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SENATE

REPORT
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TO AMEND THE INTERNATIONAL CENTER ACT TO AUTHORIZE THE LEASE OR SUBLEASE OF CERTAIN PROPERTY DESCRIBED IN SUCH ACT TO AN ENTITY OTHER THAN A FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION IF CERTAIN CONDITIONS ARE MET

JUNE 2, 2008.—Ordered to be printed

Mr. BIDEN, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany H.R. 3913]

The Committee on Foreign Relations, having had under consideration the bill (H.R. 3913), to amend the International Center Act to authorize the lease or sublease of certain property described in such Act to an entity other than a foreign government or international organization if certain conditions are met, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE

The purpose of the legislation is to amend the International Center Act (P.L. 90-553) to permit the lease or sublease of property in the Center to an entity other than a foreign government or international organization, subject to the approval of the Secretary of State.

II. COMMITTEE ACTION

H.R. 3913 was introduced on October 22, 2007, by Representative Ileana Ros-Lehtinen. It was approved by the House Committee on Transportation and Infrastructure on January 16, 2008. The House

of Representatives approved the bill by voice vote on January 28, 2008. Senator Cardin introduced an identical companion bill, S. 2322, on November 7, 2007. It is cosponsored by Senators Coleman and Stevens.

On May 20, 2008, the committee ordered H.R. 3913 favorably reported, without amendment.

III. DISCUSSION

Forty years ago, Congress set aside several dozen acres of federally-owned land in northwest Washington, DC (bordered roughly by Connecticut Avenue, Tilden Street, Reno Road and Yuma Street), to serve as a site for the construction of foreign embassies. The legislation helped enable the United States to fulfill its obligation under Article 21 of the Vienna Convention on Diplomatic Relations, which requires a “receiving State” to “either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.” The legislation enacted in 1968, known as the International Center Act (P.L. 90–553), authorized the Secretary of State to sell or lease property in the Center to foreign governments and international organizations. Another purpose of the Act was to set aside land within the International Center for a headquarters building for the Organization of American States (OAS); however, the OAS did not move its headquarters to the International Center.

In 1982, the International Center Act was amended in several respects. One purpose of the 1982 legislation (P.L. 97–186) was to facilitate the construction of the headquarters of the International Telecommunications Satellite Organization, or INTELSAT, in the south-easternmost section of the property. At the time, INTELSAT was an international organization that had been established in the 1960s pursuant to an initiative of the Kennedy Administration. Following enactment of P.L. 97–186 and pursuant to a ground lease initially signed with the Department of State in 1982, INTELSAT constructed its headquarters building in the International Center. The lease, which has been amended several times, is for a term of 99 years, with an option to renew for an additional 99 years. To sum up, the company owns the headquarters building, but leases the land under the building from the Department of State.

In the late 1990s, the Clinton Administration and Congress undertook an initiative to privatize INTELSAT, which resulted in the enactment of the “Open-market Reorganization for the Betterment of International Telecommunications Act” or the “ORBIT Act” (P.L. 106–180). Pursuant to the ORBIT Act, INTELSAT was converted into a private company, now called Intelsat, Ltd., on July 18, 2001. Thus, as of that date, the company was no longer an international organization. The presence of its headquarters building in the International Center is, therefore, inconsistent with the provision in the International Center Act limiting occupants to foreign embassies or international organizations. Nonetheless, the Department of State has continued to accept lease payments from the company, as well as agreed to amendments to the lease, most recently in 2006. Although there is no danger of the Department seeking to eject Intelsat from the property, the company considers

the current situation a “cloud” on its lease. Accordingly, it has requested support from the Department of State and the Congress for the amendment to the International Center Act made by H.R. 3913.

The Department of State has indicated to the committee that it does not oppose H.R. 3913. In 2007, in response to a request from the committee, the Department undertook a new real estate appraisal of the Intelsat building in order to determine the viability of federal acquisition of it. The Department leadership, after reviewing the appraisal and various options, decided that federal purchase was not viable. *See* Letter from Jeffrey T. Bergner, Assistant Secretary of State for Legislative Affairs to Senator Biden, May 16, 2008 (set forth in the appendix).

It is possible that Intelsat will seek to sell the headquarters building and its leasehold interests and relocate its headquarters operations. Under the lease with the State Department, the company has the right to assign, sublet or otherwise transfer its leasehold interests to another entity, subject to the approval of the Secretary of State. The terms of the lease empower the Secretary to deny Intelsat the right to complete a transfer if the Secretary determines (1) that the use, development or occupancy by the proposed transferee could impair the safety or security of the International Center (under the Vienna Convention, the United States has the duty to protect the embassies there), or (2) if the Secretary reasonably demonstrates that the use, development or occupancy could impair the continued operation of the International Center or could be contrary to the character of commercially acceptable uses or occupants in the surrounding area. Any determination based on safety or security must be made personally by the Secretary and shall be final and conclusive as a matter of law. Any determination based on other grounds is subject to judicial review. The Department believes that the lease provisions are adequate to protect the interests of the United States. *See* Letter from Jeffrey T. Bergner, Assistant Secretary of State for Legislative Affairs to Senator Biden, May 23, 2007 (set forth in the appendix). Under the terms of the lease, the United States would have no right to any profits arising from the transfer of the leasehold interests.

The committee expects that the Department of State will closely review any new tenant or proposed use, consistent with its duty under the Vienna Convention and its rights under the lease. The committee also expects that the Department will inform the committee about any significant change in the status of the ownership or occupancy of the building.

IV. SECTION-BY-SECTION ANALYSIS

H.R. 3913 has only one section. It adds a new sentence to the end of Section 1 of the International Center Act to override the provision in that section limiting the sale, exchange or lease of property in the International Center to foreign governments or international organizations. The provision in H.R. 3913 allows certain portions of the International Center to be “leased or subleased to an entity other than a foreign government or international organization,” subject to the approval of the Secretary of State.

V. COST ESTIMATE

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee provides this estimate of the costs of this legislation prepared by the Congressional Budget Office.

UNITED STATES CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 29, 2008.

Hon. JOSEPH R. BIDEN, JR.,
*Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3913, an act to amend the International Center Act to authorize the lease or sublease of certain property described in such act to an entity other than a foreign government or international organization if certain conditions are met.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte.

Sincerely,

PETER R. ORSZAG.

 CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 29, 2008.

H.R. 3913 would amend current law to allow private entities to lease certain property at the International Chancery Center (ICC)—a parcel of land in Washington, D.C., owned by the Federal Government. Under current law, only foreign governments and international organizations are eligible to lease property at the ICC. CBO estimates that H.R. 3913 would have no effect on the Federal budget.

The property specified in H.R. 3913 has been leased to Intelsat since 1982. Intelsat was established in 1964 as an international organization, but was privatized in 2001. The act would clarify Intelsat's right to continue under its lease as a private corporation. The Department of State reports that since being privatized, Intelsat has made all the payments required under its lease, and CBO expects it would continue to do so under the act.

H.R. 3913 also would allow Intelsat to sublet or otherwise transfer its lease to another private entity, subject to approval of the Secretary of State.

H.R. 3913 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On January 18, 2008, CBO transmitted a cost estimate for H.R. 3913 as ordered reported by the House Committee on Transportation and Infrastructure on January 16, 2008. The two versions of the legislation are similar, and their estimated costs are identical.

The CBO staff contact for this estimate is Sunita D'Monte. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has determined that there is no regulatory impact as a result of this legislation.

VII. CHANGES IN EXISTING LAW

Pursuant to Rule XXVI, paragraph 12 of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman).

INTERNATIONAL CENTER ACT (P.L. 90-553)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to facilitate the conduct of foreign relations by the Department of State in Washington, District of Columbia, through the creation of a more propitious atmosphere for the establishment of foreign government and international organization offices and other facilities, the Secretary of State is authorized to develop in coordination with the Administrator of General Services for, or to sell, exchange, or lease to foreign governments and international organizations property owned by the United States in the Northwest section of the District of Columbia bounded by Connecticut Avenue, Yuma Street, 36th Street, Reno Road, and Tilden Street, except that portion of lot 802 in square 1964, the jurisdiction over which was transferred to the District of Columbia for use as an educational facility, upon such terms and conditions as the Secretary may prescribe. Every lease, contract of sale, deed, and other document of transfer shall provide (a) that the foreign government shall devote the property transferred to use for legation purposes, or (b) that the international organization shall devote the property transferred to its official uses. *Notwithstanding the foregoing limitations, the property identified by the District of Columbia as tax lots 803, 804, 805, and 806 within the area described in this section may be leased or subleased to an entity other than a foreign government or international organization, so long as the Secretary maintains the right to approve the occupant and the intended use of the property.**

VIII. APPENDIX

U.S. DEPARTMENT OF STATE,
Washington, DC, May 18, 2007.

Hon. JOSEPH R. BIDEN, JR.,
*Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of April 26 regarding Intelsat, Ltd.'s request for a legislative amendment to the International Center Act (P.L. 90-553) to permit the continued presence of its headquarters building at the International Center in Washington, D.C. The answers to your questions are enclosed.

We hope this information is helpful in addressing your concerns. Please feel free to contact us further on this or any other matter of concern to you.

Sincerely,

JEFFREY T. BERGNER, *Assistant Secretary Legislative Affairs.*

Enclosure: As Stated.

QUESTIONS AND ANSWERS

Question 1. Does the Department support the proposed amendment to the International Center Act? If so, why?

Answer. At this time we do not oppose the proposed amendment. The proposed legislation would serve to correct the anomaly of a commercial corporation holding an International Center lease. This anomaly arose incident to Intelsat's privatization.

Question 2. Has the Department considered the feasibility of purchasing the building from Intelsat? Would it be of any use to the Department operations? Could the building be purchased, followed by the removal of the building, and the sale of the vacant land? Please elaborate on the factors relevant to these questions.

Answer. The Department originally considered the feasibility of purchasing the building from Intelsat in 2003. At that time the market purchase price was between \$120 and \$138 million. The Department found the building inefficiently designed, with considerable unusable space. The Department still believes the building will not meet our current and planned office space needs. However, due to the time lapse since the last appraisal, a new appraisal for the land has been contracted and should be done by August 30.

Question 3. Are there any limitations on Intelsat's ability to assign the ground lease?

Answer. Under Article 7-1(B) of the amended lease, Intelsat has the right to assign and transfer the ground lease to: (1) an International organization or a foreign government acceptable to the Department, for the official uses of an International Organization or for Legation purposes, or to an agency or instrumentality of the United States Government; (2) a Non-Official Party, as provided in Article 7-2 or as otherwise provided by the express terms of the Lease, for purposes of performing Lessee's obligations to construct, reconstruct, repair, or maintain Improvements and/or transfer by such Non-Official Party to an International Organization or a foreign government for the official uses of an International Organization or for Legation purposes or to an agency or instrumentality of the United States Government; or (3) by Novation to the Successor Entity upon transfer of the Improvements to the Successor Entity.

In addition, Intelsat has the right to assign, sublet or otherwise transfer the property subject to the approval requirements summarized in the response to question #4 below.

Question 4. What ability does the Department have under the ground lease to review or reject any assignee?

Answer. Under Article 7-1(B) of the amended lease, Intelsat must provide the Department a written request prior to any Transfer at least 60 days prior to the date of the proposed Transfer. The Department may deny Intelsat the right to complete the transfer

if the Secretary of State determines that the use, development or occupancy by the proposed Transferee could impair the safety or security of the International Center or the Secretary reasonably demonstrates that the use, development or occupancy could impair the continued operation of the International Center or could be contrary to the character of commercially acceptable uses or occupants in the surrounding area. Any determination based on safety and security considerations must be made personally by the Secretary and is final and conclusive as matter of law.

Denial of permission to complete a transfer on the other grounds specified is subject to judicial review.

Question 5. Are there any zoning matters under District of Columbia law that should be addressed prior to congressional consideration of the legislation?

Answer. While zoning issues could arise regarding potential future uses for the property, the Department is not aware of any current issues.

Question 6. Are there any applicable laws or regulations administered by the General Services Administration that would govern any assignment of the lease of which the Committee should be aware?

Answer. No.

Question 7. Does the Department believe any additional provisions are necessary in any legislation in order to protect the interests of the United States?

Answer. The Department believes the terms of the lease as amended adequately protect the interests of the United States Government.

U.S. DEPARTMENT OF STATE,
Washington, DC, May 16, 2008.

Hon. JOSEPH R. BIDEN, JR.,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Department of State wishes to provide you with an updated report regarding Intelsat, Ltd.'s request for a legislative amendment to the International Center Act (P.L. 90-553) to permit the continued presence of its headquarters building at the International Center in Washington, D.C.

The Department's position has not changed from last year. We do not oppose H.R. 3913, which passed the House earlier this year. The legislation would serve to correct the exception of a commercial corporation holding an International Center lease.

The Department contracted for a new appraisal of the Intelsat building to include an evaluation of the viability of federal ownership. The current market value of the building is approximately \$81,000,000 plus an amount to terminate the land lease. Since the building is inefficiently designed for a single occupant such as the Department, we also looked at the possibility of using the 14 separate pods as potential sites to house foreign embassies as an expansion to the International Chancery Center (ICC). Excluding the cost

of purchasing the building, the total renovation costs under this use scenario is estimated to be \$19,000,000.

On a practical matter, the viability of the Intelsat Building as a possible expansion of the ICC is questionable and far exceeds the original intent of establishing an ICC in which each chancery is built and maintained by the particular foreign government, with only minimal oversight by the Department. Given this, the Department continues to believe that it is not within its best interest to attempt to purchase the Intelsat building.

We hope this information is helpful as you consider H.R. 3913. Please feel free to contact us further on this or any other matter of concern to you.

Sincerely,

JEFFREY T. BERGNER, *Assistant Secretary Legislative Affairs.*