

A BILL

To provide Federal managers with tools and flexibility in areas such as personnel, budgeting, property management and disposal, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

(a) SHORT TITLE. -This Act may be cited as the "Managerial Flexibility Act of 2001".

(b) TABLE OF CONTENTS. - The table of contents for this Act is as follows.

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1 **TITLE I - FEDERAL EMPLOYEE MANAGEMENT REFORMS**

2 **SUBTITLE A - FEDERAL EMPLOYMENT RESTRUCTURING ASSISTANCE**

3 **Sec. 101. Voluntary separation incentives.**

4 (a) Chapter 35 of title 5, United States Code, is amended—

5 (1) by amending the chapter title to read as follows:

6 "CHAPTER 35 – RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE
7 PAYMENTS, RESTORATION, AND REEMPLOYMENT";

8 (2) by inserting after subchapter I a new subchapter II to read as follows:

9 "SUBCHAPTER II – VOLUNTARY SEPARATION INCENTIVE PAYMENTS

10 **"§3521. Definitions**

11 "For the purpose of this subchapter—

12 "(1) 'agency' means an Executive agency as defined by section 105; and

13 "(2) 'employee' means an employee as defined by section 2105 employed by an agency

14 and an individual employed by a county committee established under section 8(b)(5) of the Soil
15 Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

16 "(A) is serving under an appointment without time limitation; and

17 "(B) has been currently employed for a continuous period of at least 3 years;

18 but does not include—

1 1115(b)(1)(A)(i) and 1115(b)(1)(B)(i) if formal actuarial determinations are not available. The
2 original unfunded liability as defined in 1115(a) shall include an adjustment to correct for the
3 difference between the formal actuarial determinations and the estimates in section 1115(b)(1)."

4 (e) Conforming Amendment.—The heading for chapter 56 of title 10, United States Code, is
5 amended to read as follows:

6 "CHAPTER 56—UNIFORMED SERVICES RETIREE HEALTH CARE FUND".

7 **Sec 213. Effective date.**

8 Except as otherwise provided herein, this Title shall take effect upon enactment with respect to fiscal
9 years beginning after 2002.

10 **TITLE III - FEDERAL PROPERTY ASSET MANAGEMENT REFORMS**

11 **Sec. 301. Definitions.**

12 Section 3 of the Federal Property and Administrative Services Act of 1949 (hereinafter in this Title
13 referred to as the 'Act'), as amended (40 U.S.C. Sec 472), is amended by adding at the end the
14 following:

15 "(m) The term 'landholding agency' means any Federal agency that, by specific or general
16 statutory authority, has jurisdiction, custody, and control over real property, or interests therein. The
17 term does not include agencies when they are disposing of real property for public benefit purposes
18 pursuant to section 203 of the Act (40 U.S.C. Sec 484), and does not apply to Indian lands - i.e.,
19 lands held in trust or restricted fee status for individual Indians or Indian Tribes.

20 **SUBTITLE A - LIFE CYCLE PLANNING AND MANAGEMENT**

21 Title II of the Act, as amended, is amended by adding at the end thereof the following new sections:

1 "Sec. 213. (a) Asset Management Principles. In accordance with the authorities vested in the
2 Administrator under section 205(c) of this Act, the Administrator, in collaboration with the heads of
3 Federal agencies and the Office of Management and Budget, shall establish and maintain current asset
4 management principles to be applied where appropriate to real and personal property assets subject to
5 this Act and under the jurisdiction, custody and control of such agencies. With respect to the outlease
6 of Federal Property through the use of public-private partnerships authorized in section 216(d), the
7 Administrator shall require the use of the following principles: (1) under no circumstances shall the
8 liability of the government arising from an arrangement with a non-governmental entity or from the
9 operation of any partnership, cooperative venture, limited liability company, corporation, trust, or other
10 business arrangement created as the result of an agreement with a non-governmental entity exceed the
11 amount of the Federal government's capital contribution or equity contribution; (2) such projects will
12 only be undertaken if the federal asset is not developed to its highest and best use and the project is
13 economically viable; determination of economic viability would include, among other relevant economic
14 factors , the internal rate of return of the investment to the government (with preference given to higher
15 rates of return) at leaseback rates not exceeding market rates; and (3) projects will only be undertaken
16 if the market conditions are favorable to development and 'full occupancy' by government or private
17 tenants.

18 "(b) Performance Measurement Benchmarks. The Administrator, in consultation with the heads
19 of landholding agencies, shall establish performance measures to determine the effectiveness of Federal
20 real property management. These measures shall monitor and assess: (1) the disposal of non-
21 performing real property assets; (2) the reduction in vacant Federal space; (3) the realization of equity

1 value in Federal real property assets; (4) the value added through cooperative arrangements with the
2 commercial real estate community; and (5) the enhancement of Federal agency productivity through an
3 improved working environment. The performance measures shall be designed to: (1) enable the
4 Congress and heads of agencies to track progress in the achievement of property management
5 objectives on a government wide basis; and (2) allow for comparing the performance of agencies
6 against industry and other public sector agencies in terms of performance. In developing and
7 implementing the performance measures, the Administrator shall use existing data sources and
8 automated data collection tools to the maximum extent practical.

9 "(c) Inventory Database. In order to accumulate and maintain a single, comprehensive
10 descriptive listing of all Federal real property interests under the custody and control of each Federal
11 agency, the Administrator, in coordination with the heads of Federal agencies, shall collect such
12 descriptive information, except for classified information, as the Administrator deems will best describe
13 the nature, use, and extent of the real property holdings of the United States. For purposes of this
14 section, real property holdings include all public lands of the United States and all real property of the
15 United States located outside the States of the Union, to include, but not be limited to the District of
16 Columbia, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands and the
17 Virgin Islands. To facilitate the reporting on a uniform basis, the Administrator is authorized to establish
18 data and other information technology standards for use by Federal agencies in developing or upgrading
19 agency real property information systems.

20 "(d) Public Information Access. The listing compiled pursuant to this section shall be public
21 record; however, the Administrator is authorized to withhold information, including the location of

1 classified facilities, when it is determined that withholding such information would be in the public
2 interest. Nothing herein shall require the public release of information that is exempt from disclosure
3 pursuant to the Freedom of Information Act, as amended (5 U.S.C. §552).

4 "(e) Jurisdiction of Administrator. Except for the purpose of maintaining the property listing
5 described in subparagraphs (c) and (d), above, nothing in this section shall authorize the Administrator
6 to assume jurisdiction over the acquisition, management, or disposal of real property not subject to this
7 Act.

8 "Sec. 214. (a) Within 180 days of the effective date of this section, the head of each
9 landholding agency shall appoint, or designate from among senior management officials within such
10 agency, a Senior Real Property Officer. Such individual shall be selected with special attention to the
11 qualifications required to administer the functions described under this section. The head of any
12 landholding agency who so desires may also appoint a Real Property Officer for any major component
13 part of an agency, and such Real Property Officers, for the purposes of complying with this title, shall
14 report to the Senior Real Property Officer.

15 "(b) The Senior Real Property Officer for each agency shall be responsible for continuously
16 monitoring agency real property assets to:

17 "(1) manage each asset, including but not limited to its functional use, occupancy,
18 reinvestment requirements and future utility, in a manner fully consistent with and supportive of
19 the goals and objectives set forth in the agency's Strategic Plan required under section 3 of the
20 Government Performance and Results Act of 1993, Public Law 103-62 (5 U.S.C. §306),
21 consistent with the framework provided by the real property asset management principles

1 published by the Administrator pursuant to section 213(a), and reflected in an agency asset
2 management plan. The asset management plan shall be prepared according to guidelines issued
3 by the Administrator, shall be maintained to reflect current agency program and budget
4 priorities, and be consistent with capital planning and programming guidance issued by the
5 Office of Management and Budget;

6 "(2) identify real property assets that can benefit from the application of the enhanced
7 asset management tools described in section 216;

8 "(3) apply enhanced asset management tools, in those cases where a real property asset
9 can so benefit, in such a way that any resulting transaction will result in a fair return on the
10 Federal government investment and protect the Federal government from unreasonable financial
11 or other risks; and

12 "(4) provide to the Administrator a listing and description of the real property assets,
13 under the jurisdiction, custody and control of that agency, including public lands of the United
14 States and property located in foreign lands, along with any other relevant information the
15 Administrator may request, for inclusion in a government-wide listing of all Federal real
16 property interests established and maintained in accordance with section 213(c) of this Title.

17 "(5) determine the performance of the agency against the performance measures
18 established under section 213(b) and report the results of such monitoring to the Congress in
19 the agency's budget submission under section 1005 of title 31, United States Code.

20 "(c) Except as otherwise provided by Federal law, prior to a Federal agency acquiring any
21 interests in real property from any non-Federal source, the Senior Real Property Officer of the

1 acquiring agency shall give first consideration to available Federal real property holdings."

2 **SUBTITLE B - ENHANCED AUTHORITIES FOR REAL PROPERTY**

3 **ASSET MANAGEMENT**

4 **Sec. 311. Enhanced asset management tools.**

5 Title II of the Act, as amended, is amended by adding at the end thereof the following new
6 sections:

7 "Sec. 215. Criteria for Using Enhanced Asset Management Tools --

8 "(a) Subject to the requirements of subsection (b) of this section, the head of a landholding
9 agency may apply an enhanced asset management tool described in section 216 to a real property
10 interest under the agency's jurisdiction, custody and control when the head of the agency has
11 determined that such real property interest --

12 "(1) when used to acquire replacement real property, is not excess property within the
13 meaning given in subsection 3(e) of this Act (40 U.S.C. §472(e)); provided, further, the agency
14 shall include as part of the documentation required under subsection (b)(3) a description of the
15 need and mission requirement fulfilled by the Federal property;

16 "(2) is used to fulfill or support a continuing mission requirement of the agency; and

17 "(3) can, by applying an enhanced asset management tool, improve the support of such
18 mission.

19 "(b) Before applying an enhanced asset management tool defined in section 216 to a real
20 property interest identified under subsection (a) of this section, the head of the agency shall determine
21 that such application meets all of the following criteria:

1 "(1) supports the goals and objectives set forth in the agency's Strategic Plan required
2 under section 3 of the Government Performance and Results Act of 1993, Public Law 103-62
3 (5 U.S.C. §306) and the agency's real property asset management plan as required in section
4 214;

5 "(2) use of the real property is economical, cost effective, and in the best interests of the
6 United States; and

7 "(3) is documented in a business plan which, commensurate with the nature of the
8 selected tool, analyzes all reasonable options for using the property; takes into account
9 applicable provisions of law including but not limited to the National Environmental Policy Act
10 of 1969, as amended; and evidences compliance with the requirements of the McKinney-Vento
11 Homeless Assistance Act, including (i) describing the result of the determination by the
12 Department of Housing and Urban Development of the suitability of the property for use to
13 assist the homeless; and (ii) explaining the rationale for the landholding agency's decision not to
14 make the property available for use to assist the homeless.

15 "Sec. 216. Enhanced Asset Management Tools --

16 "(a) Interagency Transfers or Exchanges -- Any landholding agency may acquire replacement
17 real property by transfer or exchange of real property subject to this Act with other Federal agencies
18 under terms mutually agreeable to the agencies involved.

19 "(b) Sales to or Exchanges with Non-Federal Sources -- Any landholding agency may acquire
20 replacement real property by selling or exchanging a real property asset or interests therein with any
21 non-Federal source; provided that: (1) this transaction does not conflict with other applicable laws

1 governing the acquisition of interests in real property by Federal agencies; (2) the agency first made the
2 property available for transfer or exchange to other Federal agencies; and (3) the transaction results in
3 the agency receiving fair market value consideration, as determined by the agency head, which
4 consideration may be future consideration, for the asset sold or exchanged.

5 "(c) Subleases -- The head of any landholding agency, by lease, permit, license or similar
6 instrument, may make available to other Federal agencies and to non-Federal entities the unexpired
7 portion of any government lease for real property; provided that the term of any sublease shall not
8 exceed the unexpired portion of the term of the original government lease of the property and the
9 sublease results in the agency receiving fair market rental value for the asset. Prior to subleasing to any
10 private person or private sector entity, the Federal agency shall give consideration to the needs of the
11 following entities with the needs of entities listed in paragraph (1) being considered before the needs of
12 entities listed in paragraph (2):

13 "(1) FIRST PRIORITY--The needs of each of the following entities, equally, shall be
14 given first priority by the agency:

15 "(A) Federal agencies; and

16 "(B) Indian tribes (as defined by section 4 of the Indian Health Care
17 Improvement Act (25 U.S.C. § 1603)), urban Indian organizations (as defined by that
18 section), and tribal organizations (as defined by section 4 of the Indian Self-
19 Determination and Education Assistance Act (25 U.S.C. 450b)), through the
20 Secretaries of the Department of the Interior and the Department of Health and Human
21 Services, when the property is to be used in connection with an Indian self-

1 determination contract or grant pursuant to the Indian Self-Determination Act (25
2 U.S.C. 450f et seq.).

3 "(2) SECOND PRIORITY--The needs of each of the following entities, equally, shall
4 be given second priority by the agency:

5 "(A) State and local governments; and

6 "(B) Indian tribes, tribal organizations, and urban Indian organizations (defined
7 as in paragraph (1)(B)), through the Secretaries of the Department of the Interior and
8 the Department of Health and Human Services when the property is to be used for
9 purposes other than as described in paragraph (1) and such uses of the property are
10 authorized by law other than this subsection.

11 "(d) Outleases -- The head of any landholding agency may make available by outlease
12 agreements with other Federal agencies and non-Federal entities any unused or underused portion of or
13 interest in any agency real and related personal property after finding that (i) there is no long-term
14 mission requirement for the property, but the Federal government is not permitted to dispose of it; or
15 (ii) there is a continuing long-term mission requirement for the property to remain in Government
16 ownership, and (iii) the use of the real property by the lessee will not be inconsistent with the statutory
17 mission of the landholding agency; provided that such an outlease transaction to a non-Federal entity is
18 conducted competitively.

19 "(1) Outlease Agreements -- In order to reduce vacant space and realize the equity
20 value of Government-owned real property assets, provide Federal agencies with modern
21 functional work environments, and work cooperatively with the commercial real estate

1 community, any outlease agreements authorized under this subsection:

2 "(A) may be a partnership, cooperative venture, limited liability company,
3 corporation, trust, sole proprietorship, or other business arrangement;

4 "(B) shall be for a term no longer than 50 years;

5 "(C) shall result in the agency receiving fair market value consideration, as
6 defined by the agency head, for the asset, including cash, other property (either real or
7 personal), services, and/or in-kind or future consideration;

8 "(D) may provide a leaseback option to the Federal government to occupy
9 space in any facilities acquired, constructed, repaired, renovated, or rehabilitated by the
10 non-governmental entity, provided that the agreement does not guarantee government
11 occupancy; provided further that any subsequent agreements to leaseback space in
12 such facilities must be in accordance with the competition requirements of Title III of
13 this Act (41 U.S.C. §253 et seq.);

14 "(E) shall provide (i) that neither the United States, nor its agencies or
15 employees, shall be liable for any actions, debts or liability of the lessee, and (ii) that the
16 lessee shall not be authorized to execute and shall not execute any instrument or
17 document creating or evidencing any indebtedness unless such instrument or document
18 specifically disclaims any liability of the United States, and of any Federal agency or
19 employee thereunder in excess of the Government's capital contribution in the lessee;

20 "(F) shall provide (i) that the Government's interest under the agreement is
21 senior to that of any lender to a non-government entity, and (ii) that under no

1 circumstances shall the liability of the United States arising from its arrangement with the
2 non-governmental entity or from the operations of any partnership, cooperative venture,
3 limited liability company, corporation, trust, or other business arrangement created as
4 the result of the agreement with a non-governmental entity exceed the amount of the
5 Federal government's capital contribution or equity contribution to the partnership,
6 cooperative venture, limited liability company, corporation, trust, or other business
7 arrangement; and

8 "(G) may contain such other terms and conditions as the head of the agency
9 making the property available deems necessary to protect the interests of the Federal
10 government.

11 "(2) Order of Consideration -- In making property available for outlease, the
12 landholding agency shall follow the order of consideration listed in subsection (c) of this section.

13 "(3) Prerequisites to Agreements -- Prior to the head of any landholding agency
14 executing any agreement authorized under subsection (d) of this section that would result in the
15 development or substantial rehabilitation or renovation of Federal assets in a business
16 arrangement with a non-Federal entity, the head of such agency shall undertake an analysis of
17 the proposed arrangement or transaction to determine the business and legal risks and benefits
18 to the Federal Government that would likely result from the proposed arrangement or
19 transaction.

20 "(4) Scoring – For the sole purpose of scoring lease-back agreements, if the non-
21 Federal entity shall exercise management control of the business of the public-private entity and

1 holds a majority interest in ownership in the public-private venture; then the project shall not be
2 considered to be constructed on government-owned land for purposes of the application of
3 scoring rules. All leaseback agreements must meet the requirements of an operating lease as
4 specified in relevant OMB Circulars.

5 "(5) Authority for Disposition of Leased Property - If, during the term of an outlease
6 involving the development or substantial rehabilitation/renovation of a Federal asset in a
7 business arrangement with a non-Federal entity, the head of the agency determines that the
8 property is no longer needed by the agency, the head of the agency may initiate action for the
9 transfer to the lessee of all right, title, and interest of the United States in the property by
10 requesting the Administrator of General Services to dispose of the property. A disposition
11 under this section may be made for such consideration as the head of the agency and the
12 Administrator jointly determine is in the best interests of the United States and upon such other
13 terms and conditions as the head of the agency and the Administrator consider appropriate.

14 "(6) Other Authorities -- The authority under this subsection shall not be construed to
15 affect any other authority of any agency to outlease property or to otherwise make property
16 available for any reason.

17 "(7) Sunset Provision -- The authority to enter into new outlease agreements under
18 subsection 216(d) expires 10 years after the date of enactment. The effectiveness of the use of
19 such authority shall be reviewed biennially by the General Accounting Office.

20 "Sec. 217. Forms of Consideration -- Notwithstanding any other provision of law, the forms of
21 consideration received from an enhanced asset management tool as described in section 216 may

1 include cash or cash equivalents, other property (either real or personal), in-kind assets, services, future
2 consideration, or any combination thereof.

3 "Sec. 218. Transactional Reports -- For those transactions authorized under section 216
4 involving the sale, exchange or outlease to a non-Federal source of any asset valued in excess of \$2
5 million at the time of the transaction, the head of the landholding agency performing the transaction shall
6 submit the business plan required by subsection 215(b)(3) to the Office of Management and Budget
7 and to the appropriate Committees of the United States Senate and the House of Representatives at
8 least 30 calendar days prior to final execution of such transaction. The \$2 million reporting threshold in
9 this subsection may be adjusted upward or downward by the Administrator to reflect the annual
10 inflation/deflation factor as determined by the Department of Commerce Consumer Price Index.

11 **Sec. 312. Repeal of section 321 of the Federal Property and Administration Services Act.**

12 Section 321 of the Act of June 30, 1932, 47 Stat. 412 (40 U.S.C. §303b), is repealed.

13 **Sec. 313. Disposal of surplus property.**

14 Subsection 203(b) of the Act, as amended (40 U.S.C. §484(b)), is amended to read as
15 follows:

16 "(b)(1) The care and handling of surplus property, pending its disposition, and the disposal of
17 such property, may be performed by the General Services Administration or, when so determined by
18 the Administrator, by the executive agency in possession thereof or by any other executive agency
19 consenting thereto.

20 "(2) Upon the written request of a landholding agency, the Administrator shall delegate
21 all responsibilities and authorities for the care and handling of surplus real and related personal

1 property, pending its disposition, and for the disposal of such property, provided to the
2 Administrator elsewhere in this Act, to the head of the landholding agency. The Administrator
3 of General Services retains the authority to promulgate general policies and procedures for
4 disposing of such property. These policies and procedures shall require that the General
5 Services Administration:

6 "(A) notify the agencies responsible elsewhere in this Act for sponsoring public
7 benefit conveyances of the availability of excess property as soon as it has been
8 declared excess and solicit their input on whether their public benefit represents the
9 highest and best use of such property;

10 "(B) serve as the central point of contact for agencies, prospective donees, and
11 the public on the availability of surplus property as soon as it has been declared surplus;

12 "(C) assure that the agencies with the authority to make disposal decisions give
13 full consideration to the public benefit uses of surplus Federal property in making their
14 disposal decisions; and

15 "(D) serve as a clearinghouse for information on all phases of the surplus
16 property disposal process, including appeals from sponsoring agencies and prospective
17 donees that insufficient consideration was given to public benefit donations.

18 **SUBTITLE C - INCENTIVES FOR REAL AND PERSONAL PROPERTY**

19 **MANAGEMENT IMPROVEMENT**

20 **Sec. 321. Proceeds from transfer or disposition of property.**

21 Section 204 of the Act, as amended (40U.S.C.§485), is amended as follows:

1 (a) in paragraph (2) of subsection (h) by striking "(b)" and inserting in lieu thereof "(c)", and by
2 striking the phrase", to the extent provided in appropriations Acts,";

3 (b) by revising subsection (i) to read as follows:

4 "Federal agencies may retain from the proceeds of the sale of personal property
5 amounts necessary to recover, to the extent practicable, the full costs, direct and indirect,
6 incurred by the agencies in disposing of such property, including but not limited to the costs for
7 warehousing, storage, environmental services, advertising, appraisal, and transportation. Such
8 amounts shall be deposited into an account available for such expenses without regard to fiscal
9 year limitations. Amounts that are not needed to pay such costs shall be transferred at least
10 annually to the general fund or to a specific account in the Treasury as required by statute.";

11 (c) by redesignating subsections (c), (d), (e), (f), (g), (h), and (i), as subsections (d), (e), (f),
12 (g), (h), (i), and (j), respectively; and

13 (d) by striking subsections (a) and (b) and by inserting in lieu thereof the following subsections
14 (a), (b), and (c):

15 Sec. 204. Proceeds from transfer or disposition of property --

16 "(a)(1) Agency retention of proceeds from real property -- Proceeds resulting from the
17 transfer or disposition of real and related property under this Title shall be credited to the fund,
18 account (including the capital asset account provided in subsection (b) of this section) or
19 appropriation of the agency which made the property available and shall be treated as
20 provided in subsections (b) and (c) of this section.

21 "(2) Proceeds from personal property -- Proceeds from any transfer of excess personal

1 property to a Federal agency or from any sale, lease, or other disposition of surplus personal
2 property shall be treated as prescribed in subsection (j) or as otherwise authorized by law.

3 "(3) Other proceeds -- All proceeds under this Title not deposited or credited to a
4 specific agency account, shall be covered into the Treasury as miscellaneous receipts except as
5 provided in subsections (d), (e), (f), (g), (h), (i), and (j) of this section or as otherwise
6 authorized by law.

7 "(b) Monetary Proceeds to agency capital asset accounts -- Monetary proceeds received by
8 agencies from the transfer or disposition of real and related personal property shall be credited to an
9 existing account or an account to be established in the Treasury to pay for the capital expenditures of
10 the particular agency making the property available, which account shall be known as the agency's
11 capital asset account. Subject to subsection (c), any amounts credited or deposited to such account
12 under this section, along with such other amounts as may be appropriated or credited from time to time
13 in annual appropriations acts, shall be devoted to the sole purpose of funding that agency's capital asset
14 expenditures, including any expenses necessary and incident to the agency's real property capital
15 acquisitions, improvements, and dispositions, and such funds shall remain available until expended, in
16 accordance with the agency's asset management plan as required in Section 214 of the Act as amended
17 by this Title, without further authorization: Provided, that: (1) monies from an exchange or sale of real
18 property, or a portion of a real property holding, under subsection 216(b) of the Act as amended by
19 this Title shall be applied only to the replacement of that property or to the rehabilitation of the portion
20 of that real property holding that remains in Federal ownership, and (2) the head of each landholding
21 agency shall include with the materials the agency annually submits under section 1105 of title 31,

1 United States Code, a detailed accounting of all real property transactions carried out under Title II of
2 the Act and of receipts and disbursements from the agency's capital asset account during the previous
3 fiscal year."

4 "(c) Transactional and other costs -- Federal agencies may be reimbursed from the monetary
5 proceeds of real property dispositions or from other available resources, including from the agency's
6 capital asset account, the full costs, direct and indirect, to the agency of disposing of such property,
7 including but not limited to the costs of site remediation, restoration or other environmental services,
8 relocating affected tenants and occupants, advertising and marketing, community outreach, surveying,
9 appraisal, brokerage, historic preservation services, title insurance, due diligence, document notarization
10 and recording services and the costs of managing leases and providing necessary services to the
11 lessees."

12 **Sec. 322. Relationship to other agencies' authorities to use disposal procedures.**

13 Nothing in this Title shall be construed to repeal or supersede any other provision of Federal law
14 directing the use of proceeds from specific real property transactions or directing how or where a
15 particular Federal agency is to deposit, credit or use the proceeds from the sale, exchange or other
16 disposition of Federal property except as expressly provided for herein.

17 **Sec. 323. Impact on other authorities to use disposal proceeds.**

18 (a) Section 2(a) of the Land and Water Conservation Act of 1965, as amended (16 U.S.C.
19 §4601-5(a)), is superseded only to the extent that the Federal Property and Administrative Services Act
20 of 1949, as amended, or a provision of this Title, provide for an alternative disposition of the proceeds
21 from the disposal of any surplus real property and related personal property subject to this Act, or the

1 disposal of any interest therein.

2 (b) Subsection 3302(b) of title 31, United States Code, is superseded only to the extent that
3 this Act or any other Act provides for the disposition of money received by the Government.

4 **Sec. 324. Using share of sale proceeds to maintain historic Treasury receipts.**

5 For purposes of implementing subtitle C of this Title, the following shall apply:

6 (a) For fiscal years 2002 through 2006, OMB shall allocate by agency a pro rata share of the
7 baseline estimate of total surplus real property sales receipts transferred to the Land and Water
8 Conservation Fund that were contained in the President's Budget for Fiscal year 2002, made pursuant
9 to section 1109 of title 31, United States Code. OMB shall notify the affected agencies and
10 Appropriations Committees of the U.S. House of Representatives and Senate in writing of this
11 allocation within 30 days of enactment of this Title and shall not subsequently revise the allocation.

12 (b) On September 30 of each fiscal year, each agency shall transfer to the Treasury an amount
13 equal to its allocation for that fiscal year, out of the proceeds realized from any sales of the agency's
14 surplus real property assets during that fiscal year.

15 (c) If an agency's actual sale proceeds in any fiscal year are less than the amount allocated to it
16 by OMB for that fiscal year, the agency shall transfer all of its sale proceeds to the Treasury, and its
17 allocation for the subsequent fiscal year shall be increased by the difference.

18 (d) On September 30, 2006, if an agency has transferred less sale proceeds to the Treasury
19 than its total allocation for the five years, the agency shall transfer the difference out of any other funds
20 available to the agency.

21 **SUBTITLE D - STREAMLINED AND ENHANCED DISPOSAL AUTHORITIES**

1 **Sec. 331. Including nonprofit organizations as eligible donees.**

2 (a) Section 203 of the Act, as amended (40U.S.C. §484), is amended in paragraph (k)(3) as
3 follows --

4 (1) by striking "or municipality" and inserting in lieu thereof "municipality, or qualified
5 nonprofit organization established for the primary purpose of preserving historic monuments";
6 and

7 (2) by inserting after the first sentence "Such property may be conveyed to a nonprofit
8 organization only if the State, political subdivision, instrumentalities thereof, and municipality in
9 which the property is located do not request conveyance under this section within thirty days
10 after notice to them of the proposed conveyance by the Administrator to that nonprofit
11 organization.".

12 (b) Section 203 of the Federal Property and Administrative Services Act of 1949, as amended
13 (40 U.S.C.§484), is amended by revising paragraph (k)(4)(C) to read as follows --

14 "(C) the Secretary of the Interior, in the case of property transferred pursuant to the
15 Surplus Property Act of 1944, as amended, and pursuant to this Act, to States, political
16 subdivisions, and instrumentalities thereof, and municipalities for use as a public park or public
17 recreation area, and to State, political subdivisions, and instrumentalities thereof, municipalities,
18 and nonprofit organizations for use as an historic monument for the benefit of the public; or".

19 **Sec. 332. Elimination of certain negotiated sale requirements.**

20 (a) Section 203 of the Act, as amended (40 U.S.C. §484), is amended in subsection (e) as
21 follows --

1 (1) by striking subparagraphs (3)(A), (3)(B), (3)(C), and (3)(E);

2 (2) by redesignating subparagraph (3)(D) and subparagraphs (3)(F) through (3)(I), as
3 subparagraphs (3)(A) through (3)(E), respectively;

4 (3) by amending redesignated subparagraph (3)(E) to read as follows:

5 "(E) otherwise authorized by this Act or other law or with respect to personal
6 property deemed advantageous to the Government."; and

7 (4) by amending subparagraph (6)(A) to read as follows:

8 "(6)(A) An explanatory statement shall be prepared of the circumstances of
9 each disposal by negotiation of any real property that has an estimated fair market value
10 in excess of the threshold value for which transactional reports are required under
11 Section 218."; and

12 (5) by deleting subparagraphs (6)(C) and (6)(D).

13 (b) Section 203 of the Federal Property and Administrative Services Act of 1949, as amended,
14 is further amended by adding to the end thereof the following new subsection:

15 "(s) The authority of any department, agency, or instrumentality of the executive branch
16 or wholly-owned Government corporation to convey surplus real and related personal property
17 for public airport purposes under Subchapter II of title 49, United States Code, shall be subject
18 to the requirements of this Act, and any surplus real property available for conveyance under
19 that subchapter shall first be made available to the Administrator for disposal under this section,
20 including conveyance for any public benefit purposes, including public airport use, as the
21 Administrator, after consultation with the affected agencies, deems advisable."

1 **Sec. 333. Exchange and sale of personal property.**

2 Subsection 201(c) of the Act, as amended (40 U.S.C. §481(c)), is revised to read as follows:

3 "(c) In acquiring personal property or related services, or a combination thereof, any executive
4 agency, under regulations to be prescribed by the Administrator, subject to regulations prescribed by
5 the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy
6 Act (41 U.S.C. §401 et seq.), may exchange or sell personal property and may apply the exchange
7 allowance or proceeds of sale in such cases in whole or in part payment for similar property or related
8 services, or a combination thereof, acquired: Provided, that any transaction carried out under the
9 authority of this subsection shall be evidenced in writing. Sales of property pursuant to this subsection
10 shall be governed by subsection 203(e) of this title, and shall be exempted from the provisions of
11 section 5 of title 41, United States Code."

12 **Sec. 334. Expansion of abandonment authority.**

13 Subsection 202(h) of the Act, as amended (40 U.S.C. §483(h)), is amended to read as follows:

14 (h) The Administrator may authorize the abandonment, destruction, or other disposal of
15 property which has no commercial value or of which the estimated cost of continued care and handling
16 would exceed the estimated fair market value."

17 **Sec. 335. Clarifying certain donation authorities.**

18 Subsection 203(j) of the Act, as amended (40 U.S.C. § 484(j)), is further amended as follows:

19 (a) Paragraph (j)(1) is amended --

20 (1) by striking the phrase "the fair and equitable distribution, through donation," and
21 inserting in lieu thereof "donation on a fair and equitable basis"; and

1 (2) by striking "paragraphs (2) and (3)" and inserting in lieu thereof "paragraph(2)".

2 (b) Paragraph (j)(2) is deleted.

3 (c) Paragraph (j)(3) is renumbered (j)(2) and amended as follows:

4 (1) by deleting the introductory paragraph and inserting in lieu thereof the following:

5 "(2) The Administrator shall, pursuant to criteria that are based on need and
6 utilization and established after such consultation with State agencies as is feasible,
7 allocate surplus personal property among the States on a fair and equitable basis, taking
8 into account the condition of the property as well as the original acquisition cost thereof,
9 and transfer to the State agency property selected by it for purposes of donation within
10 the State--";

11 (2) in subparagraph (B) by --

12 (A) deleting "providers of assistance to homeless individuals, providers of
13 assistance to families or individuals whose annual incomes are below the poverty line
14 (as that term is defined in section 673 of the Community Services Block Grant Act),";

15 (B) striking out "schools for the mentally retarded, schools for the physically
16 handicapped" and by inserting in lieu thereof "schools for persons with mental or
17 physical disabilities";

18 (C) striking the word "and" before "libraries"; and

19 (D) inserting "and educational activities identified by the Secretary of Defense
20 as being of special interest to the Armed Services," following the word "region,"; and

21 (3) by adding a new subparagraph (C) to read as follows:

1 "(C) to nonprofit institutions or organizations that are exempt from taxation
2 under section 501 of title 26, United States Code, and which have for their primary
3 function the provision of food, shelter, or other necessities to homeless individuals or
4 families or individuals whose annual income is below the poverty line (as that term is
5 defined in section 673 of the Community Services Block Grant Act) for use in assisting
6 the poor and homeless."

7 (d) Paragraph (j)(4) is renumbered (j)(3).

8 (e) Paragraph (j)(5) is renumbered (j)(4).

9 **Sec. 336. Streamlining consideration of surplus real property for homeless assistance.**

10 (a) Section 501 of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C.
11 §11411) is amended as follows:

12 (1) in the first sentence of subsection (a), by inserting before the period the
13 following: ", and that have not been previously reported on by an agency under this subsection";

14 (2) in the second sentence of subsection (a), by inserting after "to the Secretary" the
15 following: ", which shall not include information previously reported on by an agency under this
16 subsection";

17 (3) in subsection (b)(1), (c)(1)(A), and (c)(2)(A), by striking "45" and inserting "30";

18 (4) in subsection (c)(1)(A)(i), by inserting after "(a)" the following: "that have not been
19 previously published";

20 (5) in subsection (c)(1)(A)(ii), by inserting after "properties" the following: "that have
21 not been previously published";

1 (6) by striking subsections (c)(1)(D) and (c)(4);

2 (7) in subsection (c)(2)(B), by inserting at the end the following new sentence:

3 "Such efforts as are necessary to provide for the widest possible dissemination of the
4 information on such list shall include publishing the information on an Internet website
5 maintained by the Secretary and providing notice of the information on such list to the local
6 Continuum of Care organization for homeless assistance within the jurisdiction in which the
7 property is located, or if there is no such organization, then to the State.";

8 (8) in subsections (d)(1) and (d)(2), by striking "60" and inserting "90";

9 (9) in subsection (d)(4)(A), by amending to read as follows: "(4)(A) Written notice of
10 intent to apply for a property published under subsection (c)(1)(A)(ii) of this section may be
11 filed at any time after the 90-day period described in paragraph (1) has expired. In such case,
12 an application submitted pursuant to the notice may be approved for disposal for use to assist
13 the homeless only if the property remains available for use to assist the homeless. If the
14 property remains available for use to assist the homeless, the use to assist the homeless shall be
15 given the same priority of consideration as a public health use under section 484(k) of title 40,
16 United States Code.";

17 (10) in subsection (e)(3), by inserting the following sentence immediately after the first
18 sentence: "The Secretary of Health and Human Services shall give a preference to applications
19 that contain a certification that their proposal is consistent with the local Continuum of Care
20 strategy for homeless assistance.";

21 (11) in subsection (f)(3)(A), by adding at the end the following:

1 "Such priority of consideration shall apply only with respect to properties as to which the
2 written notice of intent to apply for a property set forth in subsection (d)(2) of this section is
3 received by the Secretary of Health and Human Services within the 90-day period described in
4 section (d)(1).";

5 (12) in subsection (h) heading, by striking "Applicability to Property under Base
6 Closure Process" and inserting "Exemptions"; and

7 (13) in subsection (h), by adding the following new paragraph at the end:

8 "(3) The provisions of this section shall not apply to buildings and property that
9 are—

10 (A) in a secured area for national defense purposes; or

11 (B) inaccessible by road and can be reached only by crossing private
12 property.".

13 (b) Within 30 days of the date of enactment of this section, the Secretary of Housing
14 and Urban Development shall survey landholding agencies to determine whether the properties
15 included in the last comprehensive list of properties published pursuant to section 501(c)(1)(A)
16 of the McKinney-Vento Homeless Assistance Act remain available for application for use to
17 assist homeless. The Secretary shall publish in the Federal Register a list of all such properties.
18 Such properties shall remain available for application for use to assist the homeless in
19 accordance with sections 501(d) and 501(e) of such Act (as amended by subsection (a) of this
20 section) as if such properties had been published under section 501(c)(1)(A)(ii) of such Act.

21 **SUBTITLE E - MISCELLANEOUS**

1 **Sec. 341. Scope and construction.**

2 The authorities granted by this Title to the heads of Federal agencies for the management of real and
3 personal property and the conduct of transactions involving such property, including the disposition of
4 the proceeds therefrom, shall be in addition to, and not in lieu of, any authorities provided in any law
5 existing on the date of enactment hereof. Except as expressly provided herein, nothing in this Title shall
6 be construed to repeal or supersede any such authorities.

7 **Sec. 342. Severability.**

8 Although this Title is intended to be integrated legislation, should any portion or provision of this Title be
9 found to be invalid or otherwise unenforceable by a court of competent jurisdiction, such portion or
10 portions of this Title shall be considered independent and severable for all other provisions of this Title
11 and such invalidity shall not, by itself, invalidate any other provisions of this Title, which remaining
12 provisions shall have the full force and effect of law.

13 **Sec. 343. No Waiver.**

14 Nothing in this Title should be construed to limit or waive any right, remedy, immunity, or jurisdiction of
15 any Federal agency or any claim, judgement, lien, or benefit due the United States of America.

16 **Sec. 344. Agency Discretion.**

17 The provisions of this Title, including those authorizing the exercise of agency discretion, are not
18 intended to, and do not, create or enlarge any substantive or procedural rights or causes of action
19 against the United States, its agencies, its officers, or any person.

20 **Sec. 345. Effective date.**

21 This Title and the amendments made by its provisions shall be effective upon enactment of this Title

1 except as otherwise specifically provided for herein.

2 **Sec. 346. Report of the Comptroller General.**

3 Not later than five years after the date of enactment of this Title, the Comptroller General of the United
4 States shall submit to the Congress a report on the use by Federal landholding agencies of the
5 authorities provided by this Title.