

Calendar No. 196

116TH CONGRESS }
1st Session

SENATE

{ REPORT
116-92

SECURE FEDERAL LEASES FROM
ESPIONAGE AND SUSPICIOUS
ENTANGLEMENTS ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1869

TO REQUIRE THE DISCLOSURE OF OWNERSHIP OF
HIGH-SECURITY SPACE LEASED TO ACCOMMODATE A FEDERAL
AGENCY, AND FOR OTHER PURPOSES



SEPTEMBER 10, 2019.—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. 1869]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1869) to require the disclosure of ownership of high-security space leased to accommodate a Federal agency, 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. 1869, the Secure Federal Leases from Espionage And Suspicious Entanglements Act, or Secure Federal LEASEs Act, is to provide ownership information to Federal tenants leasing high-security space that would allow the tenants to mitigate potential national security risks. S. 1869 requires entities entering into lease agreements with the Federal Government for high-security space to identify ownership information of the property, including whether the immediate or highest-level owners are

a foreign person or entity, and the Federal lessee must then notify the Federal tenant of this information. The bill requires the General Services Administration (GSA) to develop a plan for collecting and utilizing information on all immediate, highest-level, or beneficial owners of high-security space and notifying Federal tenants of foreign ownership. It also requires GSA to submit, within a year of implementation, a report to Congress on the status of the plan. The bill also requires Federal lessees to include provisions in high-security leases limiting access to property owners except when allowed by Federal tenants. The bill applies to leases entered on or after the date of the bill's enactment.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The United States has long promoted foreign investment, including foreign ownership of real estate. In recent years, foreign investment in U.S. commercial office buildings has been increasing.¹ Ownership affords access to a building and its systems, and for this reason, foreign ownership can create national security risks that may need to be mitigated.

In 2017, the Government Accountability Office (GAO) published a report² finding that the GSA, a lessee of space for many agencies in the Federal Government, did not have complete information on the foreign ownership of some of the properties it was leasing and therefore had not notified Federal tenants, particularly those leasing high-security office space, of the nature of the foreign ownership. The report noted that several intelligence and law enforcement agencies were leasing high-security office space in foreign-owned properties, and while many of the foreign owners were companies based in allied nations such as Canada, Norway, Japan, and South Korea, there were also owners based in China.³ GAO concluded that GSA's incomplete information and lack of policies and procedures regarding foreign ownership of high-security leased space may undermine the security of tenants' facilities. When GSA does not have information on beneficial ownership, it lacks information that should be shared with its tenants for their facility risk assessments, and when tenants do not have this information, they may not correctly evaluate the security risks and take appropriate steps to secure their buildings.

GSA has implemented some policies to enhance the information available on foreign ownership of its leases—collecting the identity of immediate and highest-level owners through the System for Award Management (SAM) system. Immediate owners are the entities or people in direct control of a property, while a highest-level owner would have control over an immediate owner. However, while useful, this information is not sufficient for identifying beneficial owners, who are defined as all the individuals with financial or ownership stakes in a property, not all of whom may be publicly identifiable. These individuals' ownership position can provide them with access that could prove problematic for certain agencies. Moreover, GSA does not have a system in place that would allow

¹ Gov't Accountability Off., *GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners*, (Jan. 2017).

² *Id.*

³ *Id.*

them to collect and utilize the information necessary for identifying all beneficial owners at this time.

Another Federal agency with leasing authority, the Department of Defense (DOD), was given visibility over beneficial ownership information for high security leased spaces through language included in the 2018 National Defense Authorization Act.⁴ This improves DOD leasing security but leaves GSA and other leasing agencies without awareness of potential foreign owners.

This legislation ensures that all agencies (particularly those with independent leasing authority) will have the ability to obtain information on foreign ownership and provide it to relevant Federal tenants. While a leaser may be approved by the Federal Government, it may not be appropriate for an agency to lease a high-security space from them, and this legislation will allow agencies to properly evaluate the risks of doing so and consider appropriate mitigation measures. Additionally, by developing a new, more comprehensive beneficial owner identification system, the Federal Government can be more vigilant in ensuring that foreign governments do not have access to our most sensitive leased properties.

III. LEGISLATIVE HISTORY

S. 1869 was introduced on June 13, 2019 by Senator Gary Peters (D–MI) and Rob Portman (R–OH). The bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 1869 at a June 19, 2019 business meeting.

During the business meeting, Senator Peters and Senator Portman offered an amendment in the nature of a substitute. The amendment made various technical changes and applied the bill’s requirements to contracts entered into on or after the bill’s passage. The Committee ordered S. 1869, as modified by the Peters-Portman substitute amendment, reported favorably *en bloc* by voice vote. Senators present for the vote were Johnson, Paul, Lankford, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

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

Section 1. Short title; findings

This section designates the short title of the bill as the “Secure Federal Leases from Espionage and Suspicious Entanglements Act” or the “Secure Federal LEASEs Act.”

This section also lays out congressional findings summarizing the GAO report.

Section 2. Definitions

This section includes definitions of the terms “beneficial owner,” “closely held,” “control,” “covered entity,” “executive agency,” “federal agency,” “federal lessee,” “foreign entity,” “foreign person,” “federal tenant,” “high-security leased space,” “highest-level owner,” “immediate owner,” “sustainable economic benefits,” “United States person,” and “widely-held.”

⁴Pub. L. 115–91, § 2876.

Section 3. Disclosure of ownership of high-security space leased for Federal agencies

The section requires that the federal agency acquiring leased space for high-security purposes disclose to the Federal lessee whether the immediate or highest level owner of the leased space is a foreign person or entity. Prior to awarding a lease requiring a disclosure, the Federal lessee must consult with the tenant about any security concerns and mitigation measures.

Section 4. Immediate, highest-level, and beneficial owners

The section requires the GSA to develop a government-wide plan for identifying and reporting all owners of high-security lease spaces before entering into lease agreements, for the purposes of identifying foreign ownership. In disclosing any foreign ownership, GSA's plan should include information on pooled investment vehicles, but exclude widely-held investments, or investments in which there are over 100 individual owners or investors.

This section further adds reporting requirements and gives an implementation deadline.

Section 5. Other security agreements for leased space

This section requires that lease agreements for a high-security spaces limit owner or maintenance access to high-security areas, as approved by the Federal tenant.

Section 6. Applicability

This section states that the bill only applies to agreements entered into on or after the date of enactment.

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, August 9, 2019.

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. 1869, the Secure Federal LEASEs 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.

S. 1869, Secure Federal LEASEs Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on June 19, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	2	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 1869 would require the General Services Administration (GSA) to identify a building's owners before entering into a lease agreement for a facility that requires high security. The bill also would require entities leasing high-security properties to the government to identify the property's owners and to update that information annually.

Information from GSA indicates that the federal government leases around 1,300 high-security facilities and that more than 60 percent of those leases will expire by the end of 2024. Using information from GSA and the Government Accountability Office, CBO estimates that requiring GSA to collect and provide ownership information would cost less than \$500,000 annually and \$2 million over the 2020–2024 period. Any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed 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 not make 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.