

CONSTRUCTION REFORM ACT OF 2015

DECEMBER 3, 2015.—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. 3106]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 3106) to authorize Department major medical facility construction projects for fiscal year 2015, to amend title 38, United States Code, to make certain improvements in the administration of Department medical facility construction projects, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	2
Purpose and Summary	5
Background and Need for Legislation	6
Hearings	9
Subcommittee Consideration	10
Committee Consideration	10
Committee Votes	11
Committee Oversight Findings	11
Statement of General Performance Goals and Objectives	11
New Budget Authority, Entitlement Authority, and Tax Expenditures	11
Earmarks and Tax and Tariff Benefits	12
Committee Cost Estimate	12
Congressional Budget Office Estimate	12
Federal Mandates Statement	13
Advisory Committee Statement	13
Constitutional Authority Statement	13
Applicability to Legislative Branch	13
Statement on Duplication of Federal Programs	13
Disclosure of Directed Rulemaking	14
Section-by-Section Analysis of the Legislation	14
Changes in Existing Law Made by the Bill as Reported	18

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Construction Reform Act of 2015”.

SEC. 2. DEPARTMENT OF VETERANS AFFAIRS CONSTRUCTION REFORMS.

(a) **PROJECT MANAGEMENT.**—Section 8103 of title 38, United States Code, is amended by adding at the end the following new subsection:

“(e) In the case of any super construction project (as such term is defined in section 8104(a)(4)(C)), the Secretary shall enter into an agreement with an appropriate non-Department Federal entity to provide full project management services for the super construction project, including management over the project design, acquisition, construction, and contract changes. Such agreement shall provide that the Secretary shall reimburse such Federal entity for all costs associated with the provision of project management services under the agreement.”.

(b) **APPLICATION OF INDUSTRY STANDARDS; ASSISTANCE.**—Section 8103 of title 38, United States Code, as amended by subsection (a), is further amended by adding at the end the following new subsections:

“(f) To the maximum extent practicable, the Secretary shall use industry standards, standard designs, and best practices in carrying out the construction of medical facilities.

“(g)(1) The Secretary shall provide to a non-Department Federal entity with which the Secretary has entered into an agreement under subsection (e)—

“(A) design, planning, and construction assistance before the entity issues a request for proposals for the design or construction of the super construction project covered by the agreement;

“(B) any documents or information needed for the entity to carry out the responsibilities of the entity with respect to the super construction project; and

“(C) upon the request of the entity, any other assistance that the entity determines necessary to carry out such responsibilities.

“(2) Any assistance provided under paragraph (1) shall be provided to the non-Department Federal entity on a non-reimbursable basis.

“(h)(1) With respect to a proposed change to a contract entered into by a non-Department Federal entity with which the Secretary has entered into an agreement under subsection (e) that is estimated at a value of less than \$250,000, the non-Department Federal entity shall issue a final decision regarding such change not later than 30 days after the date on which the change is proposed.

“(2) With respect to a proposed change to such a contract that is estimated at a value of \$250,000 or more—

“(A) the Secretary may provide to the entity the recommendations of the Secretary regarding such change;

“(B) during the 30-day period beginning on the date on which the entity furnishes to the Secretary information regarding such change, the Secretary may issue the final decision regarding such change; and

“(C) if the Secretary does not issue a final decision under subparagraph (B), during the 30-day period following the period described in such paragraph, the entity shall issue a final decision regarding such a change no later than 90 days from when the entity furnished information regarding such a change to the Secretary.

“(i) The Secretary shall ensure that each employee of the Department with responsibilities relating to the construction or alteration of medical facilities, including such construction or alteration carried out pursuant to contracts or agreements, undergoes a program of ongoing professional training and development. Such program shall be designed to ensure that employees maintain adequate expertise relating to industry standards and best practices for the acquisition of design and construction services. The Secretary may provide the program under this subsection through a contract or agreement with a non-Federal entity or with a non-Department Federal entity.”.

(c) **LIMITATION ON PLANNING AND DESIGN FOR SUPER CONSTRUCTION PROJECTS.**—

(1) **IN GENERAL.**—Section 8104(a) of title 38, United States Code, is amended—

(A) by redesignating paragraph (3) as paragraph (4);

(B) by inserting after paragraph (2) the following new paragraph (3):

“(3) The Secretary may not obligate or expend funds for advance planning or design for any super construction project, until the date that is 60 days after the date on which the Secretary submits to the Committee on Veterans’ Affairs and the Com-

mittee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives notice of such obligation or expenditure.”; and

(C) in paragraph (4), as redesignated by paragraph (1) of this subsection, by adding at the end the following new subparagraph:

“(C) The term ‘super construction project’ means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$100,000,000, but such term does not include an acquisition by exchange.”.

(2) APPLICABILITY.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply with respect to a construction project that is initiated on or after that date.

(d) CONGRESSIONAL APPROVAL OF CERTAIN PROJECTS.—

(1) PROJECTS THAT EXCEED SPECIFIED AMOUNT.—Subsection (c) of section 8104 of title 38, United States Code, is amended to read as follows:

“(c)(1) The Secretary may not obligate funds for a major medical facility project or a super construction project approved by a law described in subsection (a)(2) in an amount that would cause the total amount obligated for that project to exceed the amount specified in the law for that project (or would add to total obligations exceeding such specified amount) by more than 10 percent unless the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives each approve in writing the obligation of those funds.

“(2) The Secretary shall—

“(A) enter into a contract with an appropriate non-department Federal entity with the ability to conduct forensic audits on medical facility projects for the conduct of an external forensic audit of the expenditures relating to any major medical facility or super construction project for which the total expenditures exceed the amount specified in the law for the project by more than 25 percent; and

“(B) enter into a contract with an appropriate non-department Federal entity with the ability to conduct forensic audits on medical facility projects for the conduct of an external audit of the medical center construction project in Aurora, Colorado.”.

(2) USE OF EXTRA AMOUNTS.—Subsection (d) of such section is amended—

(A) in paragraph (2)(B), in the matter preceding clause (i), by striking “Whenever” and inserting “Before”; and

(B) by adding at the end the following new paragraph:

“(3) The Secretary may not obligate any funds described in paragraph (1) or amounts described in paragraph (2) before the date that is 30 days after the notification submitted under paragraph (1) or paragraph (2)(B), as the case may be, unless the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives each approve in writing the obligation of those funds or amounts.”.

(3) NOTIFICATION REQUIREMENTS.—

(A) COMMITTEES REQUIRED.—Subsection (d)(1) of such section is amended by striking “each committee” and inserting “the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives”.

(B) USE OF AMOUNTS FROM BID SAVINGS.—Subsection (d)(2)(B) of such section is amended by adding at the end the following new clause:

“(iv) With respect to the major construction project that is the source of the bid savings—

“(I) the amounts already obligated or available in the project reserve for such project;

“(II) the percentage of such project that has been completed; and

“(III) the amount of such bid savings that is already obligated or otherwise being used for a purpose other than such project.”.

(e) QUARTERLY REPORT ON SUPER CONSTRUCTION PROJECTS.—

(1) IN GENERAL.—At the end of subchapter I of chapter 81 of title 38, United States Code, insert the following new section:

“§ 8120. Quarterly report on super construction projects

“(a) QUARTERLY REPORTS REQUIRED.—Not later than 30 days after the last day of each fiscal quarter the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives on the super construction projects

carried out by the Secretary during such quarter. Each such report shall include, for each such project—

“(1) the budgetary and scheduling status of the project, as of the last day of the quarter covered by the report; and

“(2) the actual cost and schedule variances of the project, as of such day, compared to the planned cost and schedules for the project.

“(b) SUPER CONSTRUCTION PROJECT DEFINED.—In this section, the term ‘super construction project’ has the meaning given such term in section 8103(a)(4)(C) of this title.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of the chapter is amended by adding at the end of the items relating to such subchapter the following new item:

“8120. Quarterly report on super construction projects.”.

(f) ACCELERATED MASTER PLANNING FOR EACH MEDICAL FACILITY OF THE DEPARTMENT OF VETERANS AFFAIRS.—

(1) EXISTING FACILITIES.—Not later than December 31, 2016, the Secretary of Veterans Affairs shall complete a master plan described in paragraph (3) for each medical facility of the Department of Veterans Affairs.

(2) NEW FACILITIES.—For each medical facility of the Department for which construction is completed after the date of the enactment of this Act, the Secretary shall complete a master plan described in paragraph (3) for the facility by not later than the earlier of the following dates:

(A) The date on which activation is completed.

(B) The date of the formal dedication of the facility.

(3) MASTER PLAN DESCRIBED.—A master plan described in this paragraph is, with respect to a medical facility of the Department, a plan to inform investment decisions and funding requests over a 10-year period for construction projects at such medical facility—

(A) to meet the health care needs of a changing veteran population through a combination of health care from the Department and other community resources; and

(B) to maximize the best use of the land and structures comprising such medical facility.

SEC. 3. MODIFICATION OF AUTHORIZATION OF FISCAL YEAR 2008 MAJOR MEDICAL FACILITY PROJECT AT DEPARTMENT MEDICAL CENTER IN TAMPA, FLORIDA.

(a) MODIFICATION OF AUTHORIZATION.—In chapter 3 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2326), in the matter under the heading “Department of Veterans Affairs–Departmental Administration–Construction, Major Projects”, after “Five Year Capital Plan” insert the following: “and for constructing a new bed tower at the Department of Veterans Affairs medical center in Tampa, Florida, in lieu of providing bed tower upgrades at such medical center”.

(b) EMERGENCY DESIGNATION.—

(1) IN GENERAL.—Subsection (a) is designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(g)).

(2) DESIGNATION IN SENATE.—In the Senate, subsection (a) is designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

SEC. 4. AUTHORIZATION OF FISCAL YEAR 2015 MAJOR MEDICAL FACILITY PROJECTS.

(a) AUTHORIZATION.—The Secretary of Veterans Affairs may carry out the following major medical facility projects, with each project to be carried out in an amount not to exceed the amount specified for that project:

(1) Construction of a community living center, outpatient clinic, renovated domiciliary, and renovation of existing buildings in Canandaigua, New York, in an amount not to exceed \$158,980,000.

(2) Seismic corrections to the mental health and community living center in Long Beach, California, in an amount not to exceed \$126,100,000.

(3) Seismic correction of 12 buildings in West Los Angeles, California, in an amount not to exceed \$70,500,000.

(4) Construction of a spinal cord injury building and seismic corrections in San Diego, California, in an amount not to exceed \$205,840,000.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Veterans Affairs for fiscal year 2015 or the year in which funds are appropriated for the Construction, Major Projects, account, a total of \$561,420,000 for the projects authorized in subsection (a).

(c) LIMITATION.—The projects authorized under this section may only be carried out using—

(1) funds appropriated for fiscal year 2015 pursuant to the authorization of appropriations in subsection (b);

(2) funds available for Construction, Major Projects for a fiscal year before fiscal year 2015 that remain available for obligation;

(3) funds available for Construction, Major Projects, for a fiscal year after fiscal year 2015 that remain available for obligation;

(4) funds appropriated for Construction, Major Projects, for fiscal year 2015 for a category of activity not specific to a project;

(5) funds appropriated for Construction, Major Projects, for a fiscal year before 2015 for a category of activity not specific to a project; and

(6) funds appropriated for Construction, Major Projects, for a fiscal year after 2015 for a category of activity not specific to a project.

SEC. 5. ASSISTANT INSPECTOR GENERAL FOR CONSTRUCTION.

(a) **IN GENERAL.**—Chapter 3 of title 38, United States Code, is amended by inserting after section 312 the following new section:

“§ 312A. Assistant Inspector General for Construction

“(a) **IN GENERAL.**—There is in the Office of Inspector General an Assistant Inspector General for Construction. The Assistant Inspector General for Construction is responsible for conducting, supervising, and coordinating audits, evaluations, and investigations of the planning, design, contracting, execution, and construction of facilities and infrastructure of the Department, including major and minor construction projects and leases.

“(b) **QUALIFICATIONS.**—Each individual appointed as Assistant Inspector General for Construction shall be an individual who has expertise in construction and facilities management.

“(c) **REPORTS.**—(1) Not later than 60 days after the appointment of an individual as the Assistant Inspector General for Construction, and every calendar quarter thereafter, the Assistant Inspector General for Construction shall submit to the Committees on Veterans’ Affairs of the Senate and House of Representatives a report summarizing the activities of the Assistant Inspector General for Construction during the 120-day period ending on the date of such report.

“(2) In addition to the report required in paragraph (1), and the requirements contained in section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), the Assistant Inspector General for Construction shall promptly provide to the Committees on Veterans’ Affairs of the Senate and House of Representatives the findings of any investigation undertaken by the Assistant Inspector General for Construction, and shall notify the Committees promptly if the Assistant Inspector General for Construction identifies any serious or flagrant problem or deficiency relating to the administration or operation of any construction program of the Department, if, during the course of any investigation, the Assistant Inspector General for Construction determines that Congress should take immediate action.

“(3) Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

“(A) specifically prohibited from disclosure by any other provision of law;

“(B) specifically required by Executive Order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

“(C) a part of an ongoing criminal investigation.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 312 the following new item:

“312A. Assistant Inspector General for Construction.”.

PURPOSE AND SUMMARY

H.R. 3106, the Construction Reform Act of 2015, was introduced by Representative Jeff Miller of Florida on July 16, 2015. H.R. 3106, as amended, would: (1) require the Department of Veterans Affairs (VA) to enter into an agreement with a non-Department federal entity to provide project management services for super construction projects involving a total expenditure of more than \$100 million; (2) require the use of industry standards, standard designs, and best practices for VA medical facility construction projects; (3) prohibit VA from: obligating/expending funds for advance planning or design for any super construction project until

60 days after congressional notification, obligating funds for a major medical facility project/super construction project by more than 10 percent of the amount approved by law without congressional approval, and using bid savings amounts/funds for other than their original purpose before 30 days after notifying such committees unless each committee approves the obligation; (4) require VA to report to the Committees on Veterans' Affairs and Appropriations of the House of Representatives and the Senate on the use of bid savings; (5) require quarterly reports on super construction projects; (6) require VA to complete a master plan for each VA medical facility; (7) authorize VA to construct a new bed tower at the James A. Haley Veterans' Hospital in Tampa, Florida; (8) authorize Major Construction projects in Canandaigua, New York, and Long Beach, San Francisco, West Los Angeles, and San Diego, California, and authorize the appropriation of \$561.420 million to carry out these projects; and, (9) create, within VA's Office of the Inspector General, an Assistant Inspector General for Construction to conduct, supervise, and coordinate audits, evaluations, and investigations into the planning, design, contracting, execution, and construction of VA facilities and infrastructure.

BACKGROUND AND NEED FOR LEGISLATION

Section 2—Department of Veterans Affairs construction reforms

VA operates one of the Federal government's largest real property portfolios. Most of VA's real property assets belong to the Veterans Health Administration (VHA), which operates more than 7,000 owned and leased buildings encompassing over 160,000 square feet of clinical and administrative space across more than 15,000 acres of land.¹ Much of VHA's real property assets are outdated, with the average age of a VA medical facility approaching sixty years, making them ill-suited to the provision of 21st century health care. Updating these facilities necessitates a complex and costly major medical facility construction program.

At the Committee's request, the Government Accountability Office (GAO) undertook an audit and issued a report in April 2013 entitled, "Additional Actions Needed to Decrease Delays and Lower Costs of Major Medical Facility Projects."² In this report, GAO found that VA's four largest medical center construction projects—in Denver, Colorado; Las Vegas, Nevada; New Orleans, Louisiana; and, Orlando, Florida—experienced significant cost increases and lengthy schedule delays. The cost delays for these projects ranged from 59 percent to 144 percent, as of November 2012, with a total cost increase of nearly \$1.5 billion and an average cost increase of approximately \$366 million. The schedule delays for these projects ranged from 14 to 74 months, with an average delay of 35 months. Unsurprisingly, GAO concluded that these findings indicated serious weaknesses in VA's construction management processes. Despite numerous hearings by the Committee where VA officials were warned that these projects were significantly delayed and over

¹ See, the VA Construction Review Council Activity Report, November 2012.

² See, Government Accountability Office report, "Additional Actions Needed to Decrease Delays and Lower Costs of Major Medical Facility Projects." <http://www.gao.gov/assets/660/653585.pdf>.

budget, VA consistently maintained that the projects were both on time and on budget.

These weaknesses are perhaps nowhere more apparent than in the management of the replacement medical center construction project in Denver, Colorado. The replacement of the existing Denver VA Medical Center began as a discussion in 1999 between VA and the University of Colorado regarding the possibility of a shared facility on the former Fitzsimmons Army base in Aurora, Colorado. After undergoing numerous scope changes over a period of several years, VA requested appropriations in 2010 for a standalone replacement medical center project with a total estimated cost of \$800 million. Due to the issuance of contract modifications in December 2013, the original firm target price of \$604 million (not to exceed \$610 million) was revised to \$615.9 million (not to exceed \$621.8 million) and the entire project remained capped at \$800 million. However, in December 2014, VA was found by the Civilian Board of Contract Appeals to be in breach of its contract with the project's general contractor, Kiewit Turner (KT), who began to demobilize from the construction site.³ VA entered into an interim agreement with KT to resume construction on the project and later informed the Committee that an additional \$830 million in funding, for a total authorization of \$1.73 billion—triple the original authorization—was needed to continue the project, which Congress ultimately provided. VA subsequently turned to the Army Corps of Engineers, who revised the estimated completion cost to \$1.675 billion, to manage the project to completion. Construction is expected to conclude on February 1, 2018.

In light of the mismanagement of this and other VA major medical facility projects, the Committee strongly believes that VA's construction management processes must be reformed, strengthened, and aggressively overseen. As a result, Section 2 of the bill would require VA to enter into an agreement with a non-VA entity to provide project management services for super construction projects involving a total expenditure of more than \$100 million. Section 2 of the bill would also require VA to use industry standards, standard designs, and best practices for all medical facility construction projects and to complete a master plan for each VA medical facility. Section 2 of the bill would further prohibit VA from: obligating or expending funds for advance planning or design for any super construction project until 60 days after congressional notification, obligating funds for a major medical facility project/super construction project by more than 10 percent of the amount approved by law without congressional approval, and using bid savings amounts or funds for other than their original purpose before 30 days after notifying such committees unless each committee approves the obligation. To ensure that Congress is kept fully informed about the status of VA construction projects, Section 2 of the bill would require VA to report regularly on the use of bid savings and on all super construction projects. In addition to the above reforms, the Committee urges VA to use competitively awarded third-party independent contracts to provide building information models, construction services for validating, measuring, and monitoring construc-

³Kiewit-Turner, A Joint Venture v. Department of Veterans Affairs CBA3450 (December 9, 2014). This decision led to the first time VA ever publicly admitted that this project was either over budget or delayed.

tion costs and materials, and for validation of contractor change order requests as well as to institute a competitively awarded building enterprise management system for the purpose of managing all ongoing super construction projects using real-time data information sharing between project contractors, non-Federal entities, and VA.

Section 3—Modification of authorization of Fiscal Year 2008 major medical facility project at Department medical center in Tampa, Florida

The Supplemental Appropriations Act, 2008 (P.L. 110–252; 122 Stat. 2326) authorized VA to renovate and upgrade an existing bed tower at the James A. Haley Veterans’ Hospital in Tampa, Florida. However, VA’s Fiscal Year 2016 budget submission requested authority to construct a new, replacement bed tower, using funds previously made available, rather than renovation and upgrade of the existing bed tower. Section 3 of the bill would provide that authority. According to VA, constructing a new bed tower could be completed in 38 months, which is considerably faster than the 144 months that a renovation would require. VA also claims that proceeding with construction instead of renovation would eliminate the need for 12 leases, leading to a potential cost avoidance of \$3.84 million, and minimize both disruptions to facility operations and patient safety risks associated with a multi-phased renovation. VA has estimated that the new bed tower will consist of an approximately 220,000 gross square foot structure between four and six towers tall and will encompass 100 medical surgical single patient rooms and service spaces.

Section 4—Authorization of Fiscal Year 2015 major medical facility projects

Section 8104(2) of title 38, U.S.C., requires congressional authorization for VA major medical facility projects and major medical facility leases. A major medical facility project is defined as a project involving construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$10,000,000. A major medical facility lease is defined as a lease for space for use as a new medical facility at an average annual rental of more than \$1,000,000. Along with each major medical facility project or lease funding request, section 8104(b) of title 38 U.S.C., requires VA to submit a prospectus of the proposed medical facility to include a detailed description of the medical facility and an estimate of the cost for the construction, alteration, lease, or other acquisition as well as an estimate of the cost of the equipment required for operation of such facility, demographic data, current and projected workload and utilization data, current and projected operating costs, the priority score assigned to the project under the VA’s prioritization methodology, and a description of each alternative that was considered in the case of a new or replacement medical ideology.

Section 4 of the bill would authorize Major Construction projects in Canandaigua, New York, and Long Beach, San Francisco, West Los Angeles, and San Diego, California, and authorize the appropriation of \$561.420 million to carry out these projects. VA has re-

requested authorization for each of these projects and its justification for them can be found in VA's Fiscal Year 2015 budget submission.

Section 5—Assistant Inspector General for Construction

The VA Office of the Inspector General (VAOIG) was established in 1978 by the Inspector General Act of 1978 (P.L. 95–452, 92 Stat. 1101). Today, VAOIG is responsible for conducting and supervising audits and investigations; recommending policies designed to promote economy and efficiency, and to prevent and detect criminal activity, waste, abuse, and mismanagement in VA programs and operations; and keeping the VA Secretary and Congress fully informed about problems and deficiencies in VA programs and operations and the need for corrective action.⁴ VAOIG is currently organized to include four Assistant Inspectors General operating under the Inspector General and the Deputy Inspector General. The four current VAOIG Assistant Inspectors General are: the Assistant Inspector General for Investigations, the Assistant Inspector General for Audits and Evaluations, the Assistant Inspector General for Management and Administration, and the Assistant Inspector General for Healthcare Inspections.

Due to the many deficiencies that have been uncovered regarding the management of VA's construction program, the Committee believes that the addition of an Assistant Inspector General for Construction within VAOIG's existing organizational structure would allow for greater oversight and scrutiny of VA construction projects. As such, Section 5 of the bill would create an Assistant Inspector General for Construction within VAOIG. The new Assistant Inspector General for Construction would be required to have expertise in construction and facilities management and would be responsible for conducting, supervising, and coordinating audits, evaluations, and investigations into the planning, design, contracting, execution, and construction of VA facilities and infrastructure.

HEARINGS

There were no full Committee hearings held on H.R. 3106, as amended.

On July 14, 2015, the Subcommittee on Health conducted a legislative hearing on various bills introduced and drafted in the 114th Congress, including draft legislation to authorize VA major medical facility construction projects for FY 2015 and to make certain improvements in the administration of VA medical facility construction projects. The draft bill was later introduced as H.R. 3106. The following witnesses testified:

The Honorable Tim Walberg, U.S. House of Representatives, 7th Congressional District; Michigan; The Honorable Sean Duffy, U.S. House of Representatives, 7th Congressional District, Wisconsin; The Honorable Steve Stivers, U.S. House of Representatives, 15th Congressional District, Ohio; The Honorable Kyrsten Sinema, U.S. House of Representatives, 9th Congressional District, Arizona; The Honorable Doug Collins, U.S. House of Representatives, 9th Congressional District, Georgia; The Honorable Mike Coffman, U.S.

⁴ See, Office of Inspector General Department of Veterans Affairs Semiannual Report to Congress October 1, 2014–March 31, 2015. <http://www.va.gov/oig/pubs/sars/vaoig-sar-2015-1.pdf>

House of Representatives, 6th Congressional District, Colorado; The Honorable Jeff Denham, U.S. House of Representatives, 10th Congressional District, California; The Honorable Charles Boustany, U.S. House of Representatives, 3rd Congressional District, Louisiana; The Honorable Brad Wenstrup, U.S. House of Representatives, 2nd Congressional District, Ohio; Ian de Planque, Legislative Director American Legion; Adrian Atizado, Assistant National Legislative Director, Disabled American Veterans; Carlos Fuentes, Senior Legislative Associate, National Legislative Service Veterans of Foreign Wars of the United States; and, Madhulika Agarwal MD, MPH, Deputy Under Secretary for Health for Policy and Services, Veterans Health Administration U.S. Department of Veterans Affairs, who was accompanied by Janet P. Murphy MBA, Acting Deputy Under Secretary for Health for Operations and Management, Veterans Health Administration U.S. Department of Veterans Affairs and Jessica Tanner, General Attorney Office of General Counsel, U.S. Department of Veterans Affairs.

Statements for the Record were submitted by:

The American Academy of Audiology and the American Speech-Language Association; the Children of Vietnam Veterans Health Alliance, the International Hearing Society; Iraq and Afghanistan Veterans of America; the National Medical Association; Paralyzed Veterans of America; VetsFirst, a program of the United Spinal Association; Vietnam Veterans of America; Warrior Canine Connection; the American Academy of Ophthalmology; and, the American Medical Association.

SUBCOMMITTEE CONSIDERATION

On July 22, 2015, the Subcommittee on Health met in open markup session, a quorum being present, and favorably forwarded H.R. 3106, as amended, favorably to the full Committee by voice vote. During consideration of the bill, the following amendment was considered:

An amendment offered by Representative Mike Coffman from Colorado, which would require VA to share any information needed by the non-Department Federal entity construction agent to provide full project management services for a super construction project, provide mandatory guidelines for the handling of change-orders to the underlying construction or design contracts, and require VA to ensure that VA personnel with construction responsibility receive ongoing professional training and development on industry standards and best practices. The amendment was agreed to by voice vote.

COMMITTEE CONSIDERATION

On September 17, 2015, the full Committee met in open markup session, a quorum being present, and ordered H.R. 3106, as amended, reported favorably to the House of Representatives, by voice vote.

During consideration of the bill, the following amendments were considered:

An amendment in the nature of a substitute by Representative Jeff Miller of Florida, which would create an Assistant Inspector General for Construction within VA's Office of the Inspector Gen-

eral to be responsible for conducting, supervising, and coordinating audits, evaluations, and investigations into the planning, design, contracting, execution, and construction of VA facilities and infrastructure. The amendment in the nature of a substitute was agreed to by voice vote.

An amendment to the amendment in the nature of a substitute by Representative Julia Brownley of California, which would require the Assistant Inspector General for Construction to report to Congress 60 days after his/her appointment and quarterly thereafter and to notify Congress of the findings of any investigation undertaken as well as any serious or flagrant problems or deficiencies requiring immediate congressional action. The amendment to the amendment in the nature of a substitute was agreed to by voice vote.

An amendment to the amendment in the nature of a substitute by Representative Kathleen Rice of New York, which would require VA to enter into a contract with an appropriate non-VA Federal entity to conduct forensic audits of any major medical facility or super construction project for which the total expenditures exceed the amount specified in law by more than 25 percent and would require VA to enter into a contract with an appropriate non-VA Federal entity to conduct a forensic audit of the replacement medical center construction project in Aurora, Colorado. The amendment to the amendment in the nature of a substitute was agreed to by voice vote.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes in connection with ordering H.R. 3106, as amended, reported to the House. A motion by Ranking Member Corrine Brown of Florida to report H.R. 3106, as amended, favorably to the House of Representatives was adopted 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 that the Secretary will use these provisions to improve the management and strengthen the oversight of VA construction projects, modify the authorization of a Fiscal Year 2008 VA major medical facility project in Tampa, Florida, and authorize Fiscal Year 2015 major medical facility projects.

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 es-

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. 3106, as amended, 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. 3106, as amended, 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. 3106, as amended, 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, October 22, 2015.

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. 3106, the Construction Reform Act of 2015.

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

Sincerely,

KEITH HALL, *Director.*

Enclosure.

H.R. 3106—Construction Reform Act of 2015

H.R. 3106 would require the Department of Veterans Affairs (VA) to hire an Assistant Inspector General for construction projects. That official would be responsible for assessing the planning, design, and execution of major construction projects and leases at VA. Based on the average salary of senior executive service employees at VA, we estimate the salary and benefits for this position would amount to about \$215,000 in 2016. After adjusting for inflation, CBO estimates that implementing this provision would cost \$1 million over the 2016–2020 period.

The bill also would modify VA's procedures for managing major construction projects, require employee training on industry standards of construction projects, and require quarterly reports. CBO expects preparing necessary regulations, developing online training modules, and preparing reports would cost less than \$500,000 over the 2016–2020 period.

In addition, the bill would authorize new construction and renovation of five medical facilities for which funds have already been appropriated. Because spending on those projects would be limited to the amounts appropriated for those purposes, CBO estimates that implementing those provisions would not require additional appropriations.

In total, CBO estimates that implementing H.R. 3106 would have discretionary costs of \$1 million over the 2016–2020 period; such spending would be subject to the availability of appropriated funds.

Enacting H.R. 3106 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3106 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

H.R. 3106 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 H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 3106, as amended, 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. 3106, as amended.

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(g) of H. Res. 5, 114th Cong. (2015), the Committee finds that no provision of H.R. 3106, as amended, 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(i) of H. Res. 5, 114th Cong. (2015), the Committee estimates that H.R. 3106, as amended, contains no directed rule making that would require the Secretary to prescribe regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1—Short title

Section 1 would provide the short title of H.R. 3106, as amended, as the “Construction Reform Act of 2015.”

Section 2—Department of Veterans Affairs construction reforms

Section 2(a) would amend Section 8103 of title 38 U.S.C., by adding at the end a new subsection (e). Subsection (e) of section 8103 of title 38 U.S.C., would require the Secretary to enter into an agreement with an appropriate non-Department Federal entity to provide full project management services—including the management over the project design, acquisition, construction, and contract change—for any super construction project and require the Secretary to reimburse such Federal entity for all costs associated with the provision of project management services under such agreement.

Section 2(b) would amend section 8103 of title 38 U.S.C., by adding at the end new subsections (f), (g), (h), and (i).

Proposed subsection (f) of section 8103 of title 38 U.S.C., would require the Secretary to use, to the maximum extent practicable, industry standard, standard designs, and best practices in carrying out the construction of medical facilities.

Proposed subsection (g) of section 8103 of title 38 U.S.C., would require the Secretary to provide, on a non-reimbursable basis, a non-Department Federal entity with which the Secretary has entered into an agreement under subsection (e): design, planning, and construction assistance before the entity issues a request for proposals for the design or construction of the super construction project covered by the agreement; any documents or information needed for the entity to carry out the responsibilities of the entity with respect to the super construction project; and, upon the request of the entity, any other assistance that the entity determines necessary to carry out such responsibilities.

Proposed subsection (h) of section 8103 of title 38 U.S.C., would require a non-Department Federal entity with which the Secretary has entered into an agreement under subsection (e) to issue a final decision on a proposed change to a contract entered into by the non-Department Federal entity that is estimated at a value of less than \$250,000 by not later than 30 days after the date on which the change is proposed and, with respect to a proposed change to such contract that is estimated at a value of \$250,000 or more, authorize the Secretary to provide the entity the Secretary’s recommendations regarding the change and authorize the Secretary to issue the final decision regarding such change during the 30-day period beginning on the date on which the entity furnished to the Secretary information regarding such change and, if the Secretary does not issue a final decision during the 30-day period described above, authorize the non-Department Federal entity to issue a final

decision regarding such change by no later than 90 days from the date the entity is furnished information regarding such change by the Secretary.

Proposed subsection (i) of section 8103 of title 38 U.S.C., would require the Secretary to ensure that each employee of the Department with responsibilities relating to the construction or alteration of medical facilities—including such construction or alteration carried out pursuant to contracts or agreements—undergoes a program of ongoing professional training and development designed to ensure that employees maintain adequate expertise relating to industry standards and best practices for the acquisition of design and construction services and authorize the Secretary to provide such training program through a contract or agreement with a non-Department Federal entity or with a non-Department Federal entity.

Section 2(c) would amend section 8104(a) of title 38 U.S.C., by redesignating paragraph (3) as paragraph (4); by inserting after paragraph (2) a new paragraph (3). The new paragraph (3) would prohibit the Secretary from obligating or expending funds for advance planning or design for any super construction project until 60 days after the date on which the Secretary submits to the Committees on Veterans' Affairs and Appropriations of the House of Representatives and Senate notice of such obligation or expenditure. The new paragraph (4), as redesignated in this section, contains a new subparagraph (C) that would define the term "super construction project" as a project for the construction, alteration, and acquisition of a medical facility involving a total expenditure of more than \$1 million but not an acquisition by exchange and stipulate that the amendments made in this section would be required to take effect on the date of the enactment of this Act and are required to apply with respect to a construction project that is initiated on or after that date.

Section 2(d) would amend subsection (c) of section 8104 of title 38 U.S.C., to prohibit the Secretary from obligating funds for a major medical facility project or a super construction project approved by a law described in subsection (a)(2) in an amount that would cause the total amount obligated for that project to exceed the amount specified in the law for that project (or would add to total obligations exceeding such specified amount) by not more than 10 percent unless the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives each approve in writing the obligation of those funds. This Section would also require the Secretary to enter into a contract with an appropriate non-Department Federal entity with the ability to conduct forensic audits on medical facility projects for the conduct of an external forensic audit of the expenditures relating to any major medical facility or super construction project for which the total expenditures exceed the amount specified in the law for the project by more than 25 percent and to enter into a contract with an appropriate non-Department Federal entity with the ability to conduct forensic audits on medical facility projects for the conduct of an external audit of the medical center construction project in Aurora, Colorado." Additionally, Section(2)(d) would amend subsection (d) of section 8104 of title 38

U.S.C. in paragraph (2)(B) in the matter preceding clause (i) by striking “Whenever” and inserting “Before” and by adding at the end a new paragraph preventing the Secretary from obligating any funds described in paragraph (1) or amounts described in (2) before the date that is 30 days after the notification submitted under paragraph (1) or paragraph (2)(B), as the case may be, unless the Committee on Veterans’ Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans’ Affairs and the Committee on Appropriations of the House of Representatives each approve in writing the obligation of those funds or amounts. Section 2(d) would further amend subsection (d)(1) of section 8104 of title 38 U.S.C., by striking “each committee” and inserting “the Committee on Veterans’ Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans’ Affairs and the Committee on Appropriations of the House of Representatives” and amend subsection (d)(2)(B) of section 8104 of title 38 U.S.C., by adding at the end a new clause that would stipulate that, with respect to the major construction project that is the source of the bid savings, the amounts already obligated or available in the project reserve for such project, the percentage of such project that has been completed, and the amount of such bid savings that is already obligated or otherwise being used for a purpose other than such project.

Section 2(e) would amend subchapter I of chapter 81 of title 38 U.S.C., by inserting a new section entitled, “§ 8120. Quarterly report on super construction projects” and making relevant clerical amendments.

Sec. 8120(a) would require the Secretary to submit, by not later than 30 days after the last day of each fiscal quarter, a quarterly report on the super construction projects carried out by the Secretary during such quarter to the Committees on Veterans’ Affairs of the Senate and the House of Representatives and would require the quarterly report to include, for each such project, the budgetary and scheduling status of the project as of the last day of the quarter covered by the report and the actual cost and schedule variances of the project as of such day compared to the planned cost and schedules for the project.

Sec. 8120(b) would define the term “super construction project” as the meaning given such term in section 8103(a)(4)(C) of title 38 U.S.C.

Section 2(f) would require the Secretary to complete a master plan to inform investment decisions and funding requests over a 10-year period by not later than December 31, 2016, for each medical facility to meet the health care needs of a changing veteran population through a combination of health care from VA and community resources and to maximize the best use of the land and structures comprising such medical facility. Section 2(f) would also require the Secretary to complete a master plan for each medical facility of the Department for which construction is completed after the date of the enactment of this Act by not later than the earlier of either the date on which activation is completed or the date of the formal dedication of the facility.

Section 3—Modification of authorization of fiscal year 2008 major medical facility project at department medical center in Tampa, Florida

Section 3(a) would amend chapter 3 of the Supplemental Appropriations Act of 2008 (P.L. 110–252; 122 Stat. 2326) by inserting “and for constructing a new bed tower in Tampa, Florida, in lieu of providing bed tower upgrades at such medical center” after “Five Year Capital Plan” under the heading “Department of Veterans Affairs—Departmental Administration—Construction, Major Projects”.

Section 3(b) would designate subsection (a) as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(g)) and, in the Senate, designate subsection (a) as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

Section 4—Authorization of Fiscal Year 2015 major medical facility projects

Section 4(a) would authorize the Secretary of Veterans Affairs to carry out the following major medical facility projects, with each project to be carried out in an amount not to exceed the amount specified for that project: construction of a community living center, outpatient clinic, renovated domiciliary, and renovation of existing buildings in Canandaigua, New York, in an amount not to exceed \$158,980,000; seismic corrections to the mental health and community living center in Long Beach, California, in an amount not to exceed \$126,100,000; seismic corrections of 12 buildings in West Los Angeles, California, in an amount not to exceed \$70,500,000; and the construction of a spinal cord injury building and seismic corrections in San Diego, California, in an amount not to exceed \$205,840,000.

Section 4(b) of the bill would authorize \$561,420,000 to be appropriated to the Secretary of Veterans Affairs for Fiscal Year 2015 or the year in which funds are appropriated for the Construction, Major Projects account for the projects authorized in subsection (a).

Section 4(c) would stipulate that the projects authorized under this Section may only be carried out using: funds appropriated for Fiscal Year 2015 pursuant to the authorization of appropriations in subsection (b); funds available for Construction, Major Projects for a fiscal year before Fiscal Year 2015 that remain available for obligation; funds available for Construction, Major Projects, for a fiscal year after Fiscal Year 2015 that remain available for obligation; funds appropriated for Construction, Major Projects, for Fiscal Year 2015 for a category of activity not specific to a project; funds appropriated for Construction, Major Projects, for a Fiscal Year before 2015 for a category of activity not specific to a project; and funds appropriated for Construction, Major Projects, for a Fiscal Year after 2015 for a category of activity not specific to a project.

Section 5—Assistant Inspector General for Construction

Section 5(a) would amend Chapter 3 of title 38 U.S.C. by inserting, after section 312, a new section entitled, “§ 312A. Assistant Inspector General for Construction.”

Proposed sec. 312A(a) would create an Assistant Inspector General for Construction within the VA Office of the Inspector General. The Assistant Inspector General for Construction would be responsible for conducting, supervising, and coordinating audits, evaluations, and investigations of the planning, design, contracting, execution, and construction of facilities and infrastructure of VA, including major and minor construction projects and leases.

Proposed sec. 312A(b) would require any individual appointment as the Assistant Inspector General for Construction to have expertise in construction and facilities management.

Proposed sec. 312A(c) would require the Assistant Inspector General for Construction to submit a report summarizing his/her activities during the 120-day period ending on the day of the report to the Committees on Veterans' Affairs of the Senate and the House of Representatives by not later than 60 days after an Assistant Inspector General for Construction is appointed and quarterly after that. Sec. 312A(c) would also require the Assistant Inspector General for Construction to promptly provide the findings of any investigation undertaken to the Committees on Veterans' Affairs of the Senate and the House of Representatives and to promptly notify the Committees if a serious or flagrant problem or deficiency relating to the administration or operation of any VA construction program is identifying if, during the course of the investigation, the Assistant Inspector General for Construction determines that Congress should take immediate action. Sec. 312A(c) would further stipulate the prohibition against public disclosure of any information that is specifically prohibited from disclosure by any other provision of law or specifically required by Executive Order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs or part of an ongoing criminal investigation.

Section 5(b) would amend the table of contents at the beginning of Chapter 3 of title 38 U.S.C., by inserting "312A. Assistant Inspector General for Construction" after the item relating to section 312.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART I—GENERAL PROVISIONS

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CHAPTER 3—DEPARTMENT OF VETERANS AFFAIRS

Sec.

301. Department.

* * * * *

312A. Assistant Inspector General for Construction.

* * * * *

§ 312A. Assistant Inspector General for Construction

(a) *IN GENERAL.*—There is in the Office of Inspector General an Assistant Inspector General for Construction. The Assistant Inspector General for Construction is responsible for conducting, supervising, and coordinating audits, evaluations, and investigations of the planning, design, contracting, execution, and construction of facilities and infrastructure of the Department, including major and minor construction projects and leases.

(b) *QUALIFICATIONS.*—Each individual appointed as Assistant Inspector General for Construction shall be an individual who has expertise in construction and facilities management.

(c) *REPORTS.*—(1) Not later than 60 days after the appointment of an individual as the Assistant Inspector General for Construction, and every calendar quarter thereafter, the Assistant Inspector General for Construction shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report summarizing the activities of the Assistant Inspector General for Construction during the 120-day period ending on the date of such report.

(2) In addition to the report required in paragraph (1), and the requirements contained in section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), the Assistant Inspector General for Construction shall promptly provide to the Committees on Veterans' Affairs of the Senate and House of Representatives the findings of any investigation undertaken by the Assistant Inspector General for Construction, and shall notify the Committees promptly if the Assistant Inspector General for Construction identifies any serious or flagrant problem or deficiency relating to the administration or operation of any construction program of the Department, if, during the course of any investigation, the Assistant Inspector General for Construction determines that Congress should take immediate action.

(3) Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive Order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

* * * * *

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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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

Sec.

8101. Definitions.

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8120. *Quarterly report on super construction projects.*

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SUBCHAPTER I—ACQUISITION AND OPERATION OF MEDICAL FACILITIES

* * * * *

§ 8103. Authority to construct and alter, and to acquire sites for, medical facilities

(a) Subject to section 8104 of this title, the Secretary—

(1) may construct or alter any medical facility and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Secretary considers necessary for use as the site for such construction or alteration;

(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility (including the site of such facility) that the Secretary considers necessary for use as a medical facility; and

(3) in order to assure compliance with section 8110(a)(2) of this title, in the case of any outpatient medical facility for which it is proposed to lease space and for which a qualified lessor and an appropriate leasing arrangement are available, shall execute a lease for such facility within 12 months after funds are made available for such purpose.

(b) Whenever the Secretary considers it to be in the interest of the United States to construct a new medical facility to replace an existing medical facility, the Secretary (1) may demolish the existing facility and use the site on which it is located for the site of the new medical facility, or (2) if in the judgment of the Secretary it is more advantageous to construct such medical facility on a different site in the same locality, may exchange such existing facility and the site of such existing facility for the different site.

(c) Whenever the Secretary determines that any site acquired for the construction of a medical facility is not suitable for that purpose, the Secretary may exchange such site for another site to be used for that purpose or may sell such site.

(d)(1) The Secretary may provide for the acquisition of not more than three facilities for the provision of outpatient services or nursing home care through lease-purchase arrangements on real property under the jurisdiction of the Department of Veterans Affairs.

(2)(A) In carrying out this subsection and notwithstanding any other provision of law, the Secretary may lease, with or without compensation and for a period of not to exceed 35 years, to another party any of the real property described in paragraph (1) of this subsection.

(B) Such real property shall be used as the site of a facility referred to in paragraph (1) of this subsection—

(i) constructed and owned by the lessee of such real property; and

(ii) leased under paragraph (3)(A) of this subsection to the Department for such use and for such other activities as the Secretary determines are appropriate.

(3)(A) The Secretary may enter into a lease for the use of any facility described in paragraph (2)(B) of this subsection for not more than 35 years under such terms and conditions as may be in the best interests of the Department.

(B) Each agreement to lease a facility under subparagraph (A) of this paragraph shall include a provision that—

(i) the obligation of the United States to make payments under the agreement is subject to the availability of appropriations for that purpose; and

(ii) the ownership of such facility shall vest in the United States at the end of such lease.

(4)(A) The Secretary may sublease any space in such a facility to another party at a rate not less than—

(i) the rental rate paid by the Secretary for such space under paragraph (3) of this subsection; plus

(ii) the amount the Secretary pays for the costs of administering such facility (including operation, maintenance, utility, and rehabilitation costs) which are attributable to such space.

(B) In any such sublease, the Secretary shall include such terms relating to default and nonperformance as the Secretary considers appropriate to protect the interests of the United States.

(5) The Secretary shall use the receipts of any payment for the lease of real property under paragraph (2) for the payment of the lease of a facility under paragraph (3).

(6) The authority to enter into an agreement under this subsection—

(A) shall not take effect until the Secretary has entered into agreements under section 316 of this title to carry out at least three collocations; and

(B) shall expire on October 1, 1993.

(e) In the case of any super construction project (as such term is defined in section 8104(a)(4)(C)), the Secretary shall enter into an agreement with an appropriate non-Department Federal entity to provide full project management services for the super construction project, including management over the project design, acquisition, construction, and contract changes. Such agreement shall provide that the Secretary shall reimburse such Federal entity for all costs associated with the provision of project management services under the agreement.

(f) To the maximum extent practicable, the Secretary shall use industry standards, standard designs, and best practices in carrying out the construction of medical facilities.

(g)(1) *The Secretary shall provide to a non-Department Federal entity with which the Secretary has entered into an agreement under subsection (e)—*

(A) *design, planning, and construction assistance before the entity issues a request for proposals for the design or construction of the super construction project covered by the agreement;*

(B) *any documents or information needed for the entity to carry out the responsibilities of the entity with respect to the super construction project; and*

(C) *upon the request of the entity, any other assistance that the entity determines necessary to carry out such responsibilities.*

(2) *Any assistance provided under paragraph (1) shall be provided to the non-Department Federal entity on a non-reimbursable basis.*

(h)(1) *With respect to a proposed change to a contract entered into by a non-Department Federal entity with which the Secretary has entered into an agreement under subsection (e) that is estimated at a value of less than \$250,000, the non-Department Federal entity shall issue a final decision regarding such change not later than 30 days after the date on which the change is proposed.*

(2) *With respect to a proposed change to such a contract that is estimated at a value of \$250,000 or more—*

(A) *the Secretary may provide to the entity the recommendations of the Secretary regarding such change;*

(B) *during the 30-day period beginning on the date on which the entity furnishes to the Secretary information regarding such change, the Secretary may issue the final decision regarding such change; and*

(C) *if the Secretary does not issue a final decision under subparagraph (B), during the 30-day period following the period described in such paragraph, the entity shall issue a final decision regarding such a change no later than 90 days from when the entity furnished information regarding such a change to the Secretary.*

(i) *The Secretary shall ensure that each employee of the Department with responsibilities relating to the construction or alteration of medical facilities, including such construction or alteration carried out pursuant to contracts or agreements, undergoes a program of ongoing professional training and development. Such program shall be designed to ensure that employees maintain adequate expertise relating to industry standards and best practices for the acquisition of design and construction services. The Secretary may provide the program under this subsection through a contract or agreement with a non-Federal entity or with a non-Department Federal entity.*

§ 8104. Congressional approval of certain medical facility acquisitions

(a)(1) *The purpose of this subsection is to enable Congress to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility.*

(2) No funds may be appropriated for any fiscal year, and the Secretary may not obligate or expend funds (other than for advance planning and design), for any major medical facility project or any major medical facility lease unless funds for that project or lease have been specifically authorized by law.

(3) *The Secretary may not obligate or expend funds for advance planning or design for any super construction project, until the date that is 60 days after the date on which the Secretary submits to the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives notice of such obligation or expenditure.*

[(3)] (4) For the purpose of this subsection:

(A) The term "major medical facility project" means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$10,000,000, but such term does not include an acquisition by exchange.

(B) The term "major medical facility lease" means a lease for space for use as a new medical facility at an average annual rental of more than \$1,000,000.

(C) *The term "super construction project" means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$100,000,000, but such term does not include an acquisition by exchange.*

(b) Whenever the President or the Secretary submit to the Congress a request for the funding of a major medical facility project (as defined in subsection (a)(3)(A)) or a major medical facility lease (as defined in subsection (a)(3)(B)), the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Any such prospectus shall include the following:

(1) A detailed estimate of the total costs of the medical facility to be constructed, altered, leased, or otherwise acquired under this subchapter, including a description of the location of such facility and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a detailed report of the consideration that was given to acquiring an existing facility by lease or purchase and to the sharing of health-care resources with the Department of Defense under section 8111 of this title. Such detailed estimate shall include an identification of each of the following:

(A) Total construction costs.

(B) Activation costs.

(C) Special purpose alterations (lump-sum payment) costs.

(D) Number of personnel.

(E) Total costs of ancillary services, equipment, and all other items.

(2) Demographic data applicable to such facility, including information on projected changes in the population of veterans to be served by the facility over a five-year period, a ten-year period, and a twenty-year period.

(3) Current and projected workload and utilization data regarding the facility, including information on projected changes in workload and utilization over a five-year period, a ten-year period, and a twenty-year period.

(4) Projected operating costs of the facility, including both recurring and non-recurring costs (including and identifying both recurring and non-recurring costs (including activation costs and total costs of ancillary services, equipment and all other items)) over a five-year period, a ten-year period, and a twenty-year period.

(5) The priority score assigned to the project or lease under the Department's prioritization methodology and, if the project or lease is being proposed for funding before a project or lease with a higher score, a specific explanation of the factors other than the priority score that were considered and the basis on which the project or lease is proposed for funding ahead of projects or leases with higher priority scores.

(6) In the case of a prospectus proposing the construction of a new or replacement medical facility, each of the following:

(A) A detailed estimate of the total costs (including total construction costs, activation costs, special purpose alterations (lump-sum payment) costs, number of personnel and total costs of ancillary services, equipment and all other items) for each alternative to construction of the facility that was considered.

(B) A comparison of total costs to total benefits for each such alternative.

(C) An explanation of why the preferred alternative is the most effective means to achieve the stated project goals and the most cost-effective alternative.

(7) In the case of a prospectus proposing funding for a major medical facility lease, a detailed analysis of how the lease is expected to comply with Office of Management and Budget Circular A-11 and section 1341 of title 31 (commonly referred to as the "Anti-Deficiency Act"). Any such analysis shall include—

(A) an analysis of the classification of the lease as a "lease-purchase", "capital lease", or "operating lease" as those terms are defined in Office of Management and Budget Circular A-11;

(B) an analysis of the obligation of budgetary resources associated with the lease; and

(C) an analysis of the methodology used in determining the asset cost, fair market value, and cancellation costs of the lease.

[(c) Not less than 30 days before obligating funds for a major medical facility project approved by a law described in subsection (a)(2) of this section in an amount that would cause the total amount obligated for that project to exceed the amount specified in the law for that project (or would add to total obligations exceeding such specified amount) by more than 10 percent, the Secretary shall provide the committees with notice of the Secretary's intention to do so and the reasons for the specified amount being exceeded.]

(c)(1) The Secretary may not obligate funds for a major medical facility project or a super construction project approved by a law described in subsection (a)(2) in an amount that would cause the total amount obligated for that project to exceed the amount specified in the law for that project (or would add to total obligations exceeding such specified amount) by more than 10 percent unless the Com-

mittee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives each approve in writing the obligation of those funds.

(2) *The Secretary shall—*

(A) *enter into a contract with an appropriate non-department Federal entity with the ability to conduct forensic audits on medical facility projects for the conduct of an external forensic audit of the expenditures relating to any major medical facility or super construction project for which the total expenditures exceed the amount specified in the law for the project by more than 25 percent; and*

(B) *enter into a contract with an appropriate non-department Federal entity with the ability to conduct forensic audits on medical facility projects for the conduct of an external audit of the medical center construction project in Aurora, Colorado.*

(d)(1) Except as provided in paragraph (2), in any case in which the Secretary proposes that funds be used for a purpose other than the purpose for which such funds were appropriated, the Secretary shall promptly notify **[each committee]** *the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives*, in writing, of the particulars involved and the reasons why such funds were not used for the purpose for which appropriated.

(2)(A) In any fiscal year, unobligated amounts in the Construction, Major Projects account that are a direct result of bid savings from a major construction project may only be obligated for major construction projects authorized for that fiscal year or a previous fiscal year.

(B) **[Whenever]** *Before* the Secretary obligates amounts for a major construction project under subparagraph (A), the Secretary shall submit to the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives notice of the following:

(i) The major construction project that is the source of the bid savings.

(ii) The other major construction project for which the amounts are being obligated.

(iii) The amounts being obligated for such other major construction project.

(iv) *With respect to the major construction project that is the source of the bid savings—*

(I) *the amounts already obligated or available in the project reserve for such project;*

(II) *the percentage of such project that has been completed; and*

(III) *the amount of such bid savings that is already obligated or otherwise being used for a purpose other than such project.*

(C) The Secretary may not obligate an amount under subparagraph (A) to expand the purpose of a major construction project except pursuant to a provision of law enacted after the date on which

the Secretary submits to the committees described in subparagraph (B) notice of the following:

- (i) The major construction project that is the source of the bid savings.
- (ii) The major construction project for which the Secretary intends to expand the purpose.
- (iii) A description of such expansion of purpose.
- (iv) The amounts the Secretary intends to obligate to expand the purpose.

(3) *The Secretary may not obligate any funds described in paragraph (1) or amounts described in paragraph (2) before the date that is 30 days after the notification submitted under paragraph (1) or paragraph (2)(B), as the case may be, unless the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives each approve in writing the obligation of those funds or amounts.*

(e) The Secretary may accept gifts or donations for any of the purposes of this subchapter.

(f) The Secretary may not obligate funds in an amount in excess of \$500,000 from the Advance Planning Fund of the Department toward design or development of a major medical facility project (as defined in subsection (a)(3)(A)) until—

- (1) the Secretary submits to the committees a report on the proposed obligation; and
- (2) a period of 30 days has passed after the date on which the report is received by the committees.

(g) The limitation in subsection (f) does not apply to a project for which funds have been authorized by law in accordance with subsection (a)(2).

(h)(1) Not less than 30 days before entering into a major medical facility lease, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives—

- (A) notice of the Secretary's intention to enter into the lease;
- (B) a detailed summary of the proposed lease;
- (C) a description and analysis of any differences between the prospectus submitted pursuant to subsection (b) and the proposed lease; and
- (D) a scoring analysis demonstrating that the proposed lease fully complies with Office of Management and Budget Circular A-11.

(2) Each committee described in paragraph (1) shall ensure that any information submitted to the committee under such paragraph is treated by the committee with the same level of confidentiality as is required by law of the Secretary and subject to the same statutory penalties for unauthorized disclosure or use as the Secretary.

(3) Not more than 30 days after entering into a major medical facility lease, the Secretary shall submit to each committee described in paragraph (1) a report on any material differences between the lease that was entered into and the proposed lease described under such paragraph, including how the lease that was entered into changes the previously submitted scoring analysis described in subparagraph (D) of such paragraph.

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§ 8120. Quarterly report on super construction projects

(a) *QUARTERLY REPORTS REQUIRED.*—Not later than 30 days after the last day of each fiscal quarter the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives on the super construction projects carried out by the Secretary during such quarter. Each such report shall include, for each such project—

(1) the budgetary and scheduling status of the project, as of the last day of the quarter covered by the report; and

(2) the actual cost and schedule variances of the project, as of such day, compared to the planned cost and schedules for the project.

(b) *SUPER CONSTRUCTION PROJECT DEFINED.*—In this section, the term “super construction project” has the meaning given such term in section 8103(a)(4)(C) of this title.

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