

117TH CONGRESS  
1ST SESSION

# H. R. 1940

To establish a public buildings public-private partnership pilot program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2021

Mr. PENCE (for himself, Mr. WEBSTER of Florida, and Mr. GUEST) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To establish a public buildings public-private partnership pilot program, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Performance-Based  
5 Public Buildings Act of 2021”.

6 **SEC. 2. PUBLIC BUILDINGS PUBLIC-PRIVATE PARTNERSHIP**  
7 **PILOT PROGRAM.**

8 (a) IN GENERAL.—Chapter 33 of title 40, United  
9 States Code, is amended by adding at the end the fol-  
10 lowing:

1 **“§ 3319. Public buildings public-private partnership**  
2 **pilot program**

3 “(a) ESTABLISHMENT.—The Administrator shall  
4 carry out a pilot program to enter into public-private part-  
5 nerships to acquire public buildings pursuant to the re-  
6 quirements of this section.

7 “(b) IDENTIFICATION OF PROJECTS.—Not later than  
8 1 year after the date of enactment of this section, the Ad-  
9 ministrator shall identify not less than 5 and not more  
10 than 10 projects for acquiring space for the purposes of  
11 public buildings using public-private partnerships.

12 “(c) SUBMISSION OF PLAN AND PROSPECTUSES.—  
13 Not later than 2 years after the date of enactment of this  
14 section, the Administrator shall submit to the Committee  
15 on Transportation and Infrastructure of the House of  
16 Representatives and the Committee on Environment and  
17 Public Works of the Senate—

18 “(1) prospectuses, in accordance with section  
19 3307 of title 40, United States Code, for each  
20 project identified under subsection (b); and

21 “(2) an execution and management plan detail-  
22 ing how each project will be managed, project team  
23 timelines for each project, and, notwithstanding sub-  
24 section (d), recommendations on commencement  
25 dates based on ensuring proper staffing, resources,  
26 and management.

1       “(d) COMMENCEMENT.—Subject to the availability of  
2 appropriations, a project submitted under subsection (c)  
3 that is authorized pursuant to section 3307 shall com-  
4 mence not later than 1 year after the date on which such  
5 authorization occurs, unless otherwise indicated in the re-  
6 spective committee resolution authorizing the project.

7       “(e) EXPERTS AND CONSULTANTS.—

8           “(1) GSA PERSONNEL.—In carrying out the  
9 pilot program the Administrator shall identify and  
10 use General Services Administration personnel with  
11 knowledge and experience in complex real estate  
12 transactions.

13           “(2) CONTRACTED SERVICES.—The Adminis-  
14 trator shall, to the extent practicable and subject to  
15 appropriations Acts, use contracts, including non-  
16 appropriated contracts, for services necessary to  
17 carry out this section.

18       “(f) COMPLIANCE WITH BUDGETARY RULES.—For  
19 budgetary scorekeeping purposes, a project carried out  
20 under this section shall be treated in a manner consistent  
21 with the requirements for scoring a leaseback from a pub-  
22 lic-private partnership under Appendix B of Circular A-  
23 11 of the Office of Management and Budget, as of the  
24 date of enactment of this section.

1       “(g) GAO STUDY.—Not later than 1 year after the  
2 occupancy of projects authorized under this section, the  
3 Comptroller General of the United States shall conduct  
4 a review of such projects and submit to the Committee  
5 on Transportation and Infrastructure of the House of  
6 Representatives and the Committee on Environment and  
7 Public Works of the Senate a report that includes—

8               “(1) a review and evaluation of the public-pri-  
9 vate partnerships executed under this section and a  
10 comparison of such agreements to similar projects  
11 completed as Government construction, including a  
12 comparison of timetables and costs; and

13               “(2) any recommendations on the use of public-  
14 private partnerships as options for meeting Federal  
15 Government space needs.

16       “(h) DEFINITIONS.—In this section, the following  
17 definitions apply:

18               “(1) ADMINISTRATOR.—The term ‘Adminis-  
19 trator’ means the Administrator of General Services.

20               “(2) PUBLIC BUILDING.—The term ‘public  
21 building’ has the meaning given the term in section  
22 3301.

23               “(3) PERFORMANCE-BASED MANAGEMENT AND  
24 OPERATIONS AGREEMENT.—The term ‘performance-

1 based management and operations agreement’  
2 means an agreement that—

3 “(A) reflects an obligation by the non-Fed-  
4 eral entity to design, build, finance, deliver, op-  
5 erate and maintain an asset;

6 “(B) requires the non-Federal entity to  
7 provide the General Services Administration a  
8 single point of responsibility and obligation;

9 “(C) stipulates all requirements of the  
10 General Services Administration and contains  
11 the terms and conditions for annual perform-  
12 ance-based availability payments in accordance  
13 with the non-Federal entity meeting or exceed-  
14 ing those requirements;

15 “(D) stipulates the terms and conditions  
16 for reductions of any or all availability pay-  
17 ments to the non-Federal entity for any given  
18 period the asset is unavailable to the Govern-  
19 ment or otherwise not delivered, operated, or  
20 maintained in accordance with the requirements  
21 included in the agreement; and

22 “(E) stipulates the terms and conditions  
23 for termination and includes no obligation on  
24 the part of the Government to renew any suc-

1           cessive leases that may be included in such  
2           project.

3           “(4) PUBLIC-PRIVATE PARTNERSHIP.—The  
4           term ‘public-private partnership’ means a real prop-  
5           erty agreement for the purposes of providing office  
6           space for the Federal Government that meets the  
7           following criteria:

8                   “(A) The agreement includes a ground-  
9                   lease to a non-Federal party with a subsequent  
10                  lease back of the improvements.

11                  “(B) The entity that is the lessor of the  
12                  leaseback of improvements is entirely non-Fed-  
13                  eral.

14                  “(C) The leaseback meets the criteria for  
15                  an operating lease under Appendix B of Cir-  
16                  cular A–11 of the Office of Management and  
17                  Budget, as of the date of enactment of this sec-  
18                  tion.

19                  “(D) The project shall, to the extent prac-  
20                  ticable, be operated and maintained by the non-  
21                  Federal entity subject to a performance-based  
22                  management and operations agreement entered  
23                  into between the entity and the Adminis-  
24                  trator.”.

1           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
2 The table of sections at the beginning of chapter 33 of  
3 title 40, United States Code, is amended by adding at the  
4 end the following:

“3319. Public buildings public-private partnership pilot program.”

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