To provide for improved oversight of and accountability for military housing privatization initiative projects.

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2007

Mr. PRYOR (for himself, Mr. CHAMBLISS, and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To provide for improved oversight of and accountability for military housing privatization initiative projects.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Military Housing Privatization Initiatives Projects Oversight and Accountability Act of 2007”.
SEC. 2. IMPROVED OVERSIGHT AND ACCOUNTABILITY FOR MILITARY HOUSING PRIVATIZATION INITIATIVE PROJECTS.

(a) IN GENERAL.—Subchapter IV of chapter 169 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2885. Oversight and accountability for privatization projects

“(a) GUARANTEED MAXIMUM PRICE CONTRACT AND PERFORMANCE SCHEDULE.—

“(1) IN GENERAL.—Each military housing privatization initiative project shall be carried out under a guaranteed maximum price contract and accompanied by a performance schedule.

“(2) TERMS.—Each contract under this subsection shall be reviewed by an independent third party and certified as reasonable and consistent with local construction prices and geographic costs of living standards established by the Department of Defense.

“(b) OVERSIGHT AND ACCOUNTABILITY MEASURES.—Each Secretary concerned shall prescribe regulations to effectively oversee and manage military housing privatization initiative projects under the Secretary’s jurisdiction in order to maintain project performance and
schedule. The regulations shall include the following requirements for each privatization project:

“(1) **MONTHLY SITE VISITS.**—The chief engineering officer at the local military installation shall conduct monthly site visits and provide reports on the progress of the privatization project. The reports shall be endorsed by the commander at such installation and submitted quarterly to the chief officer for installations and environment of the respective military department and the Deputy Under Secretary of Defense for Installations and Environment.

“(2) **MONTHLY MEETINGS.**—The chief engineering officer at the local military installation, and, as applicable, the resident construction manager, privatization asset manager, bondholder representative, project owner, developer, general contractor, and construction consultant for the project shall conduct monthly meetings to ensure that the project meets performance and schedule requirements and that appropriate operating and ground lease agreements are in place and adhered to.

“(3) **NOTICES OF DEFICIENCY.**—If a project is 90 days or more behind schedule or more than 20 percent over budget, the chief officer for installations and environment of the respective military de-
partment shall submit a notice of deficiency to the
Deputy Under Secretary of Defense for Installations
and Environment, the Secretary concerned, the
bondholder representative, and the trustee for the
project.

“(4) CORRECTION OF DEFICIENCIES.—

“(A) CURE NOTICE.—Not later than 15
days after the submittal of a notice of defi-
ciency under paragraph (3), the Secretary con-
cerned shall submit to the project owner, devel-
oper, or general contractor responsible for the
project a summary of deficiencies, or cure no-
tice, related to the project.

“(B) OFFICIAL LETTER OF NOTICE.—If
the project owner, developer, or general con-
tactor responsible for the project is unable,
within 30 days after receiving a cure notice
under subparagraph (A), to make progress on
the issues outlined in such notice, the Secretary
concerned shall submit to the project owner, de-
veloper, or general contractor, the bondholder
representative, and the trustee an official letter
of notice addressing the deficiencies and detail-
ing the corrective actions that should be taken
to correct the deficiencies.
“(C) Certification required to continue certain projects.—If the project owner, developer, or general contractor responsible for the privatization project is unable, within 60 days after receiving a cure notice under subparagraph (A), to make progress on the issues outlined in such notice, the Deputy Under Secretary of Defense for Installations and Environment shall certify to the congressional defense committees that continuing the project is in the best interest of the United States or the project shall be terminated for default.

“(c) Options for combining deficient projects with projects of other military departments.—Before terminating a ground lease or foreclosing on a military construction privatization project, the Secretary concerned, in conjunction with the Deputy Under Secretary of Defense for Installations and Environment, shall examine options for combining the project with a planned project or projects for which a request for proposal or request for qualification is expected to be issued within 180 days by another military department.

“(d) Availability of sufficient reserves.—The Secretary concerned shall ensure that sufficient funds
are available for the completion of each military housing privatization initiative project to provide for the timely completion of the project in the event of default, including to provide for the payment of subcontractors for the performance of work already accomplished and necessary to complete the project.

“(e) Conditional Release of Payments for Projects.—

“(1) Sequestration of Funds.—Each contract or agreement for a military housing privatization initiative project shall provide for the sequestration of funds to be paid under such contract or agreement into a separate account to be known as the ‘project lockbox’.

“(2) Release of Funds.—Funds sequestered under paragraph (1) shall not be paid to the project owner, developer, or general contractor under the project contract or agreement until the Secretary concerned is provided a report signed by the project owner, developer, or general contractor, the bondholder representative, the trustee, and construction consultant that includes the following:

“(A) A detailed list of payments to be made under the contract or agreement.

“(B) The amount of each such payment.
“(C) The total amount of such payments that have been made to date.

“(D) A comparison between—

“(i) the percentage of the total capital sources for the project that have been expended; and

“(ii) the percentage of work that has been completed on the project.

“(f) COMMUNITY MEETINGS.—

“(1) IN GENERAL.—Whenever a military construction privatization project is awarded, the chief officer for installations and environment of the respective military department and the commanding officer of the local military installation shall hold a meeting with the local community to communicate the following information:

“(A) The nature of the project.

“(B) Any contractual arrangements.

“(C) Potential liabilities to local construction management companies and subcontractors.

“(2) PUBLICATION IN FEDERAL REGISTER.—The requirement under paragraph (1) may be met by publishing the information described in such
paragraph on the Federal Business Opportunities (FedBizOpps) Internet website.

“(g) REQUIRED QUALIFICATIONS.—The Secretary concerned shall certify that the project owner, developer, or general contractor that is selected for each military housing privatization initiative project has construction experience commensurate with that required to complete the project.

“(h) REQUIRED BONDING LEVELS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary concerned shall ensure that the project owner, developer, or general contractor responsible for a military housing privatization initiative project is fully bonded for the project, including by obtaining payment and performance bonds in an amount not less than 100 percent of the maximum price allowable under the contract or agreement for the overall project and each phase of the project.

“(2) EXCEPTIONS.—

“(A) WAIVER.—The Deputy Under Secretary of Defense for Installations and Environment may waive the bonding requirement under paragraph (1) to permit a bonding level as low as 50 percent. Notice of such waiver shall be
submitted to the congressional defense committees, including the rationale for such lower bonding level.

“(B) ALTERNATIVE SECURITIES.—The Secretary concerned may accept in lieu of the full bonding required under paragraph (1) an alternative type of security, including a corporate guarantee, if the Secretary determines that such security meets or exceeds the levels of coverage required under such paragraph. Notice of such alternative security shall be submitted to the congressional defense committees, including the rationale for accepting such alternative security.

“(i) CERTIFICATIONS REGARDING PREVIOUS BANKRUPTCY DECLARATIONS.—If a military department awards a contract or agreement for a military housing privatization initiative project to a project owner, developer, or general contractor that has previously declared bankruptcy, the Secretary concerned shall specify in the notification to Congress of the project award the extent to which the issues related to the previous bankruptcy impact the ability of the project owner, developer, or general contractor to complete the project.
“(j) Communication Regarding Poor Performance.—The Deputy Under Secretary of Defense for Installations and Environment shall prescribe regulations to provide for regular and appropriate communication between representatives of the military departments and bondholders for military housing privatization initiative projects to ensure timely action to address inadequate performance in carrying out projects.

“(k) Reporting of Efforts To Select Successor in Event of Default.—In the event a military housing privatization initiative project enters into default, the chief officer for installations and environment of the respective military department shall submit a report to the congressional defense committees every 30 days detailing the status of negotiations to award the project to a new project owner, developer, or general contractor.

“(l) Effect of Unsatisfactory Performance Rating on Affiliated Entities.—In the event the project owner, developer, or general contractor for a military construction project receives an unsatisfactory performance rating due to poor performance, each parent, subsidiary, affiliate, or other controlling entity of such owner, developer, or contractor shall also receive an unsatisfactory performance rating.
“(m) Effect of Cure Notices on Contractors and Affiliated Entities.—

“(1) In general.—The Deputy Under Secretary of Defense for Installations and Environment shall keep a record of all plans of action or cure notices issued to a project owner, developer, or general contractor under subsection (b)(4), including the identity of each parent, subsidiary, affiliate, or other controlling entity of such owner, developer, or contractor.

“(2) Consultation.—Each military department shall consult the records maintained under paragraph (1) when reviewing the past performance of owners, developers, and contractors in the bidding process for a contract or other agreement for a military housing privatization initiative project.

“(n) Annual Reports.—Each Secretary concerned shall submit to the congressional defense committees an annual report outlining lessons learned from the selection, approval, and implementation of military housing privatization initiative projects by the respective military department.”.
(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

“2885. Oversight and accountability for privatization projects.”.