

Calendar No. 544

114th CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-291

FEDERAL ASSET SALE AND TRANSFER ACT
OF 2015

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2375

TO DECREASE THE DEFICIT BY CONSOLIDATING AND SELLING
EXCESS FEDERAL TANGIBLE PROPERTY, AND FOR OTHER
PURPOSES



JULY 6, 2016.—Ordered to be printed

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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. 2375]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2375) to decrease the deficit by consolidating and selling excess Federal tangible property, 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

The purpose of S. 2375, the Federal Asset Sale and Transfer Act of 2015, is to reduce the costs of Federal real property management. It establishes an independent Federal Real Property Reform Board to identify opportunities for the Federal Government to significantly reduce its real property inventory and to reduce costs incurred in the operations and maintenance of its assets. The bill also improves the efficiency of the process for transferring Federal real properties for homelessness assistance.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Federal real property management has been on the Government Accountability Office's (GAO) High-Risk List since 2003 because the Government "continues to face long-standing challenges in managing its real property."¹ One challenge is "the Federal government continues to maintain too much excess and underutilized property."² GAO asserted that the Federal Government "has not met the criteria for demonstrating progress in reducing excess and underutilized real property."³

The Committee held an oversight hearing on June 16, 2015, to discuss Federal real property management and evaluate potential reforms.⁴ At the hearing, David Mader, the Controller at the Office of Management and Budget (OMB) testified that the Federal Government's real property inventory consists of 1,615 underutilized buildings, 3,360 unutilized buildings, and 4,465 buildings that were "pure excess."⁵ In his testimony, Norman Dong, Commissioner of the Public Buildings Service under the General Services Administration (GSA) stated:

I think everyone recognizes that we need to be far more aggressive in terms of looking at the assets in our portfolio, really asking that question of highest and best use, and whether it is through disposition or exchange or outlease, being far more aggressive in terms of taking those properties that do not have much use to the Federal Government and leveraging the sale of that, working with the private sector.⁶

While Government officials would like to be more aggressive in disposing of unneeded Federal real property, the property disposal process can often be an onerous one, driven by statutory requirements for agencies and GSA. There are more than 20 steps that GSA or a Federal agency are required to complete to dispose of a single surplus Federal real property.⁷ The disposal process initiates when a Federal agency reports a property as "excess" to its needs.⁸ Federal law defines "excess property" as "property under the control of a federal agency that the head of the agency determines is not required to meet the agency's needs or responsibilities."⁹ GSA must then determine whether the excess property can be transferred to another Federal agency.¹⁰ If GSA determines that an excess property "is not required to meet the needs or responsibilities

¹ GOV'T ACCOUNTABILITY OFFICE, GAO-15-290, HIGH RISK SERIES 135 (Feb. 2015), available at <http://www.gao.gov/assets/670/668415.pdf>.

² *Id.*

³ *Id.* at 136.

⁴ *Federal Real Property Reform: How Cutting Red Tape and Better Management Could Achieve Billions in Savings: Hearing Before the S. Comm. on Homeland Sec. and Governmental Affairs*, 114th Cong. (2015) [hereinafter "June 16, 2015, HSGAC Hearing"].

⁵ *Id.* (statement of David Mader, Controller, Off. of Mgmt. and Budget).

⁶ *Id.* (statement of Norman Dong, Commissioner, Pub. Buildings Service, U.S. Gen. Services Admin.).

⁷ OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, NATIONAL STRATEGY FOR THE EFFICIENT USE OF REAL PROPERTY: REDUCING THE FEDERAL PORTFOLIO THROUGH IMPROVED SPACE UTILIZATION, CONSOLIDATION, AND DISPOSAL (2015), available at <https://www.whitehouse.gov/sites/default/files/omb/financial/national-strategy-efficient-use-real-property.pdf> [hereinafter "OMB National Strategy"].

⁸ U.S. GEN. SERVICES ADMIN., THE DISPOSAL PROCESS, available at <http://www.gsa.gov/portal/content/101694> [hereinafter "GSA Disposal Process"].

⁹ 40 U.S.C. § 102.

¹⁰ 40 U.S.C. § 521.

of all federal agencies,” the property is then deemed to be “surplus property.”¹¹

Once a property is deemed to be surplus, GSA must first consider whether the property can be used for homeless assistance.¹² Under the McKinney-Vento Homeless Assistance Act, Federal agencies report to the Department of Housing and Urban Development (HUD) information regarding their Federal public buildings and real properties that are excess, surplus, or otherwise unutilized or underutilized.¹³ The Secretary of HUD reviews these properties and identifies which properties are suitable for homeless assistance.¹⁴ After the agencies respond to the Secretary’s identified properties, a list of properties available for application for use to assist the homeless is published in the Federal Register.¹⁵ Homeless assistance providers can then apply to the Department of Health and Human Services (HHS) to receive this property by deed or lease.¹⁶ This entire process can take up to 290 days.¹⁷

Since the passage of the McKinney-Vento Homeless Assistance Act in 1987, at least 40,000 Federal properties were reported to HUD as underutilized, unutilized, excess, or surplus.¹⁸ Approximately one quarter of these properties were determined to be suitable and available for homeless assistance purposes, 2,533 Notices of Interest have been filed for approximately 1,200 of those 10,000 properties, and less than 500 applications were actually submitted to HHS for approximately 400 of those properties.¹⁹ In total, only 122 properties have been transferred for use by the homeless since 1987, and only 81 of those properties are still being used as of March 2014.²⁰

At the June 2015 Committee hearing, witnesses expressed concern about the process and effectiveness of screening surplus properties for homelessness assistance.²¹ In his testimony before the Committee, OMB Controller Mader stated:

[W]hen you look at the results over 10 years, there is not a lot. And I have got to think there is a way of better categorizing the types of excess property so that only those that truly would be usable for the purpose intended by [the] McKinney-Vento [Homeless Assistance Act] would actually go for that consideration and allow us to move those other properties quickly.²²

GSA Public Buildings Service Commissioner Norman Dong agreed that “it is an important objective to determine whether we have any properties that have potential use for the homeless.” However, Mr. Dong further clarified that:

¹¹ 40 U.S.C. § 102(10).

¹² GSA Disposal Process.

¹³ 42 U.S.C. § 11411(a).

¹⁴ *Id.*

¹⁵ 42 U.S.C. § 11411(c).

¹⁶ 42 U.S.C. § 11411(f).

¹⁷ Gov’t Accountability Office, GAO-14-739, FEDERAL REAL PROPERTY: MORE USEFUL INFORMATION TO PROVIDERS COULD IMPROVE THE HOMELESS ASSISTANCE PROGRAM 5 (Sept. 2014), available at <http://www.gao.gov/assets/670/666259.pdf>.

¹⁸ *Id.* at 15.

¹⁹ *Id.*

²⁰ *Id.*

²¹ June 16, 2015, HSGAC Hearing.

²² *Id.* (statement of David Mader, Controller, Off. of Mgmt. and Budget).

[W]hen you actually look at the results that we have seen and less than 2 percent of those properties actually ending up for use by the homeless, it suggests that the process is not very target-effective and that there is probably a better way of supporting this objective.²³

GAO agreed with the other two witnesses and explained:

Basically, there is such a vast number of properties that are clearly unsuitable for the purposes of trying to provide housing for the homeless. I mean, so many buildings that are being screened. . . are in closed military facilities and cannot be used for that purpose, or they are in [Veterans' Affairs] campuses, the same thing, or they are in remote areas. But they all go through this process of screening, Federal Register notices, and so forth, and the HUD recordkeeping is cumbersome. It just is a really awkward and time-consuming process . . . without a whole lot of payoff.²⁴

Under current law, if a surplus property is not deemed suitable or available for homeless use, GSA then determines whether the property can be conveyed for a public benefit use through another Federal agency.²⁵ For example, the Department of Education can seek the property for a school, classroom, or other educational use.²⁶ HHS can request a surplus property to use to protect the public health, including for research purposes.²⁷ The Department of the Interior can request the surplus property be transferred for a public park or recreation area.²⁸ GSA can donate the surplus property to the American National Red Cross for charitable purposes.²⁹ GSA may also transfer the surplus property to a state or municipal government if the Attorney General determines the property is needed for a correctional facility or for other law enforcement purposes.³⁰ The Federal Emergency Management Agency may also request that surplus property be transferred for emergency management response purposes.³¹ Surplus Federal real property can also be transferred for the Interstate System,³² highways,³³ wildlife conservation,³⁴ a port facility,³⁵ public airports,³⁶ or power transmission lines.³⁷

If the property remains after all options for transfer to a Federal agency are exhausted, GSA then pursues a negotiated sale with a state or local government for public use.³⁸ If no state or local gov-

²³ *Id.* (statement of Norman Dong, Commissioner, Pub. Buildings Service, U.S. Gen. Services Admin.).

²⁴ *Id.* (statement of David Wise, Director, Physical Infrastructure Team, U.S. Gov't Accountability Off.).

²⁵ GSA Disposal Process.

²⁶ 40 U.S.C. § 550(c).

²⁷ 40 U.S.C. § 550(d).

²⁸ 40 U.S.C. § 550(e).

²⁹ 40 U.S.C. § 551.

³⁰ 40 U.S.C. § 553(b)(1)–(2).

³¹ 40 U.S.C. § 553(b)(3).

³² 23 U.S.C. § 107.

³³ 23 U.S.C. § 317.

³⁴ 16 U.S.C. § 667b.

³⁵ 40 U.S.C. § 554.

³⁶ 49 U.S.C. § 47151.

³⁷ 50 U.S.C. App. 1622(d).

³⁸ GSA Disposal Process. *See also* 40 U.S.C. 545(d)(2).

ernments seek such a sale, only then can GSA dispose of a surplus Federal property through a competitive sale to the public.³⁹

The Obama Administration, in its national strategy for Federal real property management recognized that:

Administrative burden can increase the cost and time required to execute disposals significantly. . . . The process requirements are in place for good reasons, such as ensuring environmental protection, the preservation of significant historic properties, and accurate documentation of land title. . . . Applying these steps uniformly without flexibility for location, asset type and size, and potential private or public sector re-use options, often creates inefficiencies and slows or limits the number of disposals executed.⁴⁰

GAO testified before the Committee:

[T]here are certain actions the administration can take, but there are some things outside their ability to control. And where Congress can be helpful and be a positive influence is helping in the disposal process and the mitigation or the elimination possibly of the competing stakeholder interests that have a large influence on the disposal process. And that is where I think the legislation can really be a driving force to helping to expedite the disposal process and help rationalize the Federal portfolio.⁴¹

Mr. Mader of OMB elaborated at the Committee hearing:

[T]he administration for the last several years has been proposing legislation which would basically allow us to create a process that would sort of look at the entire Government portfolio, identify those properties, regardless of Federal agency, you know, put them together, put them for an up-or-down vote, dispose of them, take a portion of those dollars that we get from the disposal, and then plow them back in.⁴²

S. 2375, the Federal Asset Sale and Transfer Act, provides the legislative relief needed to expedite property disposals independent of the onerous process required under current Federal laws and regulations. The bill establishes the Federal Real Property Reform Board (“Board”) to be charged with reviewing the entire Federal real property portfolio and identifying underutilized, unutilized, excess, and surplus properties. The Board will develop a list of high-value real property assets recommended for co-location, consolidation, disposal, or other actions. The Board’s list of recommendations will either be approved or disapproved in its entirety by OMB. Once OMB approves of the Board’s recommendations, Federal agencies will carry out the Board’s recommendations without being subject to Federal laws and regulations that would increase costs or cause delays in the disposal process. The Board will then meet each subsequent fiscal year to identify additional opportunities to

³⁹ GSA Disposal Process. *See also* 40 U.S.C. 545.

⁴⁰ OMB National Strategy at 6.

⁴¹ June 16, 2015 HSGAC Hearing (statement of David Wise, Director, Physical Infrastructure Team, U.S. Gov’t Accountability Off.).

⁴² *Id.* (statement of David Mader, Controller, Off. of Mgmt. and Budget).

improve efficient use of Federal real properties. The Board will terminate after six years.

S. 2375 mitigates some significant challenges to disposing of unneeded Federal real properties. The high-value real property assets recommended for disposal by the Board will not be subject to the McKinney-Vento Homeless Assistance Act. The legislation also provides the Board with a separate fund within the Federal Buildings Fund to deposit sales proceeds for reinvestment in future property disposals.

Additionally, S. 2375 makes important changes to the application process under the McKinney-Vento Act to streamline the process for efficiency. The legislation eliminates the requirement of a Federal Register notice of suitable properties and modifies time requirements in the application process for a more structured and delineated procedure that is practical for the Federal Government and for homeless assistance providers. The National Law Center on Homelessness and Poverty issued a letter supporting this legislation “because it contains important provisions that will strengthen Title V of the McKinney-Vento Homeless Assistance Act.”⁴³

III. LEGISLATIVE HISTORY

S. 2375, the Federal Asset Sale and Transfer Act, was introduced on December 8, 2015, by Chairman Ron Johnson and Senators Mark Warner, Roy Blunt, Rob Portman, and James Lankford. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 2375 at a business meeting on December 9, 2015. During the business meeting, a substitute amendment by Senators Johnson, Portman, Carper, and Lankford was offered and adopted. Both the amendment and the legislation as modified by the amendment were passed by voice vote with Senators Johnson, Portman, Lankford, Ayotte, Ernst, Carper, Tester, Baldwin, and Booker present.

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

Section 1. Short title

This section establishes the bill’s title as the “Federal Asset Sale and Transfer Act of 2015.”

Section 2. Purpose

This section outlines the purpose of the Federal Asset Sale and Transfer Act of 2015 to improve the management and reduce the costs of the Federal government’s real property inventory, and lists ways in which the legislation will help achieve this purpose.

Section 3. Definitions

This section defines “Administrator”, “Board”, “Director”, “Federal agency”, “Federal civilian real property and civilian real property”, “field office”, and “postal property”.

⁴³Letter from the National Law Center on Homelessness and Poverty to U.S. Senator Ronald H. Johnson, Chairman, S. Comm. on Homeland Security and Governmental Affairs, and U.S. Senator Thomas R. Carper, Ranking Member, S. Comm. on Homeland Security and Governmental Affairs (Dec. 9, 2015) (on file with Comm. staff).

Section 4. Federal Real Property Reform Board

This section establishes an independent board called the Federal Real Property Reform Board (the Board), and details its composition and obligations. This section requires that the Chairperson of the board shall be appointed by the President by and with the advice and consent of the Senate. Members appointed to the Board will have expertise in commercial real estate and development, space optimization and utilization, and community development. The Board will terminate six years after the date of the enactment of this bill.

The Board will hold meetings that are open to the public and announced 14 days in advance in the Federal Register, except for meetings that will discuss classified information. Under this section, Congressional committees of jurisdiction will receive information, upon request, of the proceedings, information, and deliberations of the Board.

Section 5. Development of recommendations to the Board

This section requires Federal agencies to report information on their real property inventories and requires OMB to develop standards and criteria for the Board to adhere to in its review.

Subsection (a) requires each Federal agency to submit to the OMB Director and the GSA Administrator a report on all Federal real properties in the agencies' inventories and agency recommendations on any properties that can be disposed of or utilized in a different manner to reduce the Federal real estate inventory, generate cost savings for the taxpayer, and operational efficiencies that may be realized by the federal government in the operation and maintenance of federal civilian real properties.

Subsection (b) requires the OMB Director, in consultation with the GSA Administrator, to review the agency recommendations submitted under subsection (a) and to develop consistent standards and criteria against which agency recommendations will be reviewed. The standards and criteria will be developed by considering several factors that inform on the cost-effectiveness and efficiency of a Federal building, how to maximize the use of a building, or how the disposal of a building would achieve cost savings, generate revenue for the Federal government, and impact the economy of the community surrounding the building.

Subsection (c) directs the OMB Director to develop and apply a clear standard space-utilization rate that provides the Board with a data point for how much space of a real property asset is actually being used by the agency. Considering the diverse nature of the federal portfolio, this space-utilization rate will be consistent across Federal agencies and throughout each type of space.

Under subsection (d), the standards, criteria, and recommendations developed by the OMB Director will be submitted to the Board, published in the Federal Register, and submitted to Congressional committees of jurisdiction and GAO. The Board may also request additional information from a Federal agency about a particular property.

Section 6. Duties of Board

This section charges the Board with identifying opportunities to significantly reduce the Federal real property inventory and reduce Federal real property costs.

Subsection (b) requires the Board to identify at least five Federal properties that are not listed as surplus or excess and that have a total fair market value of at least \$500 million. The Board will submit a list of these identified high-value properties to Congress and the OMB Director. The GSA Administrator must initiate the sale of the identified properties and sell the identified properties within one year at fair market value at the highest and best use.

Subsection (c) requires the Board to independently analyze the real property inventories and recommendations submitted by Federal agencies to OMB. The Board is not bound or limited by the agency recommendations. If the Board determines that an agency did not provide necessary information, data, or adequate recommendations, the Board can develop recommendations based on existing relevant data other than the agency's submission.

Subsection (d) allows the Board to consider proposals, information, and other data submitted by the private sector and by State and local officials. Any information received from these sources will be made available to the public.

Under subsection (e), the Board is required to implement an accounting system to independently evaluate the costs of and returns on the recommendations provided to the Board. This will assist the Board in developing its recommendations and in determining the highest return to the taxpayer.

Subsection (f) requires the Board to conduct public hearings. All testimony before the Board at a public hearing shall be presented under oath.

Subsection (g) requires the Board to issue a report on the Board's findings, conclusions, and recommendations. This report must be submitted to the OMB Director and publicly posted on a website maintained by the Board. While the Board is encouraged to include consensus recommendations in this report, recommendations supported by a majority of the Board may be included if the Board cannot achieve a consensus.

Subsection (h) directs the Board to establish and maintain a website to make relevant information available to the public.

Subsection (i) mandates that GAO submit a report to Congress and the Board that includes a detailed analysis of the Board's recommendations and a description of the selection process used by the Board to develop the recommendations.

Section 7. Review by the Office of Management and Budget

This section describes the next steps to carry out the Board's recommendations.

Under subsection (b), the OMB Director shall review and submit a report on the approval or disapproval of the Board's recommendations. During this time of review by OMB and before the OMB Director submits the report required under this subsection, the Board must testify before Congress about its report if a committee of jurisdiction requests such testimony.

Subsection (c) describes the processes for when OMB approves or disapproves of the recommendations submitted by the Board.

Section 8. Implementation of Board recommendations

Subsection (a) establishes the required timelines for Federal agencies to carry out the Board's recommendations. Each recommended action taken by a Federal agency shall be economically beneficial and cost-neutral or otherwise favorable to the Federal Government. A procedure for handling extenuating circumstances is outlined.

Subsection (b) allows Federal agencies to take all such necessary and proper action related to any Federal building or facility recommended for action by the Board.

Under subsection (c), when a Federal agency acts on a Board recommendation, the agency will act within any of its delegated authority. If the agency has not been delegated the necessary authority to initiate action on a Board recommendation, the Federal agency must work in partnership with the GSA Administrator to carry out the Board recommendation.

Subsection (d) provides the GSA Administrator the discretion to engage in certain transactions identified, recommended or commenced under this bill, specifically transactions which would convey a federal civilian real property for less than fair market value, for no consideration at all, or in a transaction that mandates the exclusion of other market participants.

Subsection (e) lists Federal statutes which will not apply for any recommendation of the Board.

Under subsection (f), the OMB Director must submit all known information on the Federal real property assets included in the recommendations of the Board to the Secretary of HUD. The requirements under this subsection do not apply to the high value assets identified under section 6(b) of this bill. The Secretary of HUD is directed to identify any suitable properties for use as a property benefitting the mission of assistance to the homeless for the purposes of further screening pursuant to Section 501 of the McKinney-Vento Homeless Assistance Act within 30 days after receiving the information submitted by the OMB Director.

Subsection (g) describes the requirements for addressing environmental considerations that may arise in the transfer, sale, or other disposal of Federal real property assets.

Paragraph (1) allows a Federal agency to enter into an agreement with any entity to transfer real property by deed pursuant to section 120(h)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to carry out a recommendation of the Board.

Paragraph (2) prohibits the head of a Federal agency from entering into a deed of transfer for a Federal real property asset described in paragraph (1) unless the agency head makes one of two cost certifications pertaining to environmental restoration, waste management, and environmental compliance activities to the Board and to Congress.

Paragraph (3) allows a Federal agency to make payment to a recipient of any Federal real property asset transfer for which an agency head certified that the cost of environmental compliance activities exceed the fair market value of the asset. This payment may be the amount by which the environmental compliance costs exceed the fair market value of the asset, or the amount by which

the costs HUD would have incurred for environmental compliance activities exceeds the fair market value of the asset.

Paragraph (4) requires the head of a Federal agency to disclose to any recipient of a transferred Federal real property asset of all information possessed by the agency regarding the environmental restoration, waste management, and environmental compliance activities that relate to the asset.

Under paragraph (5), when considering whether to grant any time extensions for implementing a Board recommendation, the OMB Director must give the highest weight to the need for significant environmental remediation to an asset or a portion of the asset.

Paragraph (6) is a savings provision that asserts that nothing in this bill modifies, alters, or amends specified federal statutes.

Section 9. Funding

This section requires the Department of Treasury to establish a funding account for the Board and a fund to carry out the Board's activities and recommendations. The fund shall consist of amounts appropriated for activities related to the Board's activities and implementing the Board's recommendations and of amounts received from the sale of any Federal real property asset pursuant to a Board recommendation. The President is directed to submit to Congress a report, not less frequently than annually, that includes an estimate of proceeds from implementing the recommendations of the Board and the obligations and expenditures needed to support those recommendations.

Section 10. Congressional approval of proposed projects

This section will require that the GSA prospectus of a proposed facility that is required to be submitted to Congress for approval includes a cost-benefit analysis of the proposed facility which evaluates the standards and criteria developed by OMB and GSA under section 5(b) of this bill.

Section 11. Preclusion of judicial review

Under this section, actions taken by the Board, Federal agencies, or OMB pursuant to activities required by this bill will not be subject to judicial review.

Section 12. Implementation review by GAO

GAO is charged with monitoring and reviewing Federal agencies' implementation of the Board's recommendations and annually reporting to Congress on any findings and recommendations for improvement.

Section 13. Streamlining the McKinney-Vento Homeless Assistance Act

This section modifies the McKinney-Vento Homeless Assistance Act to improve efficiencies in the application process and to accept applications for the use of surplus property for permanent housing with or without supportive services to assist the homeless.

Section 14. Authorization of appropriations

This section authorizes Congress to appropriate \$2 million for the salaries and expenses of the Board and \$40 million for activities needed to implement the Board's recommendations. Appropriations to carry out the Board's recommendations are to be deposited into the Federal Real Property Reform Board-Asset Proceeds and Space Management Fund created in this bill.

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 (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MAY 17, 2016.

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. 2375, the Federal Asset Sale and Transfer Act of 2015.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 2375—Federal Asset Sale and Transfer Act of 2015

Summary: S. 2375 aims to better manage federal real property by reducing the inventory of such property and the cost of maintaining the remaining inventory. The bill would establish the Federal Real Property Reform Board (board) to provide recommendations to the Office of Management and Budget (OMB) regarding specific federal properties that should be sold. The board would be required to recommend at least five civilian facilities that should be offered for sale and that have a combined estimated fair market value of at least \$500 million. The legislation also would authorize the appropriation of \$2 million to fund the board and \$40 million to implement the boards recommendations.

Assuming appropriation of the specified amounts, CBO estimates that implementing S. 2375 would cost \$8 million in 2017 and about \$40 million over the 2017–2021 period. If the board's recommendations lead to the sale of facilities, the legislation also would result in additional receipts. However, CBO has no basis to estimate whether the board's recommendations would result in the sale of any properties that would not otherwise be sold under current law.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 2375 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2375 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary effects of S. 2375 are shown in the following table. The costs of this legislation fall within all budget functions that contain federal real property other than 050 (national defense).

	By fiscal year, in millions of dollars—					
	2017	2018	2019	2020	2021	2017–2021
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Federal Real Property Reform Board:						
Authorization Level	2	0	0	0	0	2
Estimated Outlays	*	*	*	*	*	2
Asset Proceeds and Space Management Fund:						
Authorization Level	40	0	0	0	0	40
Estimated Outlays	7	7	7	7	6	34
Other Requirements:						
Estimated Authorization Level	1	*	*	*	*	3
Estimated Outlays	1	*	*	*	*	3
Total Changes:						
Estimated Authorization Level	43	0	0	0	0	45
Estimated Outlays	8	7	7	7	6	39

Note: * = less than \$500,000; components may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the end of 2016, that the authorized amounts will be appropriated, and that spending will follow historical patterns for similar management efforts.

Federal Real Property Reform Board

S. 2375 would establish an independent board to recommend to OMB properties that could be sold in order to reduce the inventory of federal civilian real property. The board would consist of seven members appointed by the President. S. 2375 would specify two major objectives for the board. First, the Board would be required to identify and recommend the sale of at least five federal civilian properties with a combined estimated fair market value of at least \$500 million. Second, the legislation would require the board to make annual recommendations for consolidating, exchanging, selling, or redeveloping federal properties to further reduce the inventory of civilian real property and to reduce operating costs. All recommendations made by the board would be available to the public on a government website.

Under the bill, the board would terminate after six years. S. 2375 would authorize the appropriation of \$2 million for the board's expenses. Assuming appropriation of those amounts, CBO estimates the board would spend about \$2 million over the 2017–2021 period.

Asset proceeds and Space Management Fund

S. 2375 would establish a fund to help agencies cover any costs associated with implementing the board's recommendations. During its six-year term, the board would primarily work with the General Services Administration (GSA) to consolidate, reconfigure, redevelop, or co-locate agency operations in order to make additional properties available for sale. The bill would authorize the appropriation of \$40 million for those purposes. Assuming appropriation of the specified amount, CBO estimates that agencies would spend about \$7 million annually over the 2017–2021 period to prepare federal properties for sale.

Other requirements

S. 2375 would require GSA and federal civilian agencies to prepare additional reports and recommendations about their real property holding and would require GSA to improve its database of federal property. CBO estimates that implementing those provisions would increase the workloads of GSA and other agencies. In addition, the Government Accountability Office would be required to report on all the recommendations. Based on information from GSA and some landholding agencies, CBO estimates that those activities would cost \$3 million over the 2017–2021 period; such spending would be subject to the availability of appropriated funds.

Effect on Federal property sales

Under current law, before an agency can offer federal real property that it considers to be surplus for sale to the public, the agency must first offer that property to other federal agencies, state and local governments, and in some cases nonprofit organizations, at no cost. S. 2375 would exempt properties recommended for sale by the board from those requirements, except for purpose of alleviating homelessness. CBO does not expect that exemption would increase the proceeds from selling surplus properties above the expected amounts under current law because other barriers to selling such property will still exist.

Based on information from GSA and other agencies that hold significant amounts of real property, CBO has concluded that there are at least two other obstacles that constrain the amount of property offered for sale and ultimately sold to the public.¹

- First, agencies generally lack funds to prepare properties for sale, including relocating any users of such properties. To help implement the board's recommendations, the bill would authorize appropriations to cover the costs of moving, consolidating, marketing, renovating property. However, those amounts may not be sufficient to cover such costs. Furthermore, any additional proceeds from sales would depend on the enactment of appropriated amounts and cannot be attributed to this bill.

- Second, many agencies resist efforts to sell property and prefer to leverage the value of their holdings rather than sell them outright. In most cases property-holding agencies do not have access to any of the proceeds from a sale of their property. However, they

¹For more information on the barriers to selling federal real property see Congressional Budget Office, *letter to the Honorable Darrell E. Issa containing an analysis of a proposal to expedite the disposal of federal civilian real property (June 27, 2011)*.

may have other authorities that enable them to add to their budgetary resources; for example, some agencies can lease unused real property and spend those proceeds on mission-related or administrative purposes. Whether or not the board that would be created by S. 2375 could overcome such resistance is unclear.

For these reasons, CBO has no basis to estimate whether the board's recommendations to sell at least five properties would result in additional receipts.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 2375 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal spending: Matthew Pickford; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Paige Piper/Bach.

Estimate approved 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 the bill, 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 40—PUBLIC BUILDINGS, PROPERTY,
AND WORKS**

* * * * *

SEC. 3307. CONGRESSIONAL APPROVAL OF PROPOSED PROJECTS

(a) * * *

(b) * * *

(1) * * *

* * * * *

(6) a statement of rents and other housing costs currently being paid by the Government for federal agencies to be housed in the building to be constructed, altered, or acquired, or the space to be leased **[**; and**]**

(7) with respect to any prospectus for the construction, alteration, or acquisition of any building or space to be leased, an estimate of the future energy performance of the building or space and a specific description of the use of energy efficient and renewable energy systems, including photovoltaic systems, in carrying out the project**[.]; and**

(8) a description of how the proposed project is consistent with criteria established in section 5(b) of the Federal Asset Sale and Transfer Act of 2015.

* * * * *

TITLE 42—THE PUBLIC HEALTH AND WELFARE

* * * * *

CHAPTER 119—HOMELESS ASSISTANCE

* * * * *

Subchapter V—Identification and Use of Surplus Federal Property

SEC. 11411. USE OF UNUTILIZED AND UNDERUTILIZED PUBLIC BUILDINGS AND REAL PROPERTY TO ASSIST THE HOMELESS

(a) * * *

(b) AVAILABILITY OF PROPERTY.—

(1) * * *

(2) * * *

(A) * * *

(i) * * *

(ii) **in the case of surplus property, for use to assist the homeless either in accordance with this section or as a public health use in accordance with section 550(a)–(d) of title 40** in the case of surplus property—

(I) for use to assist the homeless either in accordance with this section or as a public health use in accordance with paragraphs (1) and (4) of section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1) and (4)); and

(II) to provide permanent housing with or without supportive services to assist the homeless in accordance with this section.

* * * * *

(c) PUBLICATION OF PROPERTIES.—

(1) * * *

(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1) of this section, the Secretary shall publish **in the Federal Register** on the website of the Department of Housing and Urban Development or the General Services Administration—

* * * * *

(d) HOLDING PERIOD.—

(1) Properties published under subsection (c)(1)(A)(ii) of this section as available for application for use to assist the homeless shall not be available for any other purpose for a period of **60 days** 30 days beginning on the date of such publication.

(2) If written notice of intent to apply for such a property for use to assist the homeless is received by the Secretary of Health and Human Services within the **60-day period** 30-day period described under paragraph (1), such property may not

be made available for any other purpose until the date the Secretary of Health and Human Services or other appropriate landholding agency has completed action on the application submitted under subsection (e) of this section with respect to that written notice of intent.

(3) Property that is reviewed by the Secretary under subsection (a) of this section and that is not identified by the Secretary as being suitable for use to assist the homeless may not be made available for any other purpose for 20 days after the determination of unsuitability to allow for review of the determination at the request of the representative of the homeless. The Secretary shall disseminate immediately this information to the regional offices of the Department of Housing and Urban Development and to the Interagency Council on the Homeless. *If the representative of the homeless does not request a review of the determination of unsuitability during the 20-day period described in this paragraph, the property shall not be included in any subsequent publication under subsection (c)(1)(A)(ii) unless the landholding agency makes changes to the property, including improvements, that may change the unsuitable determination and the Secretary subsequently determines the property is suitable.*

(4) * * *

(A) Written notice of intent to apply for a property published under subsection (c)(1)(A)(ii) of this section may be filed at any time after the **60-day period** *30-day period* described in paragraph (1) has expired.

(B) Surplus property for which an application has been approved shall be assigned promptly to the Secretary of Health and Human Services for disposition in accordance with and subject to subsection (f) of this section.

(e) APPLICATION FOR PROPERTY.—

(1) * * *

(2) No later than **90 days** *75 days* after the submission of written notice to apply for a property, an applicant shall submit **a complete application** *an initial application* to the Secretary of Health and Human Services. The Secretary of Health and Human Services shall, with the concurrence of the appropriate landholding agency, grant reasonable extensions. *An initial application shall set forth*

(A) the services that will be offered,

(B) the need for the services, and

(C) the experience that the applicant has that demonstrates the ability to provide the services.

(3) No later than **25 days** after receipt of a completed application **10 days** *after the date on which the Secretary of Health and Human Services receives an initial application under paragraph (2)*, the Secretary of Health and Human Services shall review, make all determinations, and complete all actions on the application. The Secretary of Health and Human Services shall maintain a written public record of all actions taken in response to **an application** *an initial application*.

(4) *Not later than 45 days after the date on which the Secretary of Health and Human Services approves an initial application under paragraph (3), the applicant shall submit to the*

Secretary of Health and Human Services a final application, which shall set forth a reasonable plan to finance the approved program.

(5) Not later than 15 days after the date on which the Secretary of Health and Human Services receives a final application under paragraph (4), the Secretary of Health and Human Services shall review, make a final determination, and complete all actions on the final application. The Secretary of Health and Human Services shall maintain a public record of all actions taken in response to a final application.

(f) MAKING PROPERTY AVAILABLE TO REPRESENTATIVES OF HOMELESS.—

(1) Subject to the provisions of this subsection, property for which the Secretary of Health and Human Services has approved an application under subsection (e) of this section shall be made promptly **【available by】** *available, at the discretion of the applicant, by permit or lease, or by deed as a public health use under paragraphs (1) and (4) of section 484(k) of title 40, to the representative of the homeless that submitted the application.*

* * * * *

