	12.6
Revenues	0	0	0
Deficit Effect	0	5.8	12.6
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	> \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

In the event that annual appropriation acts are not enacted by October 1 of each fiscal year, S. 1877 would provide mandatory appropriations to continue federal government operations at the same rate as in the previous fiscal year. For this estimate, CBO assumes that under S. 1877 each agency would automatically receive an appropriation of the same amount as in the previous fiscal year.

In addition, official travel by certain individuals in the executive and legislative branch would be prohibited while automatic appropriations are in effect, except for travel to return to Washington, DC; the bill also would direct that salaries of Members of Congress not be paid (placed in escrow) until all annual appropriation acts are enacted.

S. 1877 would appropriate funds, and thus would increase direct spending. For fiscal year 2019, the Congress appropriated about \$1.4 trillion for federal agency operations and activities; the Congress has also appropriated about \$0.1 trillion for fiscal year 2020 for those purposes. Thus, to maintain the same spending level as in 2019, S. 1877 would provide appropriations totaling \$1.3 trillion in 2020 and \$1.4 trillion in each subsequent year, CBO estimates.

Based on historical spending patterns, CBO estimates that new direct spending from those appropriations would total \$0.7 trillion in 2020 and \$12.2 trillion over the 2020–2029 period.

S. 1877 also would increase spending from contract authority (a mandatory form of budget authority provided to certain transportation programs). Outlays from that contract authority are generally considered discretionary because they are controlled by obligation limitations set in annual appropriation acts. In addition, pursuant to provisions of law that govern CBO’s baseline projections, funding for certain expiring programs—such as contract authority for transportation grants—is assumed to continue beyond the scheduled expiration date for purposes of budget projections. Consistent with that practice, CBO’s baseline incorporates the assumption that contract authority in 2020 and later years will continue beyond 2020. CBO estimates that the spending of this contract authority would total \$0.4 trillion over the 2020 through 2029 period.

TABLE 1.—ESTIMATED INCREASES IN DIRECT SPENDING UNDER S. 1877

	By fiscal year, trillions of dollars—												2019– 2024	2019– 2029
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029			
Regular Appropriations:														
Estimated Budget Authority ...	0	1.3	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	6.7	13.5
Estimated Outlays	0	0.7	1.1	1.2	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	5.6	12.2
Obligation Limitation:														
Estimated Budget Authority ...	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	0	*	*	*	*	*	*	*	0.1	0.1	0.1	0.1	0.2	0.4
Total:														
Estimated Budget Au- thority	0	1.3	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	6.7	13.5
Estimated Outlays	0	0.7	1.1	1.3	1.3	1.4	1.4	1.4	1.4	1.4	1.4	1.4	5.8	12.6

Components may not sum to totals because of rounding; * = between zero and \$50 billion.

Whether the authority provided under S. 1877 were triggered in the future, and the timing and magnitude of the resulting direct spending, would depend on future decisions of the Congress. As a result, CBO’s estimate of direct spending under S. 1877 is uncertain. If the Congress were to provide some or all of the normal discretionary appropriations in future years, total direct spending under S. 1877 would be less than indicated in this estimate. Historically, lapses in discretionary appropriations have been relatively infrequent and short-lived. However, CBO has no basis for predicting the timing or duration of future lapses in discretionary funding.

CBO estimates that enacting S. 1877 would increase on-budget deficits by more than \$5 billion in all of the four consecutive 10-year periods beginning in 2030.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1877 as reported are shown as follows (existing law proposed to be omitted

is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 31—MONEY AND FINANCE

* * * * *

Subtitle II—The Budget Process

* * * * *

CHAPTER 13—APPROPRIATIONS

* * * * *

Subchapter I—General

* * * * *

SEC. 1311. AUTOMATIC CONTINUING APPROPRIATIONS.

(a)

(1)

(A) On and after the first day of each fiscal year, if an appropriation Act for Such fiscal year with respect to the account for a program, project, or activity has not been enacted and continuing appropriations are not in effect with respect to the program, project, or activity, there are appropriated such sums as may be necessary to continue, at the rate for operations specified in subparagraph (B), the program, project, or activity if funds were provided for the program, project, or activity during the preceding fiscal year.

(B)

(i) Except as provided in clause (ii), the rate for operations specified in this subparagraph with respect to a program, project, or activity is the rate for operations for the preceding fiscal year for the program, project, or activity—

(I) provided in the corresponding appropriation Act for such preceding fiscal year;

(II) if the corresponding appropriation bill for such preceding fiscal year was not enacted, provided in the law providing for continuing appropriations for such preceding fiscal year; or

(III) if the corresponding appropriations bill and a law providing continuing appropriations for such preceding fiscal year were not enacted, provided under this section for such preceding fiscal year.

(ii) For entitlements and other mandatory payments whose budget authority was provided for the previous fiscal year in appropriations Acts, under a law other

than this section providing continuing appropriations for such previous year, or under this section, and for activities under the Food and Nutrition Act of 2008, appropriations and funds made available during a fiscal year under this section shall be at the rate necessary to maintain program levels under current law, under the authority and conditions provided in the applicable appropriations Act.

(2) Appropriations and funds made available, and authority granted, for any fiscal year pursuant to this section for a program, project, or activity shall be available for the period beginning with the first day of any lapse in appropriations during such fiscal year and ending with the date on which the applicable regular appropriation bill for such fiscal year is enacted (whether or not such law provides appropriations for such program, project, or activity) or a law making continuing appropriations for the program, project, or activity is enacted, as the case may be.

(3) Notwithstanding section 251(a)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(a)(1)) and the timetable in section 254(a) of such Act (2 U.S.C. 904(1)), for any fiscal year for which appropriations and funds are made available under this section, the final sequestration report for such fiscal year pursuant to section 254(f)(1) of such Act (2 U.S.C. 904(f)(1)) and any order for such fiscal year pursuant to section 254(f)(5) of such Act (2 U.S.C. 901(f)(5)) shall be issued—

(A) for the Congressional Budget Office, 10 days after the date on which all regular appropriations Acts for such fiscal year or continuing appropriations through the end of such fiscal year or continuing appropriations through the end of such fiscal year have been enacted; and

(B) for the Office of Management and Budget, 15 days after the date on which all regular appropriations Acts for such fiscal year or continuing appropriations through the end of such fiscal year have been enacted.

(b) An appropriation or funds made available, or authority granted, for a program, project, or activity, for any fiscal year pursuant to this section shall be subject to the terms and conditions imposed with respect to the appropriation made or funds made available for the preceding fiscal year, or authority granted for such program, project or activity under current law.

(c) Expenditures made for a program, project, or activity for any fiscal year pursuant to this section shall be charged to the applicable appropriation, fund, or authorization whenever a regular appropriation Act, or a law making continuing appropriations until the end of such fiscal year, for such program, project, or activity is enacted.

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

(1) makes an appropriation, makes funds available, or grants authority for such program, project, or activity to continue for such period; or

(2) specifically provides that no appropriation shall be made, no funds shall be made available, or no authority shall be granted for such program, project, or activity to continue for such period.

* * * * *

TITLE 52—VOTING AND ELECTIONS

* * * * *

Subtitle III—Federal Campaign Finance

* * * * *

CHAPTER 301—FEDERAL ELECTION CAMPAIGNS

* * * * *

Subchapter I—Disclosure of Federal Campaign Funds

* * * * *

SEC. 30114. USE OF CONTRIBUTED AMOUNTS FOR CERTAIN PURPOSES.

(a) * * *

(1) * * *

(2) **[for ordinary]** *except as provided in subsection (d), for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office;*

* * * * *

(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.

(2) RETURN TO DC.—If the individual is away from the seat of Government on the date on which a covered period (as so defined) begins, a contribution or donation described in subsection (a) may be obligated and expended for travel by the individual to return to the seat of Government.

* * * * *