

Suspend the Rules and Pass the Bill, H.R. 8235, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

116TH CONGRESS
2^D SESSION

H. R. 8235

To provide for the modernization of electronic case management systems,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2020

Mr. JOHNSON of Georgia (for himself and Mr. COLLINS of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the modernization of electronic case management systems, 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,*

3 **SEC. 1. SHORT TITLE.**

4 This Act may be cited as the “Open Courts Act of
5 2020”.

1 **SEC. 2. MODERNIZATION OF ELECTRONIC COURT RECORDS**
2 **SYSTEMS.**

3 (a) CONSOLIDATION.—Not later than the date speci-
4 fied in subsection (e), as modified by any adjustments cer-
5 tified pursuant to section 6(b), the Director of the Admin-
6 istrative Office of the United States Courts, in coordina-
7 tion with the Administrator of General Services, shall de-
8 velop, deliver, and sustain, consistent with the require-
9 ments of this section and section 3, one system for all pub-
10 lic court records.

11 (b) REQUIREMENTS OF SYSTEM.—The system de-
12 scribed in subsection (a) shall comply with the following
13 requirements:

14 (1) The system shall provide search functions,
15 developed in coordination with the Administrator of
16 General Services, for use by the public and by par-
17 ties before the court.

18 (2) The system shall make public court records
19 automatically accessible to the public upon receipt of
20 such records.

21 (3) Any information made available through a
22 website established pursuant to section 205 of the
23 E–Government Act of 2002 shall be included in the
24 system.

25 (4) Any website for the system shall substan-
26 tially comply with the requirements under sub-

1 sections (b) and (c) of section 205 of the E–Govern-
2 ment Act of 2002.

3 (5) To the extent practicable, external websites
4 shall be able to link to documents on the system.
5 Each website established pursuant to section 205 of
6 the E–Government Act of 2002 shall contain a link
7 to the system.

8 (c) DATA STANDARDS.—

9 (1) ESTABLISHMENT OF DATA STANDARDS.—

10 The Director of the Administrative Office of the
11 United States Courts, in coordination with the Ad-
12 ministrator of General Services and the Archivist of
13 the United States, shall establish data standards for
14 the system described in this section and section 3.

15 (2) REQUIREMENTS.—The data standards es-
16 tablished under paragraph (1) shall, to the extent
17 reasonable and practicable—

18 (A) incorporate widely accepted common
19 data elements;

20 (B) incorporate a widely accepted, non-
21 proprietary, full text searchable, platform-inde-
22 pendent computer-readable format; and

23 (C) be capable of being continually up-
24 graded as necessary.

1 (3) DEADLINES.—Not later than 9 months
2 after the date of enactment of this Act, the Director
3 of the Administrative Office of the United States
4 Courts shall issue guidance to all Federal courts on
5 the data standards established under this section.

6 (d) USE OF TECHNOLOGY.—In carrying out the du-
7 ties under subsection (a), the Director shall use modern
8 technology in order—

9 (1) to improve security, data accessibility, data
10 quality, affordability, and performance; and

11 (2) to minimize the burden on pro se litigants.

12 (e) DATE SPECIFIED.—The date specified in this
13 subsection is January 1, 2025, unless the Administrator
14 of General Services certifies to Congress, by not later than
15 6 months after the date of enactment of this Act, that
16 an additional period of time is required. If the Adminis-
17 trator so certifies, the date specified in this subsection
18 shall be a date that is no later than January 1, 2026.

19 (f) FUNDS FOR ESTABLISHMENT, OPERATION, AND
20 MAINTENANCE OF MODERNIZED COURT RECORDS SYS-
21 TEM.—

22 (1) SHORT TERM ACCESS FEES TO FUND DE-
23 VELOPMENT AND DELIVERY OF MODERNIZED COURT
24 RECORDS SYSTEM.—Until the date specified in sub-
25 section (e), to cover the costs of carrying out this

1 section and section 3 and pursuant to sections 1913,
2 1914, 1926, 1930, and 1932 of title 28, United
3 States Code, the Judicial Conference shall prescribe
4 a progressive schedule of reasonable additional fees
5 for persons, other than government agencies, who
6 accrue fees for electronic access to information
7 under section 303 of Public Law 102–140 (28
8 U.S.C. 1913 note; 105 Stat. 807) in an amount of
9 \$6,000 or greater in any quarter. Any such addi-
10 tional fees shall be assessed on a progressive fee
11 schedule according to the level of use so that higher
12 volume users are assessed higher fees.

13 (2) PRICING FOR HIGH-VOLUME, FOR-PROFIT
14 USE.—

15 (A) IN GENERAL.—Pursuant to sections
16 1913, 1914, 1926, 1930, and 1932 of title 28,
17 United States Code, the Director of the Admin-
18 istrative Office of the United States Courts, in
19 coordination with the Administrator of General
20 Services and the Office of Technology Trans-
21 formation of the General Services Administra-
22 tion, may prescribe a schedule of reasonable
23 fees for high-volume, for-profit public users of
24 the system described in this section and section
25 3, to facilitate service-level agreements for max-

1 imum response times, integrations, high avail-
2 ability, and service and support.

3 (B) FEE REQUIREMENTS.—The schedule
4 of fees described in paragraph (1) shall be
5 based on a determination of specific and sub-
6 stantial need, and may not impair access to jus-
7 tice and the public right of access to court
8 records, restrain innovation in the provision of
9 legal services and access to public court records,
10 nor inhibit not for profit research of the busi-
11 ness of the Federal courts.

12 (3) FEES TO FUND OPERATION AND MAINTENANCE OF
13 MODERNIZED COURT RECORDS SYSTEM.—
14 TEM.—

15 (A) IN GENERAL.—To cover the costs of
16 carrying out this Act, the Judicial Conference
17 of the United States may, only to the extent
18 necessary, prescribe schedules of reasonable
19 user fees, pursuant to sections 1913, 1914,
20 1926, 1930, and 1932 of title 28, United States
21 Code. Such fees shall be based on the extent of
22 use of the system described under this section
23 and section 3 as well as factors such as feasi-
24 bility, fairness to other users of the system, and

1 efficacy, and may not foreclose access to justice
2 and the public right of access to court records.

3 (B) FILING FEES PROHIBITED.—The Judi-
4 cial Conference of the United States may not
5 prescribe filing fees to cover the cost of the sys-
6 tem described in this section and section 3 un-
7 less the Judicial Conference determines that all
8 other sources of fees will not cover the costs of
9 such system. Only after such a determination
10 and only to the extent necessary, the Judicial
11 Conference may prescribe schedules of progres-
12 sive filing fees under subparagraph (A). In ad-
13 dition to the requirements of subparagraph (A),
14 such filing fees—

15 (i) shall be based on factors to ensure
16 that such schedules are graduated and eq-
17 uitable, including the type of action and
18 claim for relief, the status of a filer, the
19 amount of damages demanded, the esti-
20 mated complexity of the type of action, and
21 the interests of justice;

22 (ii) may be prescribed for the filing of
23 a counterclaim;

1 (iii) shall not apply in the case of a
2 pro se litigant or litigant who certifies the
3 litigant's financial hardship;

4 (iv) shall not be a basis for rejecting
5 a filing or otherwise denying a party seek-
6 ing relief access to the courts of the United
7 States;

8 (v) shall be assessed according to
9 schedules, not on a case-by-case, ad hoc
10 basis; and

11 (vi) shall not be greater than 15 per-
12 cent of any other fees associated with the
13 filing.

14 (4) USE OF FUNDS.—

15 (A) DEPOSIT FEES.—All fees collected
16 under this subsection shall be deposited as off-
17 setting collections to the Judiciary Information
18 Technology Fund pursuant to section
19 612(c)(1)(A) of title 28, United States Code, to
20 reimburse expenses incurred in carrying out
21 this section.

22 (B) AUTHORIZED USES OF FEES.—
23 Amounts deposited to the Judiciary Information
24 Technology Fund pursuant to this paragraph
25 and not used to reimburse expenses incurred in

1 carrying out this section and section 3 may be
2 used pursuant to section 612(a) of title 28,
3 United States Code.

4 (5) INTEREST OF JUSTICE.—A court may waive
5 any fee imposed under paragraph (3) in the interest
6 of justice upon motion.

7 (6) EFFECTIVE DATE.—Paragraphs (2) and (3)
8 shall take effect on the date specified in subsection
9 (e). Paragraph (1) and section 303 of Public Law
10 102–140 (28 U.S.C. 1913 note; 105 Stat. 807) shall
11 cease to have effect on that date.

12 **SEC. 3. PUBLIC ACCESS TO ELECTRONIC COURT RECORDS**
13 **SYSTEM REQUIREMENT.**

14 (a) IN GENERAL.—Not later than the date specified
15 in section 2(e), and subject to any certification under sec-
16 tion 6(b), the Director of the Administrative Office of the
17 United States Courts, in coordination with the Adminis-
18 trator of General Services, shall make all materials in the
19 system described in section 2 and this section publicly ac-
20 cessible, free of charge and without requiring registration.

21 (b) USE OF TECHNOLOGY.—In providing public ac-
22 cess under subsection (a), the Director shall, in coordina-
23 tion with the Administrator of General Services, use mod-
24 ern technology in order—

1 (1) to improve security, data accessibility, qual-
2 ity, ease of public access, affordability, and perform-
3 ance; and

4 (2) to minimize the burden on pro se litigants.

5 (c) FUNDING FOR PUBLIC ACCESS TO MODERNIZED
6 ELECTRONIC COURT RECORDS SYSTEM.—

7 (1) IN GENERAL.—To cover any marginal costs
8 of ensuring the public accessibility, free of charge, of
9 all materials in the system in accordance with this
10 section, the Judicial Conference of the United States
11 shall collect an annual fee from Federal agencies
12 equal to the Public Access to Court Electronic
13 Records access fees paid by those agencies in 2018,
14 as adjusted for inflation. All fees collected under this
15 subsection shall be deposited as offsetting collections
16 to the Judiciary Information Technology Fund pur-
17 suant to section 612(c)(1)(A) of title 28, United
18 States Code, to reimburse expenses incurred in pro-
19 viding services in accordance with this section.

20 (2) AUTHORIZED USES OF FEES.—Amounts de-
21 posited to the Judiciary Information Technology
22 Fund pursuant to this subsection and not used to
23 reimburse expenses incurred in carrying out this sec-
24 tion may be used to reimburse expenses incurred in
25 carrying out section 2. Amounts not used to reim-

1 burse expenses incurred in carrying out section 2
2 may be used pursuant to section 612(a) of title 28,
3 United States Code.

4 (3) **EFFECTIVE DATE.**—Paragraph (1) shall
5 take effect beginning on the date specified in section
6 2(e).

7 **SEC. 4. ENSURING MODERN DEVELOPMENT STANDARDS.**

8 (a) **INDUSTRY STANDARDS.**—The system described
9 in sections 2 and 3 shall be developed in accordance with
10 industry standards for the incremental development of
11 new information technology systems, including user-cen-
12 tered design, Agile software development practices and
13 procurement, and service-oriented architecture.

14 (b) **ANALYSES.**—The Director of the Administrative
15 Office of the United States Courts shall, in cooperation
16 with the Administrator of General Services, conduct reg-
17 ular analyses at each stage of system development to en-
18 sure that any requirements—

19 (1) are consistent with this Act;

20 (2) meet the business needs of users of the sys-
21 tem, the public, and the judiciary; and

22 (3) comply with relevant statutes and rules, in-
23 cluding chapter 131 of title 28, United States Code
24 (commonly known as the “Rules Enabling Act”), the

1 Federal Rules of Procedure, and local rules and or-
2 ders of Federal courts.

3 (c) INITIAL PLAN.—Not later than 6 months after
4 the date of enactment of this Act, the Director of the Ad-
5 ministrative Office of the United States Courts shall sub-
6 mit to Congress a report with respect to its initial plan
7 for development of the system after consultation with the
8 Office of Technology Transformation Services of the Gen-
9 eral Services Administration and the United States Digital
10 Service, which may include an analysis of the state of the
11 system as of the date of enactment of this Act, an ap-
12 proach for developing the system consistent with sections
13 2 and 3 of this Act, and a proposed timeline for develop-
14 ment.

15 (d) REPORTS AND NOTICE.—

16 (1) REPORTS.—

17 (A) IN GENERAL.—Each quarter after the
18 issuance of the report described in subsection
19 (c), the Director of the Administrative Office of
20 the United States Courts shall report quarterly
21 to the Committees on the Judiciary of the
22 House of Representatives and the Senate on
23 progress of the development of the system, im-
24 provements achieved, and risks that arise (such
25 as lack of funding source or lack of techno-

1 logical solutions to meet the needs of this Act
2 or applicable statutes and rules). Such report
3 shall include an assessment of vendors' compli-
4 ance with a quality assessment surveillance
5 plan, code quality, and whether the system is
6 meeting users' needs.

7 (B) SYSTEM STATUS.—Not later than 60
8 days after the end of each fiscal year, the
9 Comptroller General of the United States shall
10 report to Congress on the policies, goals, per-
11 formance, budget, contracts, fee proposals, and
12 user fees of the Administrative Office of the
13 United States Courts, including input from a
14 cross-section of the nongovernmental users and
15 stakeholders, with respect to the system de-
16 scribed in sections 2 and 3 of this Act.

17 (2) NOTICE.—Not later than 6 months after
18 the date of enactment of this Act, and quarterly
19 thereafter, the Comptroller General of the United
20 States shall notify Congress that the Director of the
21 Administrative Office of the United States Courts
22 has—

23 (A) produced additional usable
24 functionality of the system described under sec-
25 tions 2 and 3 of this Act;

1 (B) held live, publicly accessible dem-
2 onstrations of software in development; and

3 (C) allowed the Comptroller General or a
4 designee to attend all sprint reviews held during
5 such 6 month or quarterly period.

6 **SEC. 5. REVIEW AND PUBLICATION OF USER FEES.**

7 (a) PERIODIC REVIEW.—The Judicial Conference of
8 the United States shall review any schedule of fees pre-
9 scribed under this Act 3 years after such schedule becomes
10 effective and every 3 years thereafter to ensure that the
11 schedule meets the requirement of this Act. If a fee sched-
12 ule does not meet such requirements, the Judicial Con-
13 ference shall prescribe a new schedule of fees pursuant
14 to this section and submit the new schedule of fees to Con-
15 gress pursuant to this section.

16 (b) FEE PROPOSAL AND COMMENT PERIODS.—

17 (1) PUBLIC COMMENT.—The Judicial Con-
18 ference of the United States shall publish any sched-
19 ule of new fees or fee adjustments, as authorized
20 under this Act, in the Federal Register and on the
21 website of the United States Courts. The Judicial
22 Conference shall accept public comment on the pro-
23 posed fees for a period of not less than 60 days.

24 (2) PUBLICATION OF FINAL SCHEDULE OF NEW
25 FEES OR FEE ADJUSTMENTS.—After the period

1 specified in paragraph (2), the final schedule of new
2 fees or fee adjustments shall be published in the
3 Federal Register and on the website of the United
4 States Courts along with an explanation of any
5 changes from the proposed schedule of new fees or
6 fee adjustments.

7 (3) CONGRESSIONAL REVIEW PERIOD.—A
8 schedule of fees set or adjusted under paragraph (3)
9 may not become effective—

10 (A) before the end of the 90-day period be-
11 ginning on the day after the date on which the
12 Judicial Conference publishes the schedule of
13 new fees or fee adjustments under paragraph
14 (3); or

15 (B) if a law is enacted disapproving such
16 fee.

17 (c) STUDY.—

18 (1) IN GENERAL.—The Judicial Conference of
19 the United States shall periodically study the system
20 described in sections 2 and 3 of this Act in accord-
21 ance with this section. The study shall examine—

22 (A) the relative extent to which specific
23 functions and usage of the system are sup-
24 ported, directly or indirectly, by fees, appropria-
25 tions, and other sources of revenue; and

1 (B) whether, and to what extent, there are
2 additional fees of any kind that could be more
3 appropriately imposed to support the operations
4 and maintenance of the system and whether or
5 not any such fees should or must be imposed by
6 statute or by judiciary regulation;

7 (C) whether, and to what extent, there are
8 additional appropriations that should be pur-
9 sued that should be provided to support the sys-
10 tem in lieu of fees; and

11 (D) whether, and to what extent, there are
12 other sources of revenue that should be pro-
13 vided to support the system.

14 (2) CONSIDERATIONS.—In determining the ap-
15 propriateness of any fees, the Judicial Conference of
16 the United States shall consider the extent to which
17 any such fees would—

18 (A) negatively or positively affect the ad-
19 ministration of justice;

20 (B) impose inappropriate burdens on ac-
21 cess to justice by litigants;

22 (C) relate to the relative impact of activi-
23 ties on system costs;

24 (D) improve fairness to users;

1 (E) otherwise be fair or unfair to the pub-
2 lic;

3 (F) be feasible to implement effectively;
4 and

5 (G) generate meaningful revenue.

6 (3) REPORT.—Not later than 1 year after the
7 date of enactment of this Act, the Judicial Con-
8 ference of the United States shall submit to the
9 Committees on the Judiciary of the House of Rep-
10 resentative and the Senate a report on the conclu-
11 sions of the study described under this section.

12 (4) FEE AUTHORITY.—If the Judicial Con-
13 ference of the United States determines, pursuant to
14 subsection (a), that additional fees are reasonable
15 and necessary to fund the system described in sec-
16 tions 2 and 3, it may promulgate such fees pursuant
17 to section 2(f)(3)(A).

18 (5) ADDITIONAL REPORT.—Not less frequently
19 than every 3 years, the Judicial Conference shall re-
20 view the matters described in this subsection and re-
21 port any new findings to Congress as described in
22 this subsection. Any fees may be adjusted pursuant
23 to section 2(f)(3)(A).

1 **SEC. 6. REPORTING AND CERTIFICATION TO CONGRESS ON**
2 **FINANCES.**

3 (a) ANNUAL REPORT AND CONSULTATION CON-
4 CERNING FUNDING FOR THE FOLLOWING FISCAL
5 YEAR.—At the beginning of each fiscal year after the date
6 of enactment of this Act, the Director of the Administra-
7 tive Office of the United States Courts shall submit to
8 the Committees on the Judiciary of the House of Rep-
9 resentatives and the Senate a report on—

10 (1) the status of funding the system described
11 under sections 2 and 3; and

12 (2) plans for any new fee proposals or adjust-
13 ments and whether there is a foreseeable need to use
14 the certification authority provided under subsection
15 (b)(2) in the following fiscal year.

16 (b) CERTIFICATION REGARDING ANTICIPATED
17 FUNDING IN THE CURRENT FISCAL YEAR.—

18 (1) IN GENERAL.—The Director of the Admin-
19 istrative Office of the United States Courts may
20 treat any and all receipts, funds, expenditures and
21 costs associated with the system established under
22 sections 2 and 3 as constituting a separate item in
23 its budget distinct from the remainder of its budget.

24 (2) CERTIFICATION.—At the beginning of a fis-
25 cal year, starting in fiscal year 2023, and only when
26 necessary, the Director of the Administrative Office

1 of the United States Courts may submit a certifi-
2 cation, including supporting documentation and
3 analysis, to the Committees on the Judiciary of the
4 House of Representatives and the Senate, which—

5 (A) identifies any expected deficit in funds
6 for that fiscal year; and

7 (B) specifies the Director's response for
8 such deficit for the remainder of that fiscal
9 year, including—

10 (i) modifying the scope and scale of
11 the system described in sections 2 and 3;

12 (ii) increasing fees or other receipts
13 within the Judicial Conference's authority;
14 and

15 (iii) temporarily delaying the delivery
16 of the system.

17 (3) CONSULTATION.—Not later than 30 days
18 after receipt of the certification described in para-
19 graph (2), the Director of the Administrative Office
20 of the United States Courts and the Chairs and
21 Ranking Members of the Committees on the Judici-
22 ary of the House of Representatives and the Senate
23 shall meet in person concerning the certification,
24 supporting documentation, and analysis.

1 (4) IMPLEMENTATION.—The Director of the
2 Administrative Office of the United States Courts
3 may implement its response described in paragraph
4 (2) any time after the 30-day period following the
5 consultation described in paragraph (3).

6 (5) GAO REVIEW.—In any fiscal year during
7 which such certification is issued and implemented,
8 the Comptroller General of the United States shall
9 conduct a comprehensive review of the certification
10 not later than 120 days after its submission, includ-
11 ing—

12 (A) the accuracy of the expectations of the
13 Director of the Administrative Office of the
14 United States Courts with respect to any deficit
15 in funds;

16 (B) the efficacy of the Director’s rec-
17 ommended response, and

18 (C) the Comptroller General’s rec-
19 ommendations for alternative or additional re-
20 sponses submitted as a report to the Director
21 and Committees on the Judiciary of the House
22 of Representatives and the Senate.

23 (6) DIRECTOR RESPONSE TO REVIEW.—Not
24 later than 60 days after the Comptroller General of
25 the United States conducts a review under para-

1 graph (5), the Director of the Administrative Office
2 of the United States Courts shall prepare and sub-
3 mit to the Committees on the Judiciary of the
4 House of Representatives and the Senate a response
5 to such review.

6 **SEC. 7. RULE OF CONSTRUCTION.**

7 Nothing in this Act, or the amendments made by this
8 Act, shall be construed to—

9 (1) affect the filing fees or other filing proce-
10 dures for prisoners; or

11 (2) abrogate, limit, or modify the requirements
12 described in section 1915 of title 28, United States
13 Code.

14 **SEC. 8. DIGITAL ACCESSIBILITY STANDARDS.**

15 The system described under sections 2 and 3 of this
16 Act shall comply with relevant digital accessibility stand-
17 ards established pursuant to section 508 of the Rehabilita-
18 tion Act of 1973.

19 **SEC. 9. DETERMINATION OF BUDGETARY EFFECTS.**

20 The budgetary effects of this Act, for the purpose of
21 complying with the Statutory Pay-As-You-Go Act of 2010,
22 shall be determined by reference to the latest statement
23 titled “Budgetary Effects of PAYGO Legislation” for this
24 Act, submitted for printing in the Congressional Record
25 by the Chairman of the House Budget Committee, pro-

- 1 vided that such statement has been submitted prior to the
- 2 vote on passage.