

Calendar No. 185

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
118-82

SECURE ADJACENT FEDERAL PROPERTY
ACT OF 2023

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1868

TO REQUIRE AN INTERAGENCY STUDY TO PRODUCE A
SECURITY ASSESSMENT PROCESS ON ADJACENT SPACE
TO HIGH-SECURITY LEASED SPACE TO ACCOMMODATE
A FEDERAL AGENCY, AND FOR OTHER PURPOSES



JULY 27, 2023.—Ordered to be printed

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SECURE ADJACENT FEDERAL PROPERTY ACT OF 2023

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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. 1868]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1868) to require an interagency study to produce a security assessment process on adjacent space to high-security leased space 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

S. 1868, the *Secure Adjacent Federal Property Act of 2023*, would require the General Services Administration (GSA) to coordinate an interagency government-wide study with the Department of Homeland Security (DHS), Office of Management and Budget (OMB), Federal Protective Service (FPS), and other relevant entities to establish a security assessment process to examine the threat level of each building or office space adjacent to high-security leased federal facilities in an effort to strengthen federal facility security. The bill ensures requisite privacy protections are in

place and requires GSA to report the results of the study to Congress within two years of enactment.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Federal real property management, including federal facility security, has been on the Government Accountability Office (GAO) High-Risk List since 2003 as one of the top government activities for which GAO recommends changes to reduce risks.¹ GSA, which leases space for many agencies in the federal government, and DHS's FPS share the responsibility of protecting federal facilities owned or leased by GSA. High-security facilities present an increased level of security risk and are more vulnerable to threats from foreign entities compared to other facilities, because these office spaces are typically used for sensitive or classified government operations.² GSA has stated that there are approximately 1,300 high-security facilities leased by the federal government, and more than 60% of those leases are set to expire by the end of 2024.³

The Homeland Security Act of 2002 grants GSA the authority to protect federal facilities excluding certain functions delegated to DHS.⁴ Within this framework, FPS holds the primary responsibility for securing and protecting buildings and their occupants, whereas GSA holds the primary responsibility for security fixtures, maintenance, and building access. The facility security levels are determined through consultation between FPS and the federal agencies, in coordination with GSA.⁵ The Interagency Security Committee established the standards for these levels, which range from Level I (indicating the lowest risk) to Level V (indicating the highest risk). FPS conducts security assessments of federal facilities to identify and evaluate potential risks so that it can recommend security measures based on these established standards.⁶

A GAO report published in 2017 stated that foreign-owned property located near federal facilities may pose security risks, citing the Department of Defense (DOD), a federal agency with leasing authority, and its concerns about foreign entities conducting business in close proximity to its test and training ranges.⁷ The GAO report found that such foreign encroachment could provide opportunities for surveillance of DOD's sensitive test and training activities.⁸ In general, the presence of foreign-owned or occupied properties nearby could compromise the security and confidentiality of federal agency operations by enabling espionage or unauthorized access.

The Secure Federal LEASEs Act (P.L. 116–276) was enacted in the 116th Congress. The purpose of the bill was to provide owner-

¹ Government Accountability Office, High-Risk Series: *Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas* (GAO–23–106203).

² Government Accountability Office, *Federal Real Property: GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners* (GAO–17–195).

³ S. Rept. 116–92.

⁴ Homeland Security Act of 2002, Pub. L. 107–296, Sec. 422(a) (2002).

⁵ *Federal Real Property: GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners*, *supra* note 2.

⁶ U.S. Department of Homeland Security, Cybersecurity and Infrastructure Security Agency, *The Risk Management Process: An Interagency Security Committee Standard* (2021) (https://www.cisa.gov/sites/default/files/publications/The%20Risk%20Management%20Process%20-%202021%20Edition_1.pdf).

⁷ *Federal Real Property: GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners*, *supra* note 2.

⁸ Government Accountability Office, *Defense Infrastructure: Risk Assessment Needed to Identify If Foreign Encroachment Threatens Test and Training Ranges* (GAO–15–149).

ship information to federal tenants leasing high-security space that would allow the tenants to mitigate potential national security risks.⁹ The Secure Federal LEASEs Act may have addressed security concerns regarding the building itself. However, security risks persist since there is currently no government-wide guidance for agencies to collect ownership and assess occupancy of space adjacent to high-security leased space. For that reason, this bill would require GSA to coordinate an interagency working group with OMB, DHS, FPS, and any other relevant entity to establish a process for assessing the security of space adjacent to high-security leased offices. The process could be used to protect federal government facilities against threats such as espionage, cyberattacks, or unauthorized access.

III. LEGISLATIVE HISTORY

Senator Gary Peters (D–MI) introduced S. 1868, the Secure Adjacent Federal Property Act of 2023, on June 7, 2023 with original cosponsor Senator Rick Scott (R–FL). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1868 at a business meeting on June 14, 2023. At the business meeting, Senator Peters offered a substitute amendment to the bill, as well as a modification to that amendment. The Peters amendment, as modified, corrected for a missing word and modified several definitions in the bill to provide consistency with other statutes and regulations. It also included language to ensure requisite privacy protections are in place and to require that no additional funds be used to carry out the bill. The Committee adopted the modification to the Peters substitute amendment and the Peters substitute amendment, as modified, by unanimous consent, with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Paul, Lankford, Romney, Scott, and Hawley present. The bill, as amended by the Peters substitute amendment as modified, was ordered reported favorably by roll call vote of 10 yeas to 1 nay, with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Lankford, Romney, Scott, and Hawley voting in the affirmative, and Senator Paul voting in the negative. Senators Carper, Blumenthal, Johnson, and Marshall voted yea by proxy, for the record only.

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 “Secure Adjacent Federal Property Act of 2023.”

Section 2. Definitions

This section provides definitions for “administrator,” “beneficial owner,” “control,” “covered entity,” “executive agency,” “federal agency,” “federal lessee,” “federal tenant,” “foreign entity,” “foreign person,” “high-security leased adjacent space,” “high-security leased space,” “highest-level owner,” “immediate owner,” “intelligence community,” “substantial economic benefits,” and “United States person.”

⁹ Secure Federal LEASEs Act, Pub. L. 116–276 (2020).

Section 3. Government-wide study

Subsection (a) requires GSA, in coordination with FPS, DHS, OMB, and other relevant entities, to carry out a government-wide study to assist agencies in producing a security assessment process for high-security leased adjacent space, to be used before agencies enter into lease agreements to accommodate federal tenants located in high-security leased space.

Subsection (b) outlines the contents of the study, which includes evaluating the process for assessing the threat level of each occupancy of a high-security leased adjacent space through site-visits, interviews, and other relevant activities. It may also include a process for collecting and using information on each immediate owner, highest-level owner, or beneficial owner seeking to lease a high-security leased adjacent space.

Subsection (c) establishes a working group within 90 days of the bill's enactment to assist in carrying out the study, consisting of members from relevant entities. A member must not receive compensation as a result of serving on the working group. The working group will terminate upon submission of the required report.

Subsection (d) ensures that any information collected pursuant to the study is not made available to the public.

Subsection (e) clarifies that entities located in the United States are not required to provide information requested pursuant to the study.

Subsection (f) requires GSA to submit a report to Congress within two years of the bill's enactment, detailing the results of the study and how privacy laws and rights relating to the First and Fourth Amendments to the U.S. Constitution would be upheld in the security assessment process and information collection process.

Subsection (g) states that the bill does not authorize a federal entity to mandate information gathering unless specifically authorized by law.

Subsection (h) prohibits the use of information collected through the security assessment process for law enforcement purposes.

Subsection (i) specifies that no additional funds are authorized to be appropriated to carry out this section.

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

S. 1868, Secure Adjacent Federal Property Act of 2023			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on June 14, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
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	1	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 1868 would direct the General Services Administration (GSA) to create an interagency working group to assess and, within two years of enactment, report on the security of spaces that are adjacent to high-security areas to be leased by the federal government.

GSA reports that it manages more than 8,000 leases and CBO expects that roughly 1,000 would be for spaces with high-security requirements that would need to be assessed, but we have no comprehensive information about such leases. On that basis, and the cost of similar reports, CBO estimates that the assessment and report would cost \$1 million over the 2023–2028 period, primarily for staff cost. 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 Director and Budget Analysis.

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.