

108TH CONGRESS
1ST SESSION

H. R. 2573

To amend title 40, United States Code, to make reforms in the management and development of Federal real property.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2003

Mr. LATOURETTE (for himself, Ms. NORTON, Mr. YOUNG of Alaska, and Mr. OBERSTAR) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend title 40, United States Code, to make reforms in the management and development of Federal real property.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Private Part-
5 nership Act of 2003”.

6 **SEC. 2. FEDERAL REAL PROPERTY DEVELOPMENT.**

7 (a) IN GENERAL.—Part A of subtitle II of title 40,
8 United States Code, is amended by adding at the end the
9 following:

1 **“CHAPTER 39—FEDERAL REAL PROPERTY**
 2 **DEVELOPMENT**

“Sec.

“3901. Definitions.

“3902. Agreements with non-Federal entities.

“3903. Sunset.

3 **“§ 3901. Definitions**

4 “In this chapter, the following definitions apply:

5 “(1) EXCESS PROPERTY.—The term ‘excess
 6 property’ has the meaning given such term by sec-
 7 tion 102.

8 “(2) FEDERAL BUILDINGS FUND.—The term
 9 ‘Federal Buildings Fund’ means the fund estab-
 10 lished by section 592.

11 “(3) LANDHOLDING AGENCY.—

12 “(A) IN GENERAL.—Subject to subpara-
 13 graph (B), the term ‘landholding agency’ means
 14 any executive agency that, by specific or general
 15 statutory authority, has jurisdiction over prop-
 16 erty that is real property.

17 “(B) EXCLUSIONS.—The term ‘land-
 18 holding agency’—

19 “(i) does not include an executive
 20 agency with respect to the agency—

21 “(I) disposing of an interest in
 22 real property for public benefit pur-
 23 poses pursuant to section 545;

1 “(II) holding lands in trust or re-
2 stricted fee status for individual Indi-
3 ans or Indian tribes; or

4 “(III) having jurisdiction over
5 National Park System lands, National
6 Forest System lands, or National
7 Wildlife Refuge System lands; and

8 “(ii) does not include the Bureau of
9 Land Management.

10 “(4) PROPERTY.—The term ‘property’ has the
11 meaning given such term by section 102, and in-
12 cludes public buildings and the occupied or improved
13 grounds of the United States generally.

14 **“§ 3902. Agreements with non-Federal entities**

15 “(a) AUTHORITY TO ENTER INTO AGREEMENTS.—

16 “(1) IN GENERAL.—Subject to the require-
17 ments of this section, the Administrator of General
18 Services may enter into agreements with non-Fed-
19 eral entities to provide for—

20 “(A) the acquisition, lease, construction,
21 rehabilitation, operation, maintenance, or use of
22 real property under the jurisdiction of the Gen-
23 eral Services Administration or another land-
24 holding agency; or

1 “(B) such other activities related to the
2 real property as the Administrator considers
3 appropriate.

4 “(2) LANDHOLDING AGENCIES OTHER THAN
5 GSA.—In the case of real property under the juris-
6 diction of a landholding agency other than the Gen-
7 eral Services Administration, the Administrator may
8 enter into an agreement under this subsection only
9 upon the written request of the head of the land-
10 holding agency.

11 “(b) ELIGIBILITY OF REAL PROPERTY.—The Admin-
12 istrator may enter into an agreement under subsection (a)
13 with respect to real property only if the head of the land-
14 holding agency with jurisdiction over the property deter-
15 mines in writing that the real property is not excess prop-
16 erty.

17 “(c) TERMS AND CONDITIONS.—An agreement en-
18 tered into under section (a) with respect to real property
19 under the jurisdiction of a landholding agency—

20 “(1) shall have as its primary purpose enhance-
21 ing the value of the real property to the United
22 States;

23 “(2) shall provide that any obligation of an
24 agency under the agreement is subject to the avail-

1 ability of appropriated funds or the availability of re-
2 cepts authorized by subsection (h);

3 “(3) shall be for a term that is not longer than
4 50 years;

5 “(4) shall be negotiated pursuant to such proce-
6 dures as the Administrator considers necessary to
7 ensure the integrity of the selection process and to
8 protect the interests of the United States;

9 “(5) shall support the goals and objectives set
10 forth in a plan to be developed by the landholding
11 agency to improve real property management deci-
12 sions, reduce costs, and maximize portfolio perform-
13 ance, which plan shall address, at a minimum, life
14 cycle planning and preservation of asset value;

15 “(6) may provide a lease option to the United
16 States, to be exercised at the discretion of the Ad-
17 ministrator, to occupy any office, storage, or other
18 space in a facility covered under the agreement that
19 may be suitable for use by one or more Federal
20 agencies;

21 “(7) shall not provide, unless specifically deter-
22 mined otherwise by the Administrator, that owner-
23 ship of a facility covered under the agreement be
24 transferred to the United States at or shortly after
25 the expiration of any lease of the facility to the

1 United States, but may provide that ownership of
2 the facility be transferred to the United States be-
3 fore the expiration of the agreement;

4 “(8) shall describe the consideration, duties,
5 and responsibilities for which the United States and
6 the non-Federal entity are responsible;

7 “(9) shall provide—

8 “(A) that the United States will not be lia-
9 ble for any action, debt, or liability of any enti-
10 ty created by the agreement; and

11 “(B) that the non-Federal entity may not
12 execute any instrument or document creating or
13 evidencing any indebtedness unless such instru-
14 ment or document specifically disclaims any li-
15 ability of the United States under the instru-
16 ment or document; and

17 “(10) shall include such other terms and condi-
18 tions as the Administrator considers appropriate.

19 “(d) CONSIDERATION.—

20 “(1) IN GENERAL.—An agreement entered into
21 under subsection (a) shall be for fair consideration,
22 as determined by the Administrator.

23 “(2) IN-KIND CONSIDERATION.—Consideration
24 under such an agreement may be provided in whole
25 or in part through in-kind consideration, including

1 provision of space, goods, or services of benefit to
2 the United States. Such services may include con-
3 struction, repair, remodeling, or other physical im-
4 provements of Federal property, maintenance of
5 Federal property, or the provision of office, storage,
6 or other usable space.

7 “(e) AUTHORITY TO CONVEY.—In carrying out an
8 agreement entered into under subsection (a), the Adminis-
9 trator may convey interests in real property, by lease or
10 exchange, to a non-Federal entity.

11 “(f) RELATIONSHIP TO OTHER LAWS.—

12 “(1) REQUIREMENT FOR CONGRESSIONAL AP-
13 PROVAL.—An agreement entered into under sub-
14 section (a) shall not be subject to section 3307.

15 “(2) WAIVER AUTHORITY.—

16 “(A) IN GENERAL.—In carrying out this
17 section, the Administrator may waive require-
18 ments of Federal law relating to the acquisition,
19 lease, construction, rehabilitation, operation,
20 maintenance, or use of real property if the Ad-
21 ministrator determines, in writing, that the
22 waiver is necessary to achieve the purposes of
23 this section.

24 “(B) LIMITATION.—Nothing in subpara-
25 graph (A) shall be construed to authorize the

1 Administrator to waive a requirement of Fed-
2 eral law relating to the environment, labor, or
3 historic preservation.

4 “(C) PROHIBITION ON DELEGATION.—The
5 Administrator may not delegate the authority
6 granted under subparagraph (A).

7 “(g) REPORTING REQUIREMENT.—

8 “(1) IN GENERAL.—Before entering into an
9 agreement under subsection (a), the Administrator
10 shall transmit to Congress a report on the proposed
11 agreement.

12 “(2) CONTENTS.—A report transmitted under
13 this subsection shall include—

14 “(A) a summary of a cost-benefit analysis
15 of the proposed agreement;

16 “(B) a statement of the fair market value
17 of any real property covered under the proposed
18 agreement;

19 “(C) a description of the provisions of the
20 proposed agreement, including the consideration
21 received;

22 “(D) a description of actions to be taken
23 under the proposed agreement to comply with
24 applicable Federal laws, including environ-
25 mental, historic preservation, and labor laws;

1 “(E) a description of how the proposed
2 agreement departs from standard agency prac-
3 tices relating to the acquisition, lease, construc-
4 tion, rehabilitation, operation, maintenance, or
5 use of real property otherwise authorized under
6 this part; and

7 “(F) a description of the extent to which
8 the proposed agreement is consistent with State
9 and local zoning requirements.

10 “(3) REVIEW BY CONGRESS.—A proposed
11 agreement under subsection (a) may not become ef-
12 fective before the earlier of—

13 “(A) the end of a 45-day period of contin-
14 uous session of Congress following the date of
15 the transmittal of a report on the agreement
16 under this subsection; or

17 “(B) the end of the 60-day period fol-
18 lowing such date of transmittal.

19 For purposes of subparagraph (A), continuity of a
20 session of Congress is broken only by an adjourn-
21 ment sine die, and there shall be excluded from the
22 computation of such 45-day period any day during
23 which either House of Congress is not in session
24 during an adjournment of more than 5 days to a day
25 certain.

1 “(h) PROCEEDS.—

2 “(1) DEPOSIT IN FEDERAL BUILDINGS FUND.—

3 “(A) PROCEEDS FROM REAL PROPERTY OF
4 GSA.—Net proceeds from an agreement entered
5 into under subsection (a) involving real prop-
6 erty under the jurisdiction of the General Serv-
7 ices Administration shall be deposited into the
8 Federal Buildings Fund.

9 “(B) PROCEEDS FROM REAL PROPERTY OF
10 OTHER LANDHOLDING AGENCIES.—Net pro-
11 ceeds from an agreement entered into under
12 subsection (a) involving real property under the
13 jurisdiction of a landholding agency other than
14 the General Services Administration shall be de-
15 posited into a separate account in the Federal
16 Buildings Fund to be established for the land-
17 holding agency by the Secretary of the Treas-
18 ury.

19 “(2) ADMINISTRATION OF AMOUNTS.—

20 “(A) IN GENERAL.—Amounts deposited
21 into the Federal Buildings Fund under this
22 subsection, including amounts deposited into an
23 account established for a landholding agency
24 under paragraph (1)(B), shall be administered

1 and expended, subject to appropriations Acts,
2 as part of the Federal Buildings Fund.

3 “(B) USE OF AMOUNTS IN AGENCY AC-
4 COUNTS.—Amounts deposited into an account
5 established for a landholding agency under
6 paragraph (1)(B) are authorized to be appro-
7 priated to the Administrator of General Serv-
8 ices for real property management and related
9 activities of the landholding agency, at the writ-
10 ten request of the head of the landholding agen-
11 cy.

12 “(3) RECOVERY OF EXPENSES.—

13 “(A) EXPENSES OF GSA.—The Adminis-
14 trator may retain from the proceeds of any
15 agreement entered into under subsection (a)
16 amounts necessary to recover the expenses in-
17 curred by the Administrator with respect to the
18 agreement. Such amounts shall be deposited
19 into the account in the Treasury from which
20 the Administrator incurred the expenses.

21 “(B) EXPENSES OF OTHER LANDHOLDING
22 AGENCIES.—In the case of an agreement en-
23 tered into under subsection (a) involving real
24 property under the jurisdiction of a landholding
25 agency other than the General Services Admin-

1 istration, the Administrator shall reimburse the
 2 agency, out of the proceeds of the agreement,
 3 for expenses incurred by the agency with re-
 4 spect to the real property. Such amounts shall
 5 be deposited into the account in the Treasury
 6 from which the agency incurred the expenses.

7 “(4) NET PROCEEDS.—In this section, the term
 8 ‘net proceeds’ means, with respect to an agreement
 9 entered into under this section, the proceeds from
 10 the agreement minus the expenses incurred by the
 11 General Services Administration and any other land-
 12 holding agency with respect to the agreement.

13 “(i) JURISDICTION OVER REAL PROPERTY.—For
 14 purposes of this section, a landholding agency shall be con-
 15 sidered to have jurisdiction over real property if the agen-
 16 cy has jurisdiction, custody, and control of the property.

17 **“§ 3903. Sunset**

18 “(a) IN GENERAL.—The authority of the Adminis-
 19 trator of General Services to enter into an agreement
 20 under section 3902 shall expire on the last day of the 6-
 21 year period beginning on the date of enactment of this
 22 chapter.

23 “(b) AGREEMENTS TRANSMITTED TO CONGRESS.—
 24 Subsection (a) shall not apply to an agreement for which
 25 the Administrator has transmitted a report to Congress

1 under section 3902(g) before the last day of the 6-year
 2 period referred to in subsection (a).

3 “(c) EXISTING AGREEMENTS.—Subsection (a) shall
 4 not affect the Administrator’s authority to carry out the
 5 Administrator’s responsibilities under an agreement en-
 6 tered into before the last day of the 6-year period referred
 7 to in subsection (a) or an agreement described in sub-
 8 section (b).”.

9 (b) CONFORMING AMENDMENT.—The analysis for
 10 part A of subtitle II of title 40, United States Code, is
 11 amended by adding at the end the following:

“39. FEDERAL REAL PROPERTY DEVELOPMENT 3901”.

12 **SEC. 3. SCOPE AND CONSTRUCTION.**

13 The authorities granted by this Act (including the
 14 amendments made by this Act) to the heads of Federal
 15 agencies for the management of real property and the con-
 16 duct of transactions involving such property, shall be in
 17 addition to, and not in lieu of, any authorities provided
 18 in any law existing on the date of enactment of this Act.
 19 Except as expressly provided herein, nothing in this Act
 20 (including the amendments made by this Act) shall be con-
 21 strued to repeal or supersede any such authorities.

22 **SEC. 4. NO WAIVER.**

23 Nothing in this Act (including the amendments made
 24 by this Act) shall be construed to limit or waive any right,
 25 remedy, immunity, or jurisdiction of any Federal agency

1 or any claim, judgment, lien, or benefit due the Govern-
2 ment of the United States.

3 **SEC. 5. REPORT OF COMPTROLLER GENERAL.**

4 Not later than 4 years after the date of enactment
5 of this Act, the Comptroller General of the United States
6 shall submit to Congress a report on the use by Adminis-
7 trator of General Services of the authorities provided by
8 this Act.

9 **SEC. 6. REPEAL.**

10 (a) IN GENERAL.—Section 1302 of title 40, United
11 States Code, is repealed.

12 (b) CONFORMING AMENDMENT.—The analysis for
13 chapter 13 of such title is amended by striking the item
14 relating to section 1302.

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