Calendar No. 81

118TH CONGRESS *1st Session*	SENATE	REPORT 118–35

SMART LEASING ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 211

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

MAY 30, 2023.—Ordered to be printed

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

R E P O R T

[To accompany S. 211]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 211) 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.

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I. PURPOSE AND SUMMARY

S. 211, the *Saving Money and Accelerating Repairs Through Leasing Act* (*SMART Leasing Act*), would provide the General Services Administration (GSA) the authority to help agencies fully realize 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 National Aeronautics Space Administration (NASA) program, which

has generated millions of dollars in revenue that were used to fund capital projects and facilities maintenance.[1]

II. BACKGROUND AND THE NEED FOR LEGISLATION

While Congress has passed major legislative reforms regarding federal property over the last ten years, these efforts have not fully accounted for the untapped potential of underutilized non-excess property.[2] For instance, agency campuses may have extra space they cannot sell, but which could provide an optimal home for capital generating opportunities, such as cell towers and solar panels. Some agencies may also have excess space and equipment they need part time but would 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 for deficit reduction purposes and to fund long-needed maintenance, capital revitalization, and improvements.[3]

The SMART Leasing Act would provide GSA the authority to help agencies fully realize 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 the Administrator 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. The pilot program has a duration of two years, is limited to six leases per year, and each lease can only last up to 15 years. The legislation also prohibits leasing to foreign entities and political organizations, and prohibits use of the leases to conduct lobbying or illicit activities. Entities with a federal contract, grant, or award will not be permitted to enter into a lease with the awarding federal agency. 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 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.[4] In fiscal year 2019, NASA's enhanced use leasing pro-

[1] On November 3, 2021, the Committee approved S. 2793, the SMART Leasing Act. That bill is substantially similar to S. 211. Accordingly, this committee report is, in many respects, similar to the committee report for S. 2793. *See* S. Rept. 117–147.

[2] The 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.

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

[4] *Id.*

gram generated $10.8 million in revenue;[5] NASA recovered $6.8 million in fiscal year 2018 and another $5.4 million in fiscal year 2017.[6] The 2022 Consolidated Appropriations Act extended enhanced use leasing authority until December 31, 2022, and the bill text noted that NASA's use of enhanced use leasing authority contributes to reducing the rate of increase of the Agency's overall deferred maintenance cost.[7]

III. LEGISLATIVE HISTORY

Chairman Gary Peters (D–MI) introduced S. 211, the SMART Leasing Act, on February 1, 2023, with original cosponsors Senators James Lankford (R–OK), Josh Hawley (R–MO), and Kyrsten Sinema (I–AZ). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 211 at a business meeting on March 29, 2023. At the business meeting, Chairman Peters offered a substitute amendment. The Peters substitute amendment requires 50 percent of the revenue generated from the pilot program to be sent to the Treasury for the purpose of deficit reduction. The remaining 50 percent would continue to fund capital revitalization and improvements for agencies. The Peters substitute amendment reflects a compromise with Ranking Member Paul. The Committee adopted the Peters substitute amendment by unanimous consent with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, and Hawley present. At the business meeting, Senator Johnson offered an amendment to the bill as well as a modification to that amendment based on negotiations with the Chairman. The Johnson amendment prohibits the GSA Administrator from entering into leases under the pilot program with any entities that (1) intend to break the law, (2) are classified as a political organization, (3) are owned, operated, and controlled by a foreign government, or (4) received any federal grant, contract, or award from the applicable federal agency that is still in the performance period. The Johnson amendment also prohibits prospective lessees from using property under the lease to carry out lobbying activities. The Committee adopted the modification to the Johnson amendment by unanimous consent, then adopted the Johnson amendment as modified by voice vote with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, and Hawley present, and Senator Padilla recorded "No." The bill, as amended by the Peters substitute amendment and the Johnson amendment as modified, was ordered reported favorably by roll call vote of 12 yeas to 0 nays, with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, and Hawley voting in the affirmative, and with Senators Carper, Johnson, and Marshall voting yea by proxy, for the record only.

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[5] Consolidated Appropriations Act of 2022, Pub. L. No: 117–103, Div. HH, Title II.
[6] Senate Committee on Commerce, Science, and Transportation, supra note 3.
[7] Consolidated Appropriations Act of 2022, Pub. L. No. 117–103, Div. HH, Title II, Sec. 202.

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

Section 1. Short title

This section establishes the short title of the bill as the "Saving Money and Accelerating Repairs Through Leasing Act" or the "SMART Leasing Act."

Section 2. Enhanced use leasing pilot program

Subsection (a) defines the terms "Administrator," "pilot program," and "relevant congressional committees."

Subsection (b) 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.

Subsection (c) requires 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. 50 percent of funds must 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 other 50 percent of the revenue generated from the pilot program must be deposited in the general fund of the Treasury for the sole purpose of deficit reduction.

Subsection (d) provides the Administrator with authority to require any terms and conditions in connection with a lease under the pilot program the Administrator considers appropriate to protect the national interest.

Subsection (e) clarifies the authority of the Administrator to lease properties is in addition to any other authority under Federal law.

Subsection (f) 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.

Subsection (g) restricts the Administrator from leasing 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 the Administrator certifies that the lease will not have a negative impact on GSA's mission or that of the applicable Federal agency. It further bars the Administrator from entering into more than 6 leases under the pilot program during each fiscal year. The Administrator may not enter into a lease under the pilot program more than 15 years in duration.

Subsection (g) additionally prohibits the GSA Administrator from entering into a lease under the pilot program with any individual or entity that (1) intends to carry out activities that are illegal; (2) is classified as a political organization; (3) is owned, operated, or controlled by a foreign government; or (4) received any federal grant, contract or award from the applicable Federal agency that is still in the performance period. This section also prohibits a lease

entered into under the pilot program from being used to carry out lobbying activities.

Subsection (h) requires 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 not later than 2 years after the date of enactment of this Act that includes a recommendation on whether the pilot program should be extended.

Subsection (i) sunsets the authority to enter into leases under the pilot program 2 years after enactment of this Act.

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

At a Glance

S. 211, SMART Leasing Act

As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on March 29, 2023

By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	*	60	60
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	60	60
Spending Subject to Appropriation (Outlays)	0	*	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2034?	No	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 2034?	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, nonexcess 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 the extent of government use of facilities constructed by third parties under EUL agreements

Bill summary: S. 211 would establish a pilot program under which the General Services Administration (GSA) could enter into long-term enhanced-use leases (EULs) for certain underused, nonexcess federal property. The bill also would allow GSA to retain proceeds from each lease to cover the full costs of the lease. Half of any remaining proceeds would be available to use for maintenance and revitalization of the leasing agency's assets, and the remaining amounts would be deposited into the general fund of the Treasury. S.211 also would require GSA to submit annual progress reports to the Congress.

Estimated Federal cost: The estimated budgetary effect of S. 211 is shown in Table 1. The costs of the legislation fall within budget function 800 (general government) and other budget functions that contain landholding agencies.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 211

	By fiscal year, millions of dollars—												
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2023–2028	2023–2033
	Increases in Direct Spending												
Estimated Budget Authority	5	30	25	0	0	0	0	0	0	0	0	60	60
Estimated Outlays	*	15	20	15	10	0	0	0	0	0	0	60	60

* = between zero and $500,000.
CBO estimates that discretionary costs stemming from the requirement for GSA to prepare annual reports for the Congress would be less than $500,000 over the 2023–2028 period.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted in August 2023.

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 its 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 federal funds would be used to develop and construct those facilities, CBO believes that the 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]

[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.

Direct spending: S. 211 would establish a pilot program allowing GSA to enter into EULs with private parties to lease underused, nonexcess federal property at fair market value. The program would direct 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 into as many as six 15-year EUL agreements annually for two years after enactment. Because CBO assumes that enactment would be late in fiscal year 2023, we expect that only one EUL agreement would be entered into in that year. The bill would direct 50 percent of amounts received in excess of lease-related costs to be made available for spending on maintenance, revitalization, and improvements of agency assets; the remaining excess amounts would be deposited in the Treasury.

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. 211 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 $5million per lease. CBO anticipates that lease payments would be set to cover an agency's cost to operate the lease, thus we do not estimate that excess amounts would be available to revitalize or improve agency assets or to be deposited into the Treasury. On that basis, CBO estimates that enacting S. 211 would increase direct spending by $60 million over the 2023–2033 period.

Spending subject to appropriation: S. 211 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. GSA also would need to provide a final report that 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. 211 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 serv-

ices 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 net direct spending and deficits: None.

Mandates: None.

Estimate prepared by Federal costs: Matthew Pickford, Kelly Durand; Mandates: Andrew Laughlin.

Estimate reviewed by: Susan Willie, Chief, Natural and Physical Resources Cost Estimates Unit; Kathleen FitzGerald, Chief, Public and Private Mandates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis.

Estimate approved by: Phillip L. Swagel, Director, Congressional Budget Office.

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.