

115TH CONGRESS
2D SESSION

H. R. 7317

To direct the Secretary of Veterans Affairs to carry out a pilot program under which the Secretary shall enter into agreements for the construction, renovation, improvement, and lease of facilities in order to address the deferred capital backlog of the Department of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 17, 2018

Mr. SHUSTER introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Secretary of Veterans Affairs to carry out a pilot program under which the Secretary shall enter into agreements for the construction, renovation, improvement, and lease of facilities in order to address the deferred capital backlog of the Department of Veterans Affairs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Performance-based
3 Building Act of 2018”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The deferred capital backlog for Depart-
7 ment of Veterans Affairs facilities (including hos-
8 pitals, clinics, housing and offices) is not sustain-
9 able.

10 (2) There are insufficient discretionary funds
11 available to meet the critical capital requirements of
12 the Department in support of its mission.

13 (3) Alternative authorities for the construction
14 and improvement of capital facilities have proven
15 successful, particularly with respect to military hous-
16 ing.

17 **SEC. 3. PILOT PROGRAM.**

18 (a) IN GENERAL.—The Secretary of Veterans Af-
19 fairs, in coordination with the Administrator of General
20 Services, shall carry out a pilot program under which the
21 Secretary may enter into agreements with appropriate
22 non-Government entities under which—

23 (1) the non-Government entity shall acquire, fi-
24 nance, and execute improvements or renovations to
25 a Department of Veterans Affairs facility identified
26 under subsection (b) or construct a new facility to

1 address a shortage of capacity identified under such
2 subsection;

3 (2) the Secretary shall lease the facility from
4 the non-Government entity for use by the Depart-
5 ment; and

6 (3) the facility shall be operated and main-
7 tained by the non-Government entity subject to a
8 performance-based management and operations
9 agreement entered into between the entity and the
10 Secretary.

11 (b) IDENTIFICATION OF FACILITIES.—

12 (1) COMPREHENSIVE EVALUATION OF DEPART-
13 MENT OF VETERANS AFFAIRS PROPERTY.—

14 (A) REVIEW OF THE DEPARTMENT.—For
15 purposes of carrying out the pilot program, not
16 later than 180 days after the date of the enact-
17 ment of this Act, the Secretary shall provide to
18 the Administrator a report identifying potential
19 sites based on a comprehensive evaluation of
20 the Department of Veterans Affairs real prop-
21 erty to determine conditions, continued
22 connectivity, and relevance to the broader mis-
23 sion of the Department. The Secretary shall
24 take into consideration such sites which the

1 condition of facilities is negatively impacting the
2 ability of the Department to fulfill its mission.

3 (B) EVALUATION BY THE ADMINIS-
4 TRATOR.—The Administrator shall review the
5 recommendations provided by the Department
6 pursuant to subparagraph (A) and identify via-
7 ble recapitalization opportunities, consistent
8 with other provisions of law.

9 (C) CRITERIA.—In carrying out the eval-
10 uation under subparagraph (B), the Adminis-
11 trator shall implement criteria that—

12 (i) are used to evaluate Federal as-
13 sets;

14 (ii) ensure the modernization or re-
15 alignment of the capital facilities of the
16 Department; and

17 (iii) maximize the use of the capital
18 assets of the Department (consistent with
19 the Federal Assets Sale and Transfer Act
20 of 2016 (40 U.S.C. 1303 note)).

21 (2) GSA DETERMINATION.—Not later than 1
22 year after the date of the enactment of this Act,
23 based on the results of the evaluation under para-
24 graph (1), the Administrator shall identify—

1 (A) department facilities that require im-
2 provements or renovations and would be appro-
3 priate for an agreement under the pilot pro-
4 gram; and

5 (B) shortages of Department capacity that
6 may be addressed through the construction of a
7 new facility under such an agreement.

8 (c) NUMBER OF PROJECTS.—The Secretary shall
9 enter into agreements with respect to at least 5 and not
10 more than 10 facilities under the pilot program, includ-
11 ing—

12 (1) agreements providing for the construction,
13 improvement, or renovation of facilities; and

14 (2) operating leases, including enhanced use
15 leases, ground lease or lease back arrangements, and
16 leases that incorporate an option to purchase at less
17 than fair market value.

18 (d) REPORTS.—

19 (1) PROJECT REPORTS.—The Administrator
20 shall submit to the appropriate committees of Con-
21 gress a report on each facility that is improved, ren-
22 ovated, or constructed under an agreement under
23 the pilot program.

24 (2) FINAL REPORT.—Not later than 5 years
25 after the determination under subsection (b)(2), the

1 Administrator, in consultation with the Secretary,
2 shall submit to Congress a final report on the effec-
3 tiveness of the pilot program in providing for the im-
4 provement of the assets of the Department.

5 (e) TERMINATION.—The authority to enter into an
6 agreement under this section shall terminate on the date
7 that is 5 years after the date of the enactment of this
8 Act.

9 (f) EXPERTS AND CONSULTANTS.—

10 (1) PERSONNEL.—In carrying out the pilot pro-
11 gram, the Administrator and Secretary shall identify
12 and use General Services Administration and De-
13 partment personnel with knowledge and experience
14 in complex real estate transactions.

15 (2) EXPERTS AND CONTRACTED SERVICES.—
16 The Administrator shall, to the extent practicable
17 and subject to appropriations Acts, use contracts, in-
18 cluding non-appropriated contracts, for real estate
19 services necessary to carry out this section.

20 (g) SUBMISSION OF PROSPECTUSES.—Not later than
21 1 year after the date of enactment of this Act, the Admin-
22 istrator shall submit to the Committee on Transportation
23 and Infrastructure of the House of Representatives and
24 the Committee on Environment and Public Works of the
25 Senate prospectuses, in accordance with section 3307, of

1 title 40, United States Code, for each project identified
2 under this Act.

3 (h) DEFINITION.—In this Act, the following defini-
4 tions apply:

5 (1) PERFORMANCE-BASED MANAGEMENT AND
6 OPERATIONS AGREEMENT.—The term “performance-
7 based management and operations agreement”
8 means an agreement that—

9 (A) reflects an obligation by the non-Gov-
10 ernment entity to design, build, finance, deliver,
11 operate and maintain an infrastructure asset;

12 (B) requires the non-Government entity to
13 provide the Department a single point of re-
14 sponsibility and obligation;

15 (C) stipulates all requirements of the De-
16 partment and contains the terms and conditions
17 for annual performance-based availability pay-
18 ments in accordance with the non-Government
19 entity meeting or exceeding those requirements;
20 and

21 (D) stipulates the terms and conditions for
22 reductions of any and all available payments to
23 the non-Government entity for any given period
24 the asset is unavailable to the Government or
25 otherwise non delivered, operated, or main-

1 tained in accordance with the requirements in-
2 cluded in the agreement.

3 (2) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of General Serv-
5 ices.

6 (3) SECRETARY.—The term “Secretary” means
7 the Secretary of Veterans Affairs.

8 (4) DEPARTMENT.—The term “Department”
9 means the Department of Veterans Affairs.

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