Calendar No. 486

117TH CONGRESS, 2d Session — SENATE — REPORT 117–147

SMART LEASING ACT

REPORT

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2793

TO AUTHORIZE THE ADMINISTRATOR OF GENERAL SERVICES TO ESTABLISH AN ENHANCED USE LEASE PILOT PROGRAM, AND FOR OTHER PURPOSES

SEPTEMBER 13, 2022.—Ordered to be printed

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

REPORT

[To accompany S. 2793]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2793) to authorize the Administrator of General Services to establish an enhanced use lease pilot program, 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.

CONTENTS

I. PURPOSE AND SUMMARY

S. 2793, the Saving Money and Accelerating Repairs Through (SMART) Leasing Act, provides the General Services Administration (GSA) the authority to help agencies fully access the potential of their property through an enhanced use lease pilot program. Under this program, the GSA Administrator may authorize Federal agencies to sublease underutilized non-excess real and related personal property. This bill is modeled on a successful National Aeronautics Space Administration (NASA) program, which has generated millions of dollars in revenue that were used to fund capital projects and facilities maintenance.

II. BACKGROUND AND THE NEED FOR LEGISLATION

While Congress has passed major legislative reforms in the federal property space over the last ten years,[1] these efforts have not fully accounted for the untapped potential of underutilized non-excess property. As it stands, agencies routinely maintain property that is needed, but could be more fully utilized with the proper projects and partnerships. For instance, agency campuses could have extra space they cannot sell, but could provide an optimal home for capital generating opportunities, such as solar panels. Some agencies may also have excess space and equipment they need part time but could otherwise be well-suited to university or private partnerships. If agencies are provided the freedom to explore sensible projects to more fully utilize their property, they could generate revenue to fund long-needed maintenance, capital revitalization, and improvements.

The SMART Leasing Act, would provide GSA the authority to help agencies fully access the potential of underutilized non-excess property through an enhanced use lease pilot program. Under this program, the GSA Administrator may authorize Federal agencies to sublease underutilized non-excess real property and related personal property to any person or entity, including another department or agency of the Federal Government or an entity of a State or local government. The Administrator must ensure that all subleases generate revenue at a fair market value.

To guard against any potential abuses, this legislation prohibits the GSA Administrator from entering into a lease unless she certifies that the lease will not have a negative impact on the mission of GSA or the applicable Federal agency. The Administrator may also require terms and conditions appropriate to protect the interests of the United States. Additionally, the size of the pilot program is limited to six leases per year through 2024. At the conclusion of the pilot, this bill provides GSA the opportunity to report on the program's merits and advise on whether the program should be extended.

This legislation was modeled after NASA's successful enhanced use leasing program. For years, NASA has used enhanced use leasing to develop public-private partnerships that have made productive use of formerly underutilized property. NASA has used the rent payments it receives to fund capital projects and facilities maintenance. Under this program, NASA has generated millions of dollars in revenue. In fiscal year 2018, NASA recovered $6.8 million and another $5.4 million in fiscal year 2017.[2] NASA's fiscal year 2020 appropriations bill extended enhanced use leasing authority until December 31, 2021.[3] On December 14, 2021, the NASA Enhanced Use Leasing Extension Act of 2021 (H.R. 5746) passed by unanimous consent in the Senate, which would extend NASA's enhanced use leasing authority through March 31, 2022.[4]

[1] Federal Assets Sale and Transfer Act of 2016, Pub. L. No. 114–287 was amended by the Federal Property Management Reform Act of 2016, Pub. L. No. 114–318.

[2] Senate Committee on Commerce, Science, and Transportation, *National Aeronautics and Space Administration Authorization Act of 2019* (Sept. 8, 2020) (S. Rept. 116–262).

[3] Further Consolidated Appropriations Act of 2020, Pub. L. No. 116–94, div. I, title VI, § 602.

[4] H.R. 5746, 117th Congress (2021).

III. LEGISLATIVE HISTORY

Chairman Gary Peters (D–MI) introduced S. 2793, the SMART Leasing Act, on September 22, 2021, with Senators Lankford (R–OK), Hawley (R–MO), and Sinema (D–AZ) as cosponsors. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 2793 at a business meeting on November 3, 2021. During the meeting, Chairman Peters offered a substitute amendment which was adopted by voice vote *en bloc* with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley present. The bill, as amended, was approved by voice vote *en bloc* with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley present.

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

Section 1. Short title

This Act may be cited as the Saving Money and Accelerating Repairs Through Leasing Act" or the "SMART Leasing Act."

Section 2. Enhanced used leasing pilot program

Key terms of "Administrator" and "pilot program" are defined and relevant Congressional committees are outlined.

This section permits the GSA Administrator to establish an enhanced use lease pilot program. Under this program, federal agencies may sublease any underutilized non-excess real property and related personal property under the jurisdiction of the Administrator.

Entities entering into a lease under the pilot program are required to provide monetary consideration for the lease at fair market value, as determined by the Administrator. The Administrator may use the funds received for a lease to cover the administrative costs of the lease. All other funds shall be deposited in a working capital account and remain available until expended for maintenance, capital revitalization, and improvements to the real and related personal property at the federal agency. The Administrator is provided authority to require any terms and conditions in connection with a lease under the pilot program she considers appropriate to protect the national interest.

This section waives the requirements of section 501 of the McKinney-Vento Homeless Assistance Act for property leased under the pilot program, which would have required federal agencies to make excess property available to assist the homeless.

The Administrator is not permitted to lease back property under the pilot program during the term of the lease or enter into guaranteed service or similar contracts with the lessee relating to the property. The Administrator also may not enter into a lease under the pilot program unless she certifies that the lease will not have a negative impact on GSA's mission or that of the applicable Federal agency.

The Administrator may enter into not more than 6 leases under the pilot program during each fiscal year. The authority to enter into leases under the pilot program shall expire on September 30, 2024.

The Administrator may not enter into a lease under the pilot program more than 15 years in duration.

Finally, this legislation would require the GSA Administrator to report to relevant Congressional committees on the pilot program. This includes annual reporting on the pilot with a description of each lease entered into that year, the value of the lease and the availability and use of the funds received. The bill also requires the Administrator to submit a final report that includes a recommendation on whether the pilot program should be extended.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 26, 2022.

Hon. GARY PETERS,
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. 2793, the SMART Leasing Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

At a Glance

S. 2793, SMART Leasing Act

As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on November 3, 2021

By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	*	60	65
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	60	65
Spending Subject to Appropriation (Outlays)	0	*	not estimated

Statutory pay-as-you-go procedures apply?	Yes	**Mandate Effects**	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between zero and $500,000.

The bill would:

- Authorize the General Services Administration to create a pilot program allowing the agency to enter into enhanced-use leases (EULs) with private parties for underused, non-excess property

Estimated budgetary effects would mainly stem from:

- Use of third-party financing to construct or renovate certain federal facilities under EULs

Areas of significant uncertainty include:

- Estimating the value of investments and extent of government use of facilities constructed by third parties under EUL agreements

Bill summary: S. 2793 would establish a pilot program under which the General Services Administration (GSA) could enter into long-term, enhanced-use leases (EULs) for certain underused, non-excess federal property. The bill also would require GSA to submit annual progress reports to the Congress.

Estimated Federal cost: The estimated budgetary effect of S. 2793 is shown in Table 1. The costs of the legislation fall within budget functions 800 (general government) and other budget functions that contain landholding agencies.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 2793

	By fiscal year, millions of dollars—											
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022–2026	2022–2031
	Increases in Direct Spending											
Estimated Budget Authority	5	30	30	0	0	0	0	0	0	0	65	65
Estimated Outlays	*	15	20	15	10	5	0	0	0	0	60	65

* = between zero and $500,000.

CBO estimates that discretionary costs stemming from requirements for GSA to prepare annual reports for the Congress would be less than $500,000 over the 2022–2026 period.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted late in fiscal year 2022.

Background: The budgetary treatment of transactions financed by third parties depends on the extent and nature of federal support. In CBO's view, transactions supported entirely by private entities would not be recorded in the federal budget because the total costs of those activities would be borne by nonfederal entities.[1] Some projects established under EULs, however, are effectively governmental and subject to federal control, either because of their location on federal land or because federal agencies would be the primary or major users of the services supported by those facilities. Those transactions would be recorded in the federal budget.

When a third party recovers at least a portion of their investments through contracts with government agencies to use specialized facilities, CBO considers such financing to be similar to an agency using federal borrowing authority to improve physical infrastructure. Because governmental funds would be used to develop and construct those facilities, CBO believes that full cost of long-term commitments that obligate the government to make payments in future years should be recorded in the budget as direct spending.[2]

Direct spending: S. 2793 would establish a pilot program allowing GSA to enter into EULs with private parties to lease underused, non-excess federal property at fair market value. The program would allow GSA to collect payments and use those proceeds to cover lease-related costs and to fund property maintenance and capital improvements. Under the bill, GSA could enter up to six 15-year EUL agreements annually through the end of fiscal year 2024. Because CBO assumes that enactment would be late in fiscal year 2022, we expect that only one EUL agreement would be entered into in that year.

The Departments of Defense and Veterans Affairs, the National Aeronautics and Space Administration, and the National Oceanographic and Atmospheric Administration are among the federal agencies that currently have some form of EUL authority. Using information from a review of relevant agreements, CBO expects that the EULs authorized under S. 2793 would allow third parties to, for instance, build new facilities or renovate existing ones, establish new energy production facilities, or construct facilities for other specialized uses.

CBO cannot predict how the government might use or benefit from new projects or the extent to which GSA and other agencies it supports would use the new EUL authority. Further, little comprehensive information about the value of underused federal assets is available. Using information about EUL activity under current law and the comparatively short 15-year term of the proposed leases, CBO expects that the value of facilities constructed or leased under the pilot authority would average roughly $5 million per lease. On that basis, CBO estimates that enacting S. 2793 would increase direct spending by $65 million over the 2022–2031 period.

[1] See Congressional Budget Office, *Third-Party Financing of Federal Projects* (June 2005), www.cbo.gov/publication/16554.

[2] See Congressional Budget Office, *How CBO Determines Whether to Classify an Activity as Governmental When Estimating Its Budgetary Effects* (June 2017), www.cbo.gov/publication/52803.

Spending subject to appropriation: S. 2793 would require GSA to provide annual reports to the Congress that provide information on the types of leases entered into and how funds received under the program were used. The final report, due September 30, 2024, would include GSA's recommendation on whether the pilot program should be continued. CBO estimates the costs to prepare those reports would be insignificant.

Uncertainty: Direct spending under S. 2793 could be higher or lower than CBO's estimate because of the following sources of uncertainty:

- CBO cannot foretell the value of third parties' investments in facilities that would be leased under the pilot program. Generally, investments of higher value would increase the potential for direct spending.
- CBO cannot predict with certainty whether or how the government would use facilities constructed by third parties under EULs. If the government is the primary user of the services provided by a facility, and thus serves as the main source from which a third party would recover its investment, the government's share of indirect financing for and benefits from that project would be higher, resulting in greater direct spending. However, if the federal government makes little or no use of the services provided by a facility, the net effect on direct spending could be much less.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in Table 1.

Increase in long-term deficits: CBO estimates that enacting S. 2793 would not increase on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2032.

Mandates: None.

Estimate prepared by: Federal Costs: Matthew Pickford; Mandates: Andrew Laughlin.

Estimate reviewed by: Susan Willie, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis; Theresa Gullo, Director of Budget Analysis.

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

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.

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