



U.S. House of Representatives
Committee on Transportation and Infrastructure

John L. Mica
Chairman

Washington, DC 20515

Nick J. Rahall, III
Ranking Member

May 6, 2011

James W. Coon II, Chief of Staff

James H. Zoia, Democrat Chief of Staff

BRIEFING MEMORANDUM

TO: Members of the Subcommittee on Economic Development, Public Buildings, and Emergency Management
FROM: Subcommittee on Economic Development, Public Buildings, and Emergency Management Staff
SUBJECT: Legislative Hearing on “How to Stop Sitting on Our Assets: A Review of the Civilian Property Realignment Act”

PURPOSE

The Subcommittee on Economic Development, Public Buildings and Emergency Management will meet on Thursday, May 12, 2011, at 10:30 a.m., in 2167 Rayburn House Office Building to receive testimony from the Office of Management and Budget, the Department of State and the private sector. The hearing will focus on two legislative proposals to employ a BRAC-like process to civilian properties to produce significant savings to the taxpayer.

BACKGROUND

At the February 10, 2011, Subcommittee hearing, Chairman Denham proposed exploring the use of a civilian BRAC process to address the chronic management issues and waste as it relates to federal real property. Shortly thereafter, the President included in the proposed Fiscal Year 2012 Budget Section 735, proposing a civilian BRAC process. On May 4, 2011, both the administration and Chairman Denham of the Subcommittee released proposals to apply a BRAC-like process to civilian properties.

Both proposals entitled, the “Civilian Property Realignment Act” would establish a framework through which a Board or Commission would independently review federal properties and make recommendations for consolidations, co-locations, redevelopment, disposal or other actions to minimize costs and produce savings for the taxpayer. The legislation, H.R. 1734, was introduced by Chairman Denham on May 4.

Attached to this memorandum are section-by-section analyses of both H.R. 1734 and the administration's proposal. However, key differences include:

- **Commission**: H.R. 1734 creates a 9-member commission, appointed by the President and Senate confirmed with input by leadership in the House and Senate, similar to the BRAC Commission. The administration's proposal creates a 7-member Board appointed by the President. The proposals also vary on terms for the members of the Commission.
- **Development of Recommendations**: The administration's proposal requires federal agencies to send information and initial recommendations to the Board. H.R. 1734 would require initial recommendations submitted to the Commission be compiled through GSA, in consultation with the chairperson of the Federal Real Property Council, and analyzed against standardized criteria that are consistent with the standards detailed in the legislation and published in the Federal Register
- **Postal Facilities**: The administration's proposal establishes additional requirements for the annual review of postal field offices.
- **State Department Properties**: The administration's proposal establishes additional requirements for the annual review of assets owned or managed by the State Department's Bureau of Overseas Building Operations.
- **Termination**: The administration's proposal terminates the Board in 12 years. H.R. 1734 terminates the Commission in 6 years.
- **Independent Leasing Authorities**: H.R. 1734 requires that agencies seeking to lease space for the purposes of a public building work through GSA to acquire such space.
- **Environmental Considerations**: H.R. 1734 waives application of the National Environmental Policy Act (NEPA) with exceptions for property disposal, relocation, and realignment actions. The administration's proposal requires the application of NEPA.

General Services Administration and Public Buildings and Assets

The Subcommittee has jurisdiction over all of GSA's real property activity through the Property Act of 1949, the Public Buildings Act of 1959, and the Cooperative Use Act of 1976, now codified in title 40 of the United States Code. The Subcommittee also has jurisdiction over all federal buildings, occupied and improved grounds, as well as leased facilities.

Management Issues

Given the vast real estate holdings of the federal government, poor asset management and missed market opportunities cost taxpayers significant sums of money. For this reason, in 2003, the Government Accountability Office (GAO) placed real property management on its list of "high risk" government activities, where it remains today. GAO conducts biennial reviews on high-risk areas within the Federal government to bring focus to specific areas needing added attention and oversight. Areas are identified as "high" risk due to their greater vulnerabilities to fraud, waste, abuse, and

mismanagement or areas that need broad-based transformation to address major economic, efficiency, or effectiveness challenges.

The key reasons the GAO identified federal real property as high risk are:

- excess and underutilized real property,
- deteriorating and aging facilities,
- unreliable property data, and
- over-reliance on costly leasing.¹

Unfortunately, despite executive orders and memoranda issued during two administrations and acts of Congress intended to improve the management of federal real property, these problems persist.² The GAO noted recently in the 2011 High Risk report issued in February 2011 that some progress has been made in some of these areas but that “federal agencies continue to face long-standing problems, such as overreliance on leasing, excess property, and protecting federal facilities.”³

The high risk activities of Federal real property are significant. Considerable amounts of vacant or underperforming assets can translate into significant costs associated with their operation, maintenance, and security. For example, in fiscal year 2009, the federal government spent \$1.7 billion in annual operating costs for underutilized buildings and \$134 million, annually, for excess buildings.⁴

BRAC

The Base Realignment and Closure process was first established by Congress through the Defense Base Closure and Realignment Act of 1988. Its purpose was to create a basic framework for the realignment and disposal of DoD properties. The BRAC process was also intended to establish a fair process of evaluating DoD’s space needs and determining the best space solutions for DoD facilities. Since 1988, there have been five rounds of BRAC, with the most recent commission established in 2005.

The BRAC process first involves DoD collecting data about its facilities and establishing standards and criteria to evaluate those facilities. Applying those standards and criteria, DoD then develops recommendations on base closures and realignments. Those recommendations are sent to the independent BRAC Commission for review. The BRAC Commission is comprised of nine individuals and the President is required to

¹ See *High Risk Series: Federal Real Property*, U.S. General Accountability Office, GAO-03-122, January 2003.

² See, for example, Executive Order 13327, Federal Real Property Asset Management, signed by President George W. Bush, February 4, 2004; Presidential Memorandum, Disposing of Unneeded Federal Real Estate, signed by President Barack Obama, June 10, 2010; Public Buildings Cooperative Use Act of 1976; Public Law 108-447, Division H, Title IV, Section 412, December 8, 2004 (providing enhanced flexibility to GSA in real property management).

³ *High Risk Series: Managing Federal Real Property*, U.S. General Accountability Office, GAO-11-278, February 2011, p. 58.

⁴ FY2009 Federal Real Property Report, Federal Real Property Council, September 2010, p. 5.

consult with Congress on six of the nine selections. The commission then determines if DoD followed its standards and criteria and reviews the associated data to determine if changes to the recommendations are appropriate. The BRAC Commission may make revisions; however, those revisions are limited in scope. The BRAC Commission then submits its recommendations to the president, who in turn must forward all recommendations to Congress or none. If the President disapproves of the BRAC recommendations, BRAC can revise and resubmit to the President. If the President then approves of the revisions the recommendations can be transmitted to Congress. Congress must affirmatively disapprove of the recommendations within a specified period of time and if Congress does not disapprove of the recommendations, the BRAC recommendations are implemented.

Conclusion

The hearing will focus on two proposals for establishing a civilian BRAC process.

WITNESSES

The Honorable Daniel I. Werfel
Controller, Office of Management and Budget

The Honorable Patrick F. Kennedy
Under Secretary for Management
U.S. Department of State

Additional Witnesses
To Be Confirmed

H.R. 1734: Civilian Property Realignment Act
Section-By-Section

- Section 1:** This section designates the short title as the “Civilian Property Realignment Act.”
- Section 2:** This section lists the purposes of the bill to include: consolidating the footprint of federal buildings; maximizing the utilization rate; reducing leasing; selling or redeveloping high value assets; using consolidation, co-location, and reconfiguring to reduce operating expenses; reducing overlap in field offices; creating incentives for agencies to achieve greater efficiencies; facilitating sale or disposal of unneeded properties; and achieving sustainability goals.
- Section 3:** This section provides relevant definitions including a definition for civilian real property that is consistent with public buildings definition in Public Buildings Act.
- Section 4:** This section establishes a commission to carry out duties as described in the Act. Commission would be composed on 9 members, appointed by the President with the advice and consent of Senate. Six of the members would be appointed with input by the House and Senate leadership. The section sets terms for 6 years and requires that the composition of the members include expertise related to commercial real estate and development, government management or operations, and community development.
- Section 5:** This section requires Commission meetings be public and open and information accessible to oversight committees and the GAO.
- Section 6:** This section sets the compensation rate for the Commission members.
- Section 7:** This section provides for the appointment and compensation of an Executive Director.
- Section 8:** This section provides for the appointment and compensation of staff and allows for details from federal agencies and GAO.
- Section 9:** This section provides the Commission contracting authority.

- Section 10:** This section terminates the Commission in 6 years.
- Section 11:** This section establishes a framework for the development of initial recommendations to be reviewed and submitted to the Commission. This section also requires the standards developed to incorporate key principles listed in section and requires the recommendations to be submitted to the Commission.
- Section 12:** This section establishes general duties of the Commission as identifying opportunities for the Government to reduce its inventory and reduce costs, performing an independent analysis, developing final recommendations, and conducting public hearings. This section also sets an initial time for reporting its final recommendations (and then on a regular basis thereafter) to the President. The section requires the Commission to establish a website and requires the GAO to conduct reviews of the process and assist the Commission in its review and analysis.
- Section 13:** This section establishes a process for review by the president. It requires the President to send to Congress his approval or disapproval of the recommendations. If the President disapproves, the Commission is provided additional time to revise recommendations. If the President fails to approve recommendations, the process ceases for that year.
- Section 14:** This section establishes expedited processes, floor procedures, and timelines for consideration of a resolution of disapproval in Congress.
- Section 15:** This section requires agencies to carry out the recommendations if they are not disapproved by Congress. It requires all activities to be initiated within 2 years and all actions completed in 6 years, unless notice is provided to the President and Congress. Allows for agencies to take necessary steps to carry out the recommendations, except agencies are required to work within their existing authorities and, if necessary, work with GSA.
- Section 16:** This section authorizes \$88 million in the first year for the Commission and initial costs associated with activities related to implementing any recommendations.
- Section 17:** This section establishes an account on the books of the Treasury for the salaries and expenses of the Commission and establishes an account within the Federal Buildings Fund (FBF) to carry out actions related to the Commission recommendations. The FBF account would be funded with proceeds from any action taken pursuant to the Commission recommendations and provides that net proceeds be split between reinvestment and the general treasury.

- Section 18:** This section provides for an expedited process for disposals and other actions taken pursuant to the recommendation.
- Section 19:** This section amends the Public Buildings Act by requiring prospectuses for future projects to include a statement on its consistency with principles in the Civilian Property Realignment Act.
- Section 20:** This section prohibits agencies from leasing space as defined as public buildings.
- Section 21:** This section requires GAO on at least an annual basis to monitor and review the implementation activities related to the Commission recommendations.

Administration's Proposal
Section-by-Section Analysis
Civilian Property Realignment Act

Section 1

Section 1 would provide a short title for the bill, i.e., "Civilian Property Realignment Act" and contains a table of contents.

Section 2

Section 2 would explain the purpose of Act as expediting the disposal of unneeded Federal civilian properties and realize savings.

Section 3

Section 3 would define Federal civilian real property, executive agencies, postal properties, military installations, field offices, and disposal for the purpose of this Act. Federal civilian real property excludes military properties, properties that involve national security or homeland security, national parks, wildlife refuges, designated wilderness areas, Indian land, and properties that would be considered national treasures or monuments. Constructed assets within public lands may be considered for a recommended action (e.g. demolition) by the Board; however, this bill is not intended to create inholdings.

Section 4

Section 4 would establish the Civilian Property Realignment Board (Board), which consists of seven members appointed by the President, one of whom will be designated as the Chairperson. Board members are intended to be real property experts from either or both the public and private sector. However, the position on the Board would be the member's only job; this is not a board made up of detailees that already have high-ranking positions at other agencies. Members of the Board are Federal employees.

Section 5

Section 5 would describe the Board meeting and hearing process. All hearings, other than those where classified information shall be discussed, shall be open to the public. Board meetings, as part of the Board's day-to-day operations, shall generally not be open to the public. All proceedings shall be open to the Chairman and ranking minority party member of the four relevant House and Senate sub-committees on government oversight and real property as requested.

Section 6

Section 6 would define the processes to formulate, review, and transmit recommendations of the Board. While formulating its recommendations, the board will take into account, among other criteria, the community in which the property is located; the highest and best use of the property; the potential uses of the properties for homeless assistance, parks and recreation, or other public benefits; the historical nature of the facility; the environmental effects of a proposed action; whether the action would create an inholding; and whether significant environmental remediation must be done to the property. The Board will also be charged with reviewing whether past actions by agencies have adequately addressed real estate management. Postal properties may only be recommended for co-location. Note only properties that are included in Board recommendations that are not disapproved by Congress

are subject to the authorities under this Act. The remaining properties are not subject to the authorities under this Act.

In transmitting its recommendations to the Director of OMB, the Board will include instructions for how to accomplish the recommended activities, such as instructions to dispose of a property by sale. In addition, the Board will enumerate a separate list of properties that should be reviewed for potential use by the homeless or for other public benefits outlined in section 10(e).

If the Director approves the first set of recommendations, the recommendations are transmitted to Congress. If the Director disapproves, the Director passes comments to the Board on his disapproval and the Board will follow-up with a subsequent report that may or may not address the Director's comments. If the Director approves the subsequent report, the recommendations are transmitted to Congress. If the Director disapproves, the process is terminated. Reasons for disapproval are transmitted to the Board and Congress. The Director may not line-item veto any recommendation; he may only approve or disapprove of the Board's report in whole.

Section 7

Section 7 would create a process for the Board to recommend co-locations into United States Postal Service owned properties. The Postal Service must comment formally on certain properties that the Board considers for co-location. The Postmaster General may veto inclusion of any transactions that involve postal properties.

Section 8

Section 8 would create a process for the Department of State's Bureau of Overseas Building Operations to comment on properties considered by the Board. The Department of State must comment formally on certain properties that the Board considers for disposal, consolidation, reconfiguration, or realignment. The Secretary of State may veto inclusion of any transactions that involve international consular and diplomatic properties.

Section 9

Section 9 would define the process by which Congress will review the Board's recommendations. If no joint resolution is passed by Congress within a 45 calendar day period that affirmatively disapproves of the Board's report as a whole, then agencies shall immediately commence planning and implementing the Board's recommendations.

Section 10

Section 10 would define the process for implementing the Board's recommendations and related authorities of the Board and agencies.

- Defines the timeline by which recommendations from the Board should be initiated (within two years) and completed (within six years) by the applicable agencies. Grants the possibility of an extension only in extenuating circumstances.
- Grants authority to use funds from its revolving fund to reimburse agencies for expenses the agencies incur while implementing the Board's recommendations.

- Outlines that agencies' existing authorities to dispose or realign a property identified by the Board in a report (but only those properties – NOT the rest of the agency's inventory) will temporarily be frozen for 90 days until the Board's recommendation with respect to that property is disapproved by Congress, disapproved by the OMB Director, or is to be implemented consistent with the process outlined in section 9 regarding Congressional consideration. Aside from the exemptions for certain public benefit conveyance reviews and proceeds retention, agencies shall otherwise use their existing authorities when disposing of property.

- Any disposal of civilian real property will not be subject to public benefit conveyance programs as outlined below. The programs require agencies to subject its excess properties to interested non-Federal entities for potential public use; e.g., homeless assistance and parks and recreation. Rather than being subject to such reviews for all properties, the Board will choose which properties will be subject to these reviews. Applying these programs only to a selected subset of properties will significantly reduce the administrative requirements and associated period of time that agencies government-wide must maintain a property after it has been identified as excess. The Board will consider such potential public uses during its deliberation phase prior to transmitting recommendations to the Director of OMB. At the discretion of the Board, the Board may recommend a property to be further reviewed for public benefits, in which interested parties from non-Federal entities shall have an opportunity to submit a notice of interest, and related information required by the programs below, to the Board and Federal agencies. ○ section 545(b)(8) of title 40, United States Code [GSA authority to negotiate a sale];

- sections 550, 554, and 553 of title 40, United States Code [Education, Public Health, Park and Recreation, Self Help Housing, Historic Monument, Correctional, Law Enforcement, Emergency Management Response, Port Facility];

- section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411);

- section 667(b) – (d) of title 16, United States Code [Wildlife Conservation];

- section 47151 of title 49, United State Code [Public Airport];

- sections 107 and 317 of title 23, United States Code [Highway];

- section 1304(b) of title 40, United States Code [Widening of Public Roads];

- section 1622(d) of title 50, United States Code Appended [Power Transmission Lines];

- any other provision of law authorizing the conveyance of Federally-owned real property;

- any congressional notification other than section 545 of title 40, United States Code.

- Provision to clarify how this Act does not affect or change current environmental law. For example, clarifies that this Act is subject to all requirements of CERCLA and that agencies implementing recommended disposals may utilize CERCLA Early Transfer Authority pursuant to CERCLA Section 120(h)(3). Note that the National Environmental Policy Act (NEPA) and other environmental requirements apply to this Act in full.

- Waiver clause, to remove the possibility of any appropriations bill provision trying to limit the Board's actions.

Section 11

Section 11 would authorize an appropriation to support the Board. In addition, it would establish accounts (salary and expenses as well as revolving fund) on the books of the Treasury and defines the purposes for the funding, including appropriations, transfers of budget authority, and sale proceeds. Net proceeds (after paying disposal costs) will be distributed to the general fund (at least 60 percent), Federal agencies, and the Board's revolving fund.

Section 12

Section 12 would define the pay and travel schedules for the Board members.

Section 13

Section 13 would establish an Executive Director and define the pay schedule.

Section 14

Section 14 would authorize staff for the Board and define the pay schedule.

Section 15

Section 15 would authorize the Board to contract, lease space, and acquire personal property.

Section 16

Section 16 would establish a sunset clause for the Board at 12 years from enactment.

Section 17

Section 17 would prevent judicial review of actions by the Board under section 6 of this Act; actions taken by the OMB Director under section 6 of this Act; or actions taken by the Board, the Secretary of HUD, and Federal agencies under section 10(f) of this Act.

Section 18

Section 18 would mandate that the Board draft and transmit a report within two years to OMB that contains the Board's conclusions and recommendations on ways that the process created by this Act could be more efficient consistent with the purposes of this Act. At a minimum the Board's report should include comments on the effect of section 7, section 8, and section 10 as currently drafted.