

THE VA CONSTRUCTION ASSISTANCE ACT OF 2013

SEPTEMBER 15, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of Florida, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 3593]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 3593) to amend title 38, United States Code, to improve the construction of major medical facilities, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary .....	2
Background and Need for Legislation .....	2
Hearings .....	3
Committee Consideration .....	3
Committee Votes .....	3
Committee Oversight Findings .....	3
Statement of General Performance Goals and Objectives .....	3
New Budget Authority, Entitlement Authority, and Tax Expenditures .....	3
Earmarks and Tax and Tariff Benefits .....	4
Committee Cost Estimate .....	4
Congressional Budget Office Estimate .....	4
Federal Mandates Statement .....	5
Advisory Committee Statement .....	5
Constitutional Authority Statement .....	5
Applicability to Legislative Branch .....	5
Statement on Duplication of Federal Programs .....	5
Disclosure of Directed Rulemaking .....	5
Section-by-Section Analysis of the Legislation .....	5
Changes in Existing Law Made by the Bill as Reported .....	7

## PURPOSE AND SUMMARY

H.R. 3593, the VA Construction Assistance Act of 2013, was introduced by Representative Coffman of Colorado and Representative Kirkpatrick of Arizona on November 21, 2013. H.R. 3593 would improve management of several major medical center construction projects in Denver, Colorado; Orlando, Florida, and New Orleans, Louisiana through implementation of construction reforms and the use of an independent special project manager from the Army Corps of Engineers.

## BACKGROUND AND NEED FOR LEGISLATION

*Section 2—Findings; Sense of Congress*

Finding construction delays and cost overruns, the section would express the Sense of Congress that management of major medical center construction projects by the Department of Veterans Affairs has been an abysmal failure and the Department of Veterans Affairs should use a special project manager from the Army Corps of Engineers and should fully implement all recommendations of the Comptroller General in an April 2013 report which found that schedule delays have averaged 35 months with average cost overruns of \$336,000,000 per project.

*Section 3—Implementation of Major Medical Facility Construction Reforms*

The United States Government Accountability Office, in a report from April, 2013<sup>1</sup> recommended a number of construction reforms, including the use of a medical equipment planner, a project management plan, construction peer review, and a metrics program for the change-order process. This section would implement these reforms to reduce construction delays and minimize cost overruns.

*Section 4—Special Project Manager for Certain Medical Center Construction Projects*

The recurring delays and cost overruns in major medical facility construction projects of the Department of Veterans Affairs have been well established through GAO reports and House Committee on Veterans' Affairs oversight hearings. In light of repeated project management failures by the Department, an outside entity with experience managing major construction projects for the Federal government would be able to assist the Department of Veterans Affairs by offering its technical expertise and advice. This section would require that the Department of Veterans Affairs procure, on a reimbursable basis, the services of an experienced special project manager from the Army Corps of Engineers to oversee major medical center construction projects in Denver, Colorado; Orlando, Florida, and New Orleans, Louisiana. The duties of the special project manager would be to conduct oversight with respect to the performance of prime contractors and compliance with acquisition regulations and to advise and assist the Department about construction best practices to improve operations, including the approval of the change-order requests. The duties would also include the produc-

<sup>1</sup> Report of the General Accountability Office, "VA Construction: Additional Actions Needed to Decrease Delays and Lower Costs of Major Medical-Facility Projects," April, 2013, GAO 13-302.

tion of completion plans and progress reports for the House and Senate Veterans Affairs committees.

#### HEARINGS

On March 25, 2014, the Subcommittee on Oversight and Investigations conducted a legislative hearing on various bills introduced during the 113th Congress including H.R. 3593. The following witnesses testified:

Ms. Stella S. Foites, Executive Director, Office of Construction and Facilities Management, Office of Acquisition, Logistics, and Construction, U.S. Department of Veterans Affairs; Mr. Raymond C. Kelley, Director National Legislative Service, Veterans of Foreign Wars; Mr. Davy Leghorn, Assistant Director of the Veteran Education and Employment Commission of the American Legion.

#### COMMITTEE CONSIDERATION

On September 10, 2014, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 3593 reported favorably to the House of Representatives by voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. There were no recorded votes taken on amendments or in connection with ordering H.R. 3593 reported to the House. A motion by Ranking Member Mike Michaud of Maine to order H.R. 3593 reported favorably to the House of Representatives was agreed to by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 3593 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 3593 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 602 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 12, 2014.*

Hon. JEFF MILLER,  
*Chairman, Committee on Veterans' Affairs,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3593, the VA Construction Assistance Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ann E. Futrell.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 3593—The VA Construction Assistance Act of 2013*

H.R. 3593 would require the Department of Veterans Affairs (VA) to employ special project managers from the U.S. Army Corps of Engineers to oversee three existing construction projects in Colorado, Florida, and Louisiana. Because construction on the facility in Florida is nearing completion, CBO expects that implementing this provision would require project managers and support teams at the Colorado and Louisiana sites only, at a cost of \$3 million over the 2015–2019 period, assuming appropriation of the necessary amounts.

The bill also would codify in law certain practices designed to ensure that construction of major VA medical facilities is completed on time and within the planned budget. Such practices include developing and using project management plans, conducting peer reviews of projects, using medical equipment planners, and developing a metrics program to monitor the change-order process. Because VA has recently adopted these practices, CBO estimates that implementing this provision would have no budgetary impact.

Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

H.R. 3593 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Ann E. Futrell. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 3593 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 3593.

#### STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee finds that no provision of H.R. 3593 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee estimates that H.R. 3593 contains no directed rule making requiring the Secretary to prescribe regulations.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 2—Findings; Sense of Congress*

Subsection 2(a) contains the following Findings:

(1) The Director of Physical Infrastructure of the General Accountability Office testified that schedule delays of major medical center construction projects of the Department of Veterans Affairs have averaged 35 months, with delays ranging from 14 months to 74 months and (2) The average cost increase attributed to such delays has been \$336,000,000.

Subsection 2(b) would express the Sense of Congress that (1) the management of the major medical center construction projects of the Department of Veterans Affairs has been an abysmal failure (2) the Secretary of Veterans Affairs should fully implement all recommendations made by the Comptroller General in an April 2013 report to improve construction procedures and practices of the Department and (3) Projects in Denver, Colorado; Orlando, Florida; and New Orleans, Louisiana should be subject to oversight of a special project manager of the Army Corps of Engineers because of delays and overruns.

*Section 3—Implementation of Major Medical Facility Construction Reforms*

Section 3 would amend section 8104 of title 38, United States Code, by adding a new subsection (i) that would require the use of a medical equipment planner, a project management plan, and construction peer excellence review. The section would also require development of a metrics program to enable monitoring of the change-order process, the use of a change order process consistent with best practices, and the use of design-build processes to minimize multiple change orders.

*Section 4—Special Project Manager for Certain Medical Center Construction Projects*

Subsection 4(a) would require that the Department of Veterans Affairs procure, on a reimbursable basis, the services of an experienced special project manager from the Army Corps of Engineers to oversee until completion major medical center construction projects in Denver, Colorado; Orlando, Florida, and New Orleans, Louisiana.

Subsection 4(b) would require the special project manager to oversee all construction-related operations including the performance of the Department of Veterans Affairs with the prime contractor, the compliance of the Department with the Federal Acquisition Regulation, including VA Acquisition Regulations. The subsection would also require that the special project manager advise and assist the Department in any construction-related activity including the approval of change-order requests for purposes of achieving timely completion of the project. In addition, the subsection would require that the special project manager recommend to the Department best construction practices to improve operations of the project.

Subsection 4(c) would require that within 90 days of appointment, the special project manager submit detailed plans for the completion of the project to the House and Senate committees on Veteran Affairs. The subsection would also require submission of progress reports to the committees not later than 180 days of the appointment of a special project manager and each 180 day period thereafter. The progress reports would include an analysis of all advice and assistance provided to the Department and an analysis of all changes ordered by the Department or claimed to have been made by contract between the Department and prime contractor, including the extent to which such changes comply with the Federal Acquisition Regulation, including the VA Acquisition Regulations. The progress reports would also include an analysis of the

communication and working relationship between the Department and prime contractor, including any recommendations made by the prime contractor to aid in completion of the project.

In addition, the progress reports would include identification of opportunities and recommendations with respect to improving the operations of any construction-related activity to reduce costs or complete the project in a more timely manner.

Subsection 4(d) would require that the Secretary of Veterans Affairs provide the special project manager with any document or information necessary to carry out the duties of the special project manager including the submission of required reports. The subsection would also require the Secretary to provide the special project manager with administrative assistance necessary to carry out the duties of the special project manager including the submission of required reports.

Subsection 4(e) defines the “covered projects” as a construction project that is a major medical facility project (as defined in section 8104(a)(3)(A) of Title 38, United States Code) being carried out as of the date of enactment of this Act at the following locations:

- (1) Denver, Colorado;
- (2) Orlando, Florida;
- (3) New Orleans, Louisiana.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

### TITLE 38, UNITED STATES CODE

\* \* \* \* \*

### PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

\* \* \* \* \*

### CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

#### SUBCHAPTER I—ACQUISITION AND OPERATION OF MEDICAL FACILITIES

\* \* \* \* \*

#### § 8104. Congressional approval of certain medical facility acquisitions

(a) \* \* \*

\* \* \* \* \*

*(i)(1) With respect to each project described in paragraph (2), the Secretary shall—*

- (A) use the services of a medical equipment planner as part of the architectural and engineering firm for the project;*
  - (B) develop and use a project management plan to ensure clear and consistent communication among all parties;*
  - (C) subject the project to construction peer excellence review;*
  - (D) develop—*
    - (i) a metrics program to enable the monitoring of change-order processing time; and*
    - (ii) goals for the change-order process consistent with the best practices of other departments and agencies of the Federal Government; and*
  - (E) to the extent practicable, use design-build processes to minimize multiple change orders.*
- (2) A project described in this paragraph is a construction or alteration project that is a major medical facility project.*

\* \* \* \* \*