

FEDERAL ELECTRONIC EQUIPMENT DONATION ACT OF
2008

MAY 8, 2008.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. WAXMAN, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

[To accompany H.R. 752]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 752) to direct Federal agencies to donate
excess and surplus Federal electronic equipment, including com-
puters, computer components, printers, and fax machines, to quali-
fying small towns, counties, schools, nonprofit organizations, and li-
braries, having considered the same, report favorably thereon with
amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Electronic Equipment Donation Act of 2008”.

SEC. 2. REQUIREMENT TO TRANSFER USEFUL FEDERAL ELECTRONIC EQUIPMENT TO EDUCATIONAL RECIPIENTS.**(a) TRANSFER OF EQUIPMENT TO EDUCATIONAL ENTITIES.—**

(1) **IN GENERAL.**—Each Federal agency shall identify useful Federal electronic equipment that the agency has determined is excess to its needs and—

(A) report such equipment to the Administrator of General Services for processing for transfer to an educational recipient in accordance with section 549 of title 40, United States Code;

(B) transfer such equipment directly to an educational recipient, through an arrangement made by the Administrator of General Services under subsection (b);

(C) transfer such equipment directly to an educational recipient pursuant to section 11(i) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(i)); or

(D) report such equipment to the Administrator of General Services as excess property if transfer under subparagraphs (A) through (C) is not practicable.

(2) **MANAGEMENT OF NONTRANSFERABLE EQUIPMENT.**—For equipment reported under paragraph (1)(D), the Administrator of General Services shall manage the equipment in accordance with subchapters II and III of title 40, United States Code.

(b) **ADVANCE REPORTING OF EQUIPMENT TO GSA.**—Each Federal agency shall report to the Administrator of General Services the availability of useful Federal electronic equipment as far as possible in advance of the date the equipment is expected to become excess to its needs, so that the Administrator may attempt to arrange for the direct transfer from the donating agency to educational recipients.

(c) **USE OF NONPROFIT REFURBISHERS.**—In transferring any equipment pursuant to this Act, at the request of the educational recipient and if appropriate, if the equipment is not classroom-usable, the transferring agency shall convey the equipment initially to a nonprofit refurbisher for upgrade before transfer to the educational recipient.

(d) **REMOVAL OF DATA BEFORE TRANSFER.**—In transferring any equipment pursuant to this Act, the transferring agency shall remove data from the equipment prior to transfer to the educational recipient according to accepted sanitization procedures. To the maximum extent practicable, the transferring agency shall remove data using a means that does not remove, disable, destroy, or otherwise render unusable the equipment or components.

(e) **PREFERENCE.**—In transferring any equipment pursuant to this Act, the transferring agency shall give the highest preference to educational recipients located in an enterprise community or empowerment zone designated under section 1391 or 1400 of the Internal Revenue Code of 1986, a qualifying small town, or a qualifying county.

(f) **LOW COST.**—Any transfer made pursuant to this Act shall be made at the lowest cost to the educational recipient permitted by law.

(g) **TITLE.**—Title of ownership of equipment transferred pursuant to this Act shall transfer to the educational recipient receiving the equipment.

(h) **NOTICE OF AVAILABILITY OF EQUIPMENT.**—The Administrator of General Services shall provide notice of the anticipated availability of useful Federal electronic equipment to educational recipients by all practicable means, including newspapers, community announcements, and the Internet.

(i) **FACILITATION BY REGIONAL FEDERAL EXECUTIVE BOARDS.**—The regional Federal Executive Boards (as that term is used in part 960 of title 5, Code of Federal Regulations) shall help facilitate the transfer of useful Federal electronic equipment from the agencies they represent to educational recipients under this Act.

SEC. 3. RULEMAKING.

The Administrator of General Services shall prescribe rules and procedures to carry out this Act.

SEC. 4. EFFECT ON OTHER LAWS.

This Act supersedes Executive Order No. 12999 of April 17, 1996.

SEC. 5. RULE OF CONSTRUCTION.

This Act may not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States or its agencies, officers, or employees.

SEC. 6. DEFINITIONS.

In this Act:

(1) The term “Federal agency” means an Executive department or an Executive agency (as such terms are defined in chapter 1 of title 5, United States Code).

(2) The term “educational recipient” means a school or a community-based educational organization.

(3) The term “school” includes a pre-kindergarten program (as that term is used in the Elementary and Secondary Education Act of 1965), an elementary school, a secondary school, and a local educational agency (as those terms are defined in section 9101 of that Act.)

(4) The term “community based educational organization” means a nonprofit entity that qualifies as a nonprofit educational institution or organization for purposes of section 501(c)(3) of the Internal Revenue Code of 1986 and—

(A) is engaged in collaborative projects, the primary focus of which is education, with schools, qualifying small towns, qualifying counties, or libraries; or

(B) provides use of computers and Internet access to members of the community at no charge.

(5) The term “qualifying small town” means a political subdivision with a population of not more than 24,999 individuals where 20 percent or more of the residents earn less than the poverty threshold (as defined by the Bureau of the Census).

(6) The term “qualifying county” means a county where 20 percent or more of the residents earn less than the poverty threshold (as defined by the Bureau of the Census).

(7) The term “useful Federal electronic equipment”—

(A) means—

(i) computers and related peripheral tools (such as computer printers, modems, routers, and servers), including telecommunications and research equipment;

(ii) fax machines; and

(iii) any other electronic equipment determined by a Federal agency to be potentially useful to an educational recipient; and

(B) includes computer software, where the transfer of a license is permitted.

(8) The term “classroom-usable”, with respect to useful Federal electronic equipment, means such equipment that does not require an upgrade of hardware or software in order to be used by an educational recipient without being first transferred under section 2(c) to a nonprofit refurbisher for such an upgrade.

(9) The term “nonprofit refurbisher” means an organization that—

(A) is exempt from income taxes under section 501(c) of the Internal Revenue Code of 1986; and

(B) upgrades useful Federal electronic equipment that is not yet classroom-usable at no cost or low cost to the ultimate educational recipient.

SEC. 7. PREFERENCE IN DONATION OF PERSONAL PROPERTY THROUGH STATE AGENCIES.

Section 549(e)(3)(B) of title 40, United States Code, is amended—

(1) by striking “The state plan” and inserting the following:

“(i) IN GENERAL.—The state plan”; and

(2) by adding at the end the following new clause:

“(ii) PREFERENCE.—The state plan of operation shall require the state agency to give the highest preference for electronic equipment to eligible institutions (as described in subsection (c)(3)) that are located in an enterprise community or empowerment zone designated under section 1391 or 1400 of the Internal Revenue Code of 1986, a political subdivision with a population of not more than 24,999 individuals where 20 percent or more of the residents earn less than the poverty threshold (as defined by the Bureau of the Census), or a county where 20 percent or more of the residents earn less than poverty threshold (as defined by the Bureau of the Census).”

SEC. 8. REPORT TO CONGRESS.

(a) REPORT REQUIRED.—Not later than 18 months after the date of the enactment of this Act, the Administrator of General Services shall submit to Congress a report.

(b) CONTENTS OF REPORT.—The report shall contain the following:

(1) An inventory of items that Federal agencies identified as useful Federal electronic equipment that the agency has determined is excess to its needs in the first 365 days after the date of the enactment of this Act.

- (2) The number of such items that were—
- (A) transferred to educational recipients pursuant to this Act;
 - (B) transferred to other Federal agencies and organizations pursuant to section 521 of title 40, United States Code;
 - (C) transferred to State agencies pursuant to section 549 of title 40, United State Code; or
 - (D) disposed of through other means.
- (3) Recommendations for further legislation or administrative action that the Administrator considers appropriate to establish an effective system for transferring excess useful Federal electronic equipment to educational recipients.

Amend the title so as to read:

A bill to direct Federal agencies to transfer excess Federal electronic equipment, including computers, computer components, printers, and fax machines, to educational recipients.

PURPOSE AND SUMMARY

H.R. 752, the Federal Electronic Equipment Donation Act, was introduced by Rep. Butterfield on January 31, 2007. H.R. 752 codifies Executive Order 12999, which allows federal agencies to transfer excess electronic equipment directly to schools and educationally related nonprofit organizations, and directs that special consideration be given to schools in enterprise zones and empowerment communities and small towns.

BACKGROUND AND NEED FOR LEGISLATION

Executive Order 12999, signed April 17, 1996, allowed the General Services Administration (GSA) to establish the Computers For Learning Program (CFL), which GSA still administers today. The program encourages and facilitates the transfer of electronic equipment that federal agencies designate as excess to their needs to educational recipients. The Executive Order included a preference for schools located in empowerment communities and enterprise zones.

A study by RAND in 1997 indicated the program had mixed results, and found problems including lack of refurbishment and limited geographic distribution of the available equipment. Representatives of small towns and rural communities have testified that such difficulties in obtaining equipment persist today.

This bill codifies Executive Order 12999, and includes additional provisions to address issues that have been raised about the operation of the program. Further, the bill expands the preference described in the Executive Order to include schools located in small towns and counties.

LEGISLATIVE HISTORY

H.R. 752, legislation to direct federal agencies to transfer excess and surplus federal electronic equipment, including computers, computer components, printers, and fax machines, to qualifying schools, nonprofit organizations, and libraries, was introduced on January 31, 2007, and referred to the Committee on Oversight and Government Reform.

The Subcommittee on Government Management, Organization, and Procurement held a hearing on H.R. 752 on February 13, 2008. The witnesses were Rebecca Rhodes, Deputy Associate Administrator, General Services Administration; Hon. Estelle “Bunny”

Sanders, Mayor, Roper, North Carolina; Shane Bailey, President, National Association of State Agencies for Surplus Property; John Rosenthal, President, Small Towns Alliance; and Thomas Williams, President, National Auctioneers Association.

The Subcommittee held a business meeting to consider H.R. 752 on March 11, 2008, and ordered the bill to be favorably reported to the full Committee, as amended, by voice vote.

The Committee held a business meeting to consider H.R. 752 on April 9, 2008, and ordered the bill to be favorably reported, as amended, by voice vote.

SECTION-BY-SECTION

Section 1: Short title

The short title of the bill is the Federal Electronic Equipment Donation Act of 2008.

Section 2: Requirement to transfer useful federal electronic equipment to qualifying recipients

Section 2(a) directs federal agencies to identify electronic equipment that the agency has determined is excess to its needs. It also requires agencies to report the equipment to the Administrator of General Services for processing for transfer to qualifying recipients, to transfer the equipment directly to the qualifying recipients through an arrangement with the Administrator of General Services, to transfer the equipment directly pursuant to section 11(i) of the Stevenson-Wydler Technology Innovation Act of 1980, or to report the equipment to the Administrator of General Services as excess property if the previous measures are unfeasible. In the latter scenario, the equipment would be handled according to the procedures for excess property outlined in subchapters II and III of title 40, USC.

Section 2(b) directs federal agencies to report the availability of the excess equipment to the Administrator of General Services as far in advance as possible to allow the Administrator to arrange for the direct transfer from the donating agency to qualifying recipients.

Section 2(c) directs agencies, at the direction of the recipient and if appropriate, to convey non-classroom-useable equipment to a nonprofit refurbisher for upgrade before transfer to the recipient.

Section 2(d) directs agencies to remove data from the equipment according to accepted sanitization procedures before transfer, and directs the agencies, to the maximum extent practicable, not to remove, disable, destroy, or otherwise render unusable the equipment or its components.

Section 2(e) directs agencies to give highest preference to recipients located in an enterprise community or empowerment zone, a qualifying small town, or a qualifying county.

Section 2(f) indicates that any transfer made under this Act must be made at the lowest possible cost to the recipient allowed by law.

Section 2(g) indicates that title of ownership of the equipment will transfer to the educational recipient who receives the equipment.

Section 2(h) directs the Administrator of General Services to publicize the anticipated availability of the equipment by all prac-

licable means, including newspapers, community announcements, and the Internet.

Section 2(i) directs the regional Federal Executive Boards to help facilitate the transfer of the equipment.

Section 3: Rulemaking

This section directs the Administrator of General Services to prescribe rules and procedures to carry out the Act.

Section 4: Effect on other laws

This section states that the Act supersedes Executive Order 12999.

Section 5: Rule of construction

This section states that the Act may not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States or its agencies, officers, or employees.

Section 6: Definitions

This section defines key terms of the bill.

A federal agency is defined as an executive department or executive agency as such terms are defined in Chapter 1 of Title 5, USC.

An educational recipient is defined as a school or community-based educational organization. A school is defined as a public or private non-profit pre-kindergarten program, elementary school, secondary school, or local educational agency.

A community-based educational organization is defined as a non-profit entity that is engaged in collaborative projects with schools, qualifying small towns, qualifying counties, or libraries, the primary focus of which is education, or that provides use of computers and Internet access to members of the community at no charge.

A qualifying small town is defined as a political subdivision with a population of not more than 24,999 individuals where 20% or more of the residents earn less than the poverty threshold as defined by the Bureau of the Census.

A qualifying county is defined as a county where 20% or more of the residents earn less than the poverty threshold as defined by the Bureau of the Census.

Useful federal electronic equipment is defined as computers and peripheral tools, fax machines, and any other electronic equipment determined by a federal agency to be potentially useful to a qualifying recipient. This includes software, if the transfer of the license is permitted.

Classroom-usable, with respect to useful federal electronic equipment, is defined as equipment that does not require an upgrade of hardware or software in order to be used by an educational recipient without being transferred to a nonprofit refurbisher.

A nonprofit refurbisher is defined as a nonprofit organization that upgrades useful federal electronic equipment that is not yet classroom-useable at no cost or at low cost to the recipient.

Section 7: Preference in donation of personal property through state agencies

This section directs state agencies for surplus property to give the highest preference in their state plans for transfer of electronic equipment to educational institutions located in enterprise zones, empowerment communities, and poor small towns and counties.

Section 8: Report to Congress

This section directs the Comptroller General of the United States to submit a report to Congress no later than 18 months after the enactment of the Act. The report will contain an inventory of items identified as useful federal electronic equipment in the first year after the enactment of the Act as well as the number of such items that were transferred to educational recipients, other federal agencies, state agencies, or disposed of through other means. The report will also contain recommendations for further action that the Administrator considers appropriate for getting the most excess useful federal electronic equipment to educational recipients.

EXPLANATION OF AMENDMENTS

The following amendments were adopted in the Subcommittee on Government Management, Organization and Procurement:

Mr. Towns offered an amendment in the nature of a substitute. The amendment changed the bill as introduced to:

(1) change language in Section 2(a) to specify that agencies shall identify useful federal electronic equipment that the agency has determined is excess to its needs, not surplus. This change, from “surplus” to “excess,” is made throughout the bill.

(2) change language in Section 2(a)(1) specifying that this equipment shall be reported to the Administrator of General Services for processing, and not physically transferred.

(3) change language in Section 2(a)(2) specifying that the equipment may be transferred directly to an educational recipient, not a “qualifying recipient.”

(4) change language in Section 2(c) to specify that equipment would be transferred to a nonprofit refurbisher for upgrade at the request of the recipient and as appropriate.

(5) insert a new Section 2(d) directing agencies to remove data from the equipment prior to transfer and, to the maximum extent practicable, to do this using a means that does not remove, disable, destroy, or otherwise render unusable the equipment or its components.

(6) redraft the definition of “community based educational organization” in Section 6.

(7) insert a Section 7 amending Section 549(e)(3)(B) of title 40, United States Code, to say that in general, the State Agencies for Surplus Property shall give the highest preference for the transfer of electronic equipment to enterprise communities, empowerment zones, and poor small towns and counties.

The Towns amendment in the nature of a substitute passed by voice vote.

The following amendments were adopted in Committee:

Mr. Towns offered an amendment in the nature of a substitute. The amendment changed the bill as amended to:

(1) designate Section 2(a)(1), (2) and (3) as Section 2(a)(1)(A), (B) and (C).

(2) insert a new Section 2(a)(1)(D) specifying that agencies may report such equipment to the Administrator of General Services as excess if transfer under subparagraphs (A) through (C) is not practicable.

(3) insert a new Section 2(a)(2) specifying that for equipment reported under paragraph (1)(D), the Administrator of General Services shall manage the equipment in accordance with subchapters II and III of title 40, United States Code.

(4) clarify that the preference in Section 7 for enterprise communities, empowerment zones, and poor small towns and counties is for educational institutions.

(5) insert a Section 8 requiring the Comptroller General of the United States to submit a report to Congress no later than 18 months after the enactment of the Act. The report will contain an inventory of items identified as useful federal electronic equipment in the first year after the enactment of the Act as well as the number of such items that were transferred to educational recipients, other federal agencies, state agencies, or disposed of through other means. The report will also contain recommendations for further action that the Administrator considers appropriate for getting the most excess useful federal electronic equipment to educational recipients.

The Towns amendment in the nature of a substitute passed by voice vote.

COMMITTEE CONSIDERATION

The Subcommittee held a business meeting to consider H.R. 752 on March 11, 2008, and ordered the bill to be reported to the full Committee, as amended, by voice vote.

The Committee held a business meeting to consider H.R. 752 on April 9, 2008, and ordered the bill to be favorably reported, as amended, by voice vote.

ROLLCALL VOTES

No rollcall votes were held.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. The bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report, including the need to improve distribution of computers to schools in small towns and rural communities.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 752. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 752 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 752. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 752 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 17, 2008.

Hon. HENRY A. WAXMAN,
*Chairman, Committee on Oversight and Government Reform
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 752, the Federal Electronic Equipment Donation Act of 2008.

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

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 752—Federal Electronic Equipment Donation Act of 2008

H.R. 752 would direct all federal agencies to donate any surplus electronic equipment to libraries, schools, communities, and non-profit organizations. Under the legislation, each federal agency could either transfer such equipment to the General Services Administration (GSA) or directly to a qualified recipient. In addition, GSA would be required to prescribe rules and regulations governing such transfers and report to the Congress on the program’s activities.

Most of the provisions of H.R. 752 would codify and expand the current practice of federal agencies. Under Executive Order 12999, GSA currently donates used electronic equipment to educational facilities through its Computers for Learning Program. Based on information from GSA, CBO estimates that implementing this legislation would not significantly increase costs to GSA or any other federal agencies. Enacting the bill would not affect direct spending or revenues.

H.R. 752 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would benefit public schools by authorizing federal agencies and GSA to transfer electronic equipment to those schools.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs), and Elizabeth Cove (for the state and local impact). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 40, UNITED STATES CODE

* * * * *

SUBCHAPTER III—DISPOSING OF PROPERTY

* * * * *

§ 549. Donation of personal property through state agencies

(a) * * *

* * * * *

(e) STATE PLAN OF OPERATION.—

(1) * * *

* * * * *

(3) REQUIREMENTS.—

(A) * * *

(B) EQUITABLE DISTRIBUTION.—**[The state plan]**

(i) *IN GENERAL.*—*The state plan of operation shall provide for fair and equitable distribution of property in the State based on the relative needs and resources of interested public agencies and other eligible institutions in the State and their abilities to use the property.*

(ii) *PREFERENCE.*—*The state plan of operation shall require the state agency to give the highest preference for electronic equipment to eligible institutions (as described in subsection (c)(3)) that are located in an enterprise community or empowerment zone designated under section 1391 or 1400 of the Internal Revenue Code of 1986, a political subdivision with a population of not more than 24,999 individuals where 20 percent or more of the residents earn less than the poverty threshold (as defined by the Bureau of the Census), or a county where 20 percent or more of the residents earn less than poverty threshold (as defined by the Bureau of the Census).*

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