

Union Calendar No. 362

107TH CONGRESS
2^D SESSION

H. R. 3645

[Report No. 107-600]

To amend title 38, United States Code, to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2002

Mr. EVANS (for himself, Mr. FILNER, Mr. GUTIERREZ, Ms. BROWN of Florida, Mr. REYES, Ms. CARSON of Indiana, Mr. LYNCH, Mr. SANDERS, Ms. KAPTUR, Mrs. JONES of Ohio, and Mr. DINGELL) introduced the following bill; which was referred to the Committee on Veterans' Affairs

JULY 22, 2002

Additional sponsors: Mrs. MINK of Hawaii, Mr. BROWN of Ohio, Mr. FOLEY, Mr. SMITH of New Jersey, Mr. McKEON, Mr. UDALL of New Mexico, Mr. SHOWS, Ms. BERKLEY, Mr. PICKERING, and Mr. RODRIGUEZ

JULY 22, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on January 29, 2002]

A BILL

To amend title 38, United States Code, to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items.

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; TABLE OF CONTENTS.**

4 *(a) SHORT TITLE.—This Act may be cited as the “Vet-*
 5 *erans Health Care and Procurement Improvement Act of*
 6 *2002”.*

7 *(b) TABLE OF CONTENTS.—The table of contents for*
 8 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. References to title 38, United States Code.

*Sec. 3. Limitation on use of local contracts for Department of Veterans Affairs
procurement of health-care items.*

Sec. 4. Enhancements to enhanced-use lease authority.

*Sec. 5. Eligibility for Department of Veterans Affairs health care of certain addi-
tional Filipino World War II veterans residing in the United
States.*

Sec. 6. Outpatient dental care for all former prisoners of war.

*Sec. 7. Improved accountability of research corporations established at Depart-
ment of Veterans Affairs medical centers.*

*Sec. 8. Department of Defense participation in Revolving Supply Fund pur-
chases.*

*Sec. 9. Name of Department of Veterans Affairs outpatient clinic, New London,
Connecticut.*

9 **SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.**

10 *Except as otherwise expressly provided, whenever in*
 11 *this Act an amendment or repeal is expressed in terms of*
 12 *an amendment to, or repeal of, a section or other provision,*
 13 *the reference shall be considered to be made to a section or*
 14 *other provision of title 38, United States Code.*

1 **SEC. 3. LIMITATION ON USE OF LOCAL CONTRACTS FOR DE-**
2 **PARTMENT OF VETERANS AFFAIRS PROCUREMENT**
3 **MENT OF HEALTH-CARE ITEMS.**

4 (a) *IN GENERAL.*—Section 8125 is amended to read
5 as follows:

6 **“§ 8125. Procurement of health-care items**

7 “(a) *Except as provided in subsection (b), any pro-*
8 *curement of a health-care item by the Department shall be*
9 *made through the use of a Federal Supply Schedule con-*
10 *tract, or a national contract, that meets the requirements*
11 *of subsection (d).*

12 “(b)(1) *Subsection (a) does not apply to a procurement*
13 *of a health-care item in any of the following cases:*

14 “(A) *A procurement that is necessary to meet a*
15 *current or near-term medical emergency at a medical*
16 *center.*

17 “(B) *A procurement that is for a health-care*
18 *item that is not listed in the Federal Supply Schedule*
19 *or as part of a national contract and for which there*
20 *is a valid clinical need.*

21 “(C) *A procurement that is for a specialized*
22 *health-care item not listed in the Federal Supply*
23 *Schedule or as part of a national contract and that*
24 *is to meet the special needs of an individual patient*
25 *who has one of the special needs identified in section*

1 1706(b) of this title and who has a valid clinical need
2 for the item.

3 “(D) A procurement that is part of an approved
4 sharing agreement between the Department of Defense
5 and the Department of Veterans Affairs with demon-
6 strable cost-per-item savings for a health-care item
7 listed on the Federal Supply Schedule or a national
8 contract.

9 “(E) A procurement that supports a prime con-
10 tract or a subcontract with a small business concern
11 qualifying for a procurement preference program
12 under section 8 or 15 of the Small Business Act (15
13 U.S.C. 637, 644), if the cost of the item to be procured
14 is no more than the cost (taking price and value into
15 consideration) of the comparable item on the Federal
16 Supply Schedule or national contract and if the item
17 meets the requirements of subsections (d)(1)(A) and
18 (d)(2).

19 “(2) A procurement may be made as authorized under
20 subparagraph (B) of paragraph (1) only if the procurement
21 is specifically authorized in advance in writing by the Sec-
22 retary. The authority of the Secretary under the preceding
23 sentence may only be delegated to the Deputy Secretary or
24 to an official of the Veterans Health Administration not
25 below the level of a Deputy Under Secretary (or equivalent)

1 *acting jointly with a procurement executive of the Depart-*
2 *ment not below the level of an Associate Deputy Assistant*
3 *Secretary.*

4 “(c) *In the case of an emergency procurement of a*
5 *health-care item as authorized by subsection (b)(1)(A), the*
6 *quantity of the item procured may not exceed the quantity*
7 *of that item that is the reasonably foreseeable need for the*
8 *item at the medical center concerned until resupply can be*
9 *achieved through procurement actions other than emergency*
10 *procurement.*

11 “(d) *A contract meets the requirements of this sub-*
12 *section if—*

13 “(1) *the contract includes—*

14 “(A) *provisions referred to as ‘preaward*
15 *and postaward audit clauses’; and*

16 “(B) *a provision referred to as a ‘price re-*
17 *duction clause’; and*

18 “(2) *in the case of a contract to be made with*
19 *a vendor that is a distributor, the contract will be for*
20 *distribution services only unless the manufacturer of*
21 *the product can clearly demonstrate that at least 60*
22 *percent of its sales of the item through that vendor is*
23 *to commercial customers with negotiated product*
24 *prices and that the vendor actually stocks and distrib-*
25 *utes the product.*

1 “(e)(1) *The Secretary shall establish procedures to as-*
2 *sure compliance by each Department medical facility with*
3 *the provisions of this section and with applicable Federal*
4 *and Department procurement regulations.*

5 “(2) *The procedures established by the Secretary under*
6 *paragraph (1) shall be designed to maximize health-care*
7 *item variety and the use of the Federal Supply Schedule.*

8 “(3) *The Secretary shall establish and enforce proce-*
9 *dures limiting the standardization of items at the local, re-*
10 *gional, or national level to provide special patient popu-*
11 *lations (as identified in section 1706(b) of this title) with*
12 *the range and types of health-care items required to meet*
13 *their clinical and quality-of-life needs.*

14 “(4) *The Advisory Committee on Prosthetics and Spe-*
15 *cial-Disabilities Programs established under section 543 of*
16 *this title shall review the procedures established under para-*
17 *graph (3), including the implementation of those proce-*
18 *dures, and shall advise the Secretary when those procedures*
19 *are not effectively enforced by the Department.*

20 “(f)(1) *The Secretary shall establish annual goals for*
21 *Department medical centers for the purchase of health-care*
22 *items from Federal Supply Schedule and national contracts*
23 *meeting the requirements of subsection (d). Such goals shall*
24 *be designed to maximize the percentage of such purchases*
25 *that are made through such contracts.*

1 “(2) *The Secretary shall establish goals for the Depart-*
2 *ment for procurements from small business concerns quali-*
3 *fying for a procurement preference program under section*
4 *8 or 15 of the Small Business Act (15 U.S.C. 637, 644).*
5 *Such goals shall be no less than the national goal for each*
6 *such procurement preference program under either of those*
7 *sections.*

8 “(3) *Achievement of the goals established under this*
9 *subsection shall be an element in the performance standards*
10 *for employees of the Department who have the authority*
11 *and responsibility for achieving those goals.*

12 “(g) *A provision of law that is inconsistent with any*
13 *provision of this section shall not apply, to the extent of*
14 *the inconsistency, to the procurement of a health-care item*
15 *for the Department.*

16 “(h)(1) *Not later than December 31 each year, the Sec-*
17 *retary shall submit to the Committees on Veterans’ Affairs*
18 *of the Senate and House of Representatives a report on the*
19 *procurement of health-care items during the preceding fiscal*
20 *year. Each such report shall include, for the year covered*
21 *by the report, the following:*

22 “(A) *The total dollar amount of all items listed*
23 *in Federal Supply Classification (FSC) Group 65 or*
24 *66 and the total dollar value of the exceptions to sub-*
25 *section (a) under each of subparagraphs (A), (B), (C),*

1 *(D), and (E) of subsection (b)(1), shown by medical*
2 *facility.*

3 *“(B) A detailed explanation for exceptions to*
4 *subsection (a), including—*

5 *“(i) the rationale for use of emergency pro-*
6 *curement at Department medical facilities;*

7 *“(ii) the rationale for approval of requests*
8 *under subsection (b)(1)(B) for procurement of*
9 *items not listed on the Federal Supply Schedule*
10 *or on national contracts; and*

11 *“(iii) exceptions granted for special health-*
12 *care needs of veterans with disabilities described*
13 *in section 1706(b) of this title.*

14 *“(C) Analysis of sharing agreements between the*
15 *Department and the Department of Defense to indi-*
16 *cate the basic written sharing initiative and the divi-*
17 *sion of financial responsibility between the two De-*
18 *partments.*

19 *“(D) The stated goal under each procurement*
20 *preference program, together with an assessment of*
21 *the performance of the Department toward achieve-*
22 *ment of that goal, especially with respect to the goal*
23 *for contracting with businesses that are owned by vet-*
24 *erans with service-connected disabilities.*

1 “(2) *The Advisory Committee on Prosthetics and Spe-*
2 *cial-Disabilities Programs of the Department shall submit*
3 *comments on each report under paragraph (1) before the*
4 *report is submitted under that paragraph, and the Sec-*
5 *retary shall include those comments in the report as sub-*
6 *mitted.*

7 “(i) *For the purposes of this subsection:*

8 “(1) *The term ‘health-care item’ includes any*
9 *item listed in, or (as determined by the Secretary) of*
10 *the same nature as an item listed in, Federal Supply*
11 *Classification (FSC) Group 65 or 66.*

12 “(2) *The term ‘national contract’ means a con-*
13 *tract for procurement of an item that is entered into*
14 *by the National Acquisition Center of the Department*
15 *or another Department procurement activity, as au-*
16 *thorized by the Secretary, that is available for use by*
17 *all Department medical facilities.*

18 “(3) *The term ‘valid clinical need’ means in the*
19 *professional judgment of an appropriate clinician.*
20 *Such term applies to health care items, prosthetic ap-*
21 *pliances, sensory or mobility aids and supplies that*
22 *are prescribed by a physician for special patient pop-*
23 *ulations such as veterans with spinal cord dysfunc-*
24 *tion, blindness, amputations, and other veterans in-*
25 *cluded in section 1706(b) of this title.*

(b) *EFFECTIVE DATE.*—The amendment made by subsection (a) shall take effect on September 30, 2003, and shall apply to procurements by the Secretary of Veterans Affairs after that date.

17 (a) *INCREASED FLEXIBILITY UNDER ENHANCED-USE*
18 *LEASES.*—Section 8162(a)(2)(B) is amended—

22 (2) by striking “to the provision of medical care
23 and services” and inserting “to the programs and ac-
24 tivities of the Department”.

1 (b) *NOTIFICATION OF PROPERTY TO BE LEASED.*—

2 *Section 8163 is amended—*

3 (1) *in the first sentence of subsection (a)—*

4 (A) *by striking “designate a property to be*
5 *leased under an enhanced-use lease” and insert-*
6 *ing “enter into an enhanced-use lease with re-*
7 *spect to certain property”; and*

8 (B) *by striking “before making the designa-*
9 *tion” and inserting “before entering into the*
10 *lease”;*

11 (2) *in subsection (b), by striking “of the proposed*
12 *designation” and inserting “to the congressional vet-*
13 *erans’ affairs committees and to the public of the pro-*
14 *posed lease”; and*

15 (3) *in subsection (c)—*

16 (A) *in paragraph (1)—*

17 (i) *by striking “designate the property*
18 *involved” and inserting “enter into an en-*
19 *hanced-use lease of the property involved”;*
20 *and*

21 (ii) *by striking “to so designate the*
22 *property” and inserting “to enter into such*
23 *lease”;*

24 (B) *in paragraph (2), by striking “90-day*
25 *period” and inserting “45-day period”;*

1 (C) in paragraph (3)—

2 (i) by striking “general description” in
3 subparagraph (D) and inserting “descrip-
4 tion of the provisions”; and

5 (ii) by adding at the end the following
6 new subparagraph:

7 “(G) A summary of a cost-benefit analysis of the
8 proposed lease.”; and

9 (D) by striking paragraph (4).

10 (c) *DISPOSITION OF LEASED PROPERTY.*—Section
11 8164 is amended—

12 (1) in subsection (a)—

13 (A) by striking “by requesting the Adminis-
14 trator of General Services to dispose of the prop-
15 erty pursuant to subsection (b)” in the first sen-
16 tence; and

17 (B) by striking the third sentence;

18 (2) in subsection (b)—

19 (A) by striking “Secretary and the Admin-
20 istrator of General Services jointly determine”
21 and inserting “Secretary determines”; and

22 (B) by striking “Secretary and the Admin-
23 istrator consider” and inserting “Secretary con-
24 siders”; and

1 (3) in subsection (c), by striking “90 days” and
 2 inserting “45 days”.

3 (d) *USE OF PROCEEDS*.—Section 8165 is amended—

4 (1) in subsection (a)—

5 (A) by striking “(1)” after “(a)”;

6 (B) by inserting after “of this title” the fol-
 7 lowing: “, except that any funds received by the
 8 Department under an enhanced-use lease in sup-
 9 port of the Veterans Benefits Administration or
 10 the National Cemetery Administration and re-
 11 maining after any deduction from such funds
 12 under subsection (b) shall be credited to applica-
 13 ble appropriations of that Administration”; and

14 (C) by striking paragraph (2);

15 (2) in subsection (b), by adding at the end the
 16 following new sentence: “The Secretary may use the
 17 proceeds from any enhanced-use lease to reimburse
 18 applicable appropriations of the Department for any
 19 expenses incurred in the development of additional
 20 enhanced-use leases.”; and

21 (3) by striking subsection (c).

22 (e) *CLERICAL AMENDMENTS*.—(1) The heading of sec-
 23 tion 8163 is amended to read as follows:

1 **“§8163. Hearing and notice requirements regarding**
 2 **proposed leases”.**

3 (2) *The item relating to section 8163 in the table of*
 4 *sections at the beginning of chapter 81 is amended to read*
 5 *as follows:*

“8163. Hearing and notice requirements regarding proposed leases.”.

6 **SEC. 5. ELIGIBILITY FOR DEPARTMENT OF VETERANS AF-**
 7 **FAIRS HEALTH CARE OF CERTAIN ADDI-**
 8 **TIONAL FILIPINO WORLD WAR II VETERANS**
 9 **RESIDING IN THE UNITED STATES.**

10 (a) *ELIGIBILITY FOR HEALTH CARE.*—*The text of sec-*
 11 *tion 1734 is amended to read as follows:*

12 “(a) *The Secretary shall furnish hospital and nursing*
 13 *home care and medical services to any individual described*
 14 *in subsection (b) in the same manner, and subject to the*
 15 *same terms and conditions, as apply to the furnishing of*
 16 *such care and services to individuals who are veterans as*
 17 *defined in section 101(2) of this title. Any disability of an*
 18 *individual described in subsection (b) that is a service-con-*
 19 *necting disability for purposes of this subchapter (as pro-*
 20 *vided for under section 1735(2) of this title) shall be consid-*
 21 *ered to be a service-connected disability for purposes of fur-*
 22 *nishing care and services under the preceding sentence.*

23 “(b) *Subsection (a) applies to any individual who is*
 24 *a Commonwealth Army veteran or new Philippine Scout*
 25 *and who—*

1 “(1) is residing in the United States; and

2 “(2) is a citizen of the United States or an alien
3 *lawfully admitted to the United States for permanent*
4 *residence.*”.

5 (b) *LIMITATION.*—*The amendment made by subsection*
6 *(a) shall take effect on the date on which the Secretary of*
7 *Veterans Affairs submits to the Committees on Veterans’ Af-*
8 *fairs of the Senate and House of Representatives and pub-*
9 *lishes in the Federal Register a certification that sufficient*
10 *resources are available for the fiscal year during which the*
11 *certification is submitted to carry out section 1734 of title*
12 *38, United States Code, as amended by such amendment,*
13 *during that fiscal year at those facilities of the Department*
14 *of Veterans Affairs where the majority of veterans described*
15 *in subsection (b) of such section will receive hospital and*
16 *nursing home care and medical services authorized by sub-*
17 *section (a) of such section.*

18 **SEC. 6. OUTPATIENT DENTAL CARE FOR ALL FORMER PRIS-**
19 **ONERS OF WAR.**

20 Section 1712(a)(1)(F) is amended by striking “and
21 *who was detained or interned for a period of not less than*
22 *90 days*”.

1 **SEC. 7. IMPROVED ACCOUNTABILITY OF RESEARCH COR-**
2 **PORATIONS ESTABLISHED AT DEPARTMENT**
3 **OF VETERANS AFFAIRS MEDICAL CENTERS.**

4 *(a) AUDITS AND IMPROVED ANNUAL REPORT.—Sub-*
5 *section (b) of section 7366 is amended to read as follows:*

6 *“(b)(1) Not later than March 1 each year, each such*
7 *corporation shall submit to the Secretary a report con-*
8 *cerning the preceding calendar year. Each such annual re-*
9 *port shall include the following: -*

10 *“(A) A detailed statement of the corporation’s*
11 *operations, activities, and accomplishments during*
12 *the preceding calendar year.*

13 *“(B) A description of each research project or ac-*
14 *tivity for which funds were provided by the corpora-*
15 *tion during that year or for which funds were pro-*
16 *vided by the corporation during a preceding year and*
17 *that is ongoing during the year covered by the report,*
18 *including, for each such project or activity, the title*
19 *of the project or activity and a description of the pur-*
20 *pose of the project or activity.*

21 *“(C) A statement of the amount of funds con-*
22 *trolled by the corporation as of the first day, and as*
23 *of the last day, of the year covered by the report and*
24 *a statement of the amount of funds received, shown by*
25 *source, during the year.*

1 “(D) *An itemized accounting of all disburse-*
2 *ments made during the year.*

3 “(E) *The most recent audit of the corporation*
4 *under paragraph (2).*

5 “(F) *Such other information as may be nec-*
6 *essary to enable the Secretary to prepare the annual*
7 *report to congressional committees required under sec-*
8 *tion 7367 of this title.*

9 “(2) *A corporation with a balance of funds under its*
10 *control in excess of \$300,000 at any time during a calendar*
11 *year shall obtain an audit of the corporation for that year.*
12 *Any other corporation shall obtain an independent audit*
13 *of the corporation at least once every three years. The report*
14 *on any such audit shall specifically state whether the cor-*
15 *poration audited made any payment, or provided any trav-*
16 *el, during the period covered by the audit to a member of*
17 *the board of directors of the corporation and, if so, the*
18 *amount and recipient of any such payment or travel.*

19 “(3) *Any audit under paragraph (2) shall be per-*
20 *formed by an independent auditor and shall be performed*
21 *in accordance with generally accepted Government auditing*
22 *standards and in accordance with Office of Management*
23 *and Budget Circular A-133.*

24 “(4) *The Inspector General of the Department shall*
25 *each year review the most recent audit under paragraph*

1 (2) of not less than 10 percent of the corporations described
 2 in the first sentence of paragraph (2) and not less than 10
 3 percent of the corporations described in the second sentence
 4 of that paragraph. As part of such review, the Inspector
 5 General shall determine whether the audit was carried out
 6 in accordance with generally accepted Government auditing
 7 standards, as required by paragraph (3).”.

8 (b) ANNUAL REPORT OF SECRETARY.—(1) Subchapter
 9 IV of chapter 73 is amended—

10 (A) by inserting after subsection (c) of section
 11 7366 the following:

12 **“§ 7367. Annual report to congressional committees”;**

13 *and*

14 (B) in the text immediately following the section
 15 heading inserted by subparagraph (A)—

16 (i) by striking “(d)” and inserting “(a)”;

17 (ii) by inserting after the first sentence the
 18 following new sentence: “Each such report shall
 19 be based on the annual reports submitted by the
 20 corporations to the Secretary under section
 21 7366(b) of this title and shall be submitted not
 22 later than May 1 of the year following the year
 23 covered by such reports.”; and

24 (iii) by striking “The report shall” and in-
 25 serting the following:

1 “(b) *Each such report shall*”.

2 (2) *The table of sections at the beginning of such chap-*
 3 *ter is amended by inserting after the item relating to section*
 4 *7366 the following new item:*

“7367. Annual report to congressional committees.”.

5 (c) *EXTENSION OF AUTHORITY TO ESTABLISH RE-*
 6 *SEARCH CORPORATIONS.—Section 7368 is amended by*
 7 *striking “December 31, 2003” and inserting “December 31,*
 8 *2006”.*

9 **SEC. 8. DEPARTMENT OF DEFENSE PARTICIPATION IN RE-**
 10 **VOLVING SUPPLY FUND PURCHASES.**

11 (a) *ENHANCEMENT OF DEPARTMENT OF DEFENSE*
 12 *PARTICIPATION.—Section 8121 is amended—*

13 (1) *by redesignating subsection (b) and (c) as*
 14 *subsections (d) and (e), respectively;*

15 (2) *by designating the last sentence of subsection*
 16 *(a) as subsection (c); and*

17 (3) *by inserting after paragraph (3) of sub-*
 18 *section (a) the following new subsection:*

19 “(b) *The Secretary may authorize the Secretary of De-*
 20 *fense to make purchases through the fund in the same man-*
 21 *ner as activities of the Department. When services, equip-*
 22 *ment, or supplies are furnished to the Secretary of Defense*
 23 *through the fund, the reimbursement required by paragraph*
 24 *(2) of subsection (a) shall be made from appropriations*
 25 *made to the Department of Defense, and when services or*

1 *supplies are to be furnished to the Department of Defense,*
 2 *the fund may be credited, as provided in paragraph (3)*
 3 *of subsection (a), with advances from appropriations avail-*
 4 *able to the Department of Defense.”.*

5 *(b) EFFECTIVE DATE.—The amendments made by sub-*
 6 *section (a) shall apply only with respect to funds appro-*
 7 *priated for a fiscal year after fiscal year 2002.*

8 **SEC. 9. NAME OF DEPARTMENT OF VETERANS AFFAIRS**

9 **OUTPATIENT CLINIC, NEW LONDON, CON-**
 10 **NECTICUT.**

11 *The Department of Veterans Affairs outpatient clinic*
 12 *located in New London, Connecticut, shall after the date*
 13 *of the enactment of this Act be known and designated as*
 14 *the “John J. McGuirk Department of Veterans Affairs Out-*
 15 *patient Clinic”. Any reference to such outpatient clinic in*
 16 *any law, regulation, map, document, record, or other paper*
 17 *of the United States shall be considered to be a reference*
 18 *to the John J. McGuirk Department of Veterans Affairs*
 19 *Outpatient Clinic.*

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107TH CONGRESS
2^D SESSION

H. R. 3645

[Report No. 107-600]

A BILL

To amend title 38, United States Code, to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items.

JULY 22, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed