Calendar No. 669

115TH CONGRESS *2d Session*	SENATE	REPORT 115–383

FEDERAL ACQUISITION SAVINGS ACT OF 2018

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 3251

TO REQUIRE EXECUTIVE AGENCIES TO CONSIDER RENTAL IN ANY ANALYSIS FOR EQUIPMENT ACQUISITION, AND FOR OTHER PURPOSES

NOVEMBER 26, 2018.—Ordered to be printed

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

REPORT

[To accompany S. 3251]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3251) to require executive agencies to consider rental in any analysis for equipment acquisition, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 3251, the Federal Acquisition Savings Act of 2018, requires executive agencies to do a cost-benefit analysis of the short- and long-term costs of rental, leasing, and ownership of equipment, and choose the acquisition method that is most advantageous to the Federal Government.

II. BACKGROUND AND THE NEED FOR LEGISLATION

In February 2018, the Government Accountability Office (GAO) reported that the Air Force and the Department of Interior did not consistently conduct a cost-benefit analysis when purchasing heavy equipment to determine whether a lease might be more cost effective.[1] The report also noted that there are indications that this may be a problem government-wide, considering that 20 Executive Branch agencies had an inventory of 136,000 pieces of heavy equipment such as cranes, forklifts, and backhoes.[2] This current inventory cost an estimated $7.4 billion to acquire.[3]

On September 5, 2018, the Federal Acquisition Regulatory Council (FAR Council) proposed changes to the Federal Acquisition Regulation (FAR) to amend the definition of the term "equipment lease" to clarify that it also includes equipment rental.[4] While existing law does not preclude the rental of equipment, it is not clear in the existing regulations that an agency should conduct a cost-benefit analysis for renting in addition to leasing equipment.[5]

S. 3251 requires Executive Branch agencies to analyze equipment acquisitions on a case-by-case basis and determine whether ownership, leasing, or renting is more advantageous to the Federal Government. Recognizing that the cheapest option may not always be the most advantageous option, the legislation requires that factors other than cost also be considered.

III. LEGISLATIVE HISTORY

Senators Gary Peters, James Lankford, and Rand Paul introduced S. 3251 on July 19, 2018. The bill was referred to the Committee on Homeland Security and Governmental Affairs on the same day. The Committee considered S. 3251 at a September 26, 2018, business meeting.

The Committee ordered S. 3251 reported favorably *en bloc* by voice vote. Senators present for the vote were Johnson, Portman, Lankford, Enzi, Hoeven, McCaskill, Carper, Heitkamp, Peters, Hassan, Harris, and Jones.

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

Section 1. Short title

This section established that the bill may be cited as the "Federal Acquisition Savings Act."

Section 2. Agency analysis of equipment acquisition

Subsection (a) requires executive agencies to acquire equipment using the method of acquisition most advantageous to the Federal Government, based on a case-by-case analysis of cost and other factors. It requires such agencies to make this determination based on an analysis of whether to purchase, rent, or lease the equipment. It also requires the FAR Council to issue implementation regulations.

Subsection (b) sets an implementation date after the FAR Council issues the implementation regulations.

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[1] Gov't Accountability Office, GAO–18–295, Heavy Equipment: Selected Agencies Should Improve Guidance for Purchases and Leases (2018), *available at* https://www.gao.gov/assets/700/690345.pdf.

[2] *Id.*

[3] *Id.* (estimated in 2016 dollars).

[4] 83 Fed. Reg. 45,072 (Sept. 5, 2018) (to be codified at 48 C.F.R. pt. 7), *available at* https://www.gpo.gov/fdsys/pkg/FR-2018-09-05/pdf/2018-19177.pdf.

[5] 83 Fed. Reg. 45,073 (Sept. 5, 2018) (to be codified at 48 C.F.R. pt. 7.4).

Subsection (c) allows the head of an executive agency to contract with state and local governments if the agency head determines the agreement satisfies the requirements of subsection (a).

Subsection (d) sets out exceptions to subsection (a), such as a disaster declaration or other emergency situations.

Subsection (e) mandates a report be conducted by GAO to review the quality of the analyses required by subsection (a).

Subsection (f) defines the terms "executive agency," "interagency acquisition," "state," and "local government."

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, October 3, 2018.

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. 3251, the Federal Acquisition Savings Act of 2018.

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,
Director.

Enclosure.

S. 3251—Federal Acquisition Savings Act of 2018

S. 3251 would amend the Federal Acquisition Regulation to require agencies to acquire equipment using a method of acquisition that is most advantageous to the federal government on a case-by-case basis. This could include short- and long-term rental, leases, interagency acquisitions, or acquisition agreements with state and local governments. The bill also would require a report within two years by the Government Accountability Office on equipment acquisitions. According to the General Services Administration (GSA), agencies are already required to consider purchasing or leasing when evaluating the acquisition of equipment and proposed regulations will clarify leasing and renting as an option. In addition, GSA has proposed a similar rule. Because CBO expects that S. 3251 would not materially change how agencies acquire equipment, CBO estimates that implementing S. 3251 would have no significant effect on the federal budget.

Enacting S. 3251 could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. S. 3251 would not affect revenues.

CBO estimates that enacting S. 3251 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 3251 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On October 4, 2017, CBO transmitted a cost estimate for H.R. 3071, the Federal Acquisition Savings Act of 2017, as ordered reported by the House Committee on Oversight and Government Reform on September 13, 2017. The two pieces of legislation are similar and the estimated budgetary effects are the same.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

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

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

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