

110TH CONGRESS
1ST SESSION

S. 2492

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2007

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

A BILL

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

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 “Military Housing Pri-
5 vatization Initiatives Projects Oversight and Account-
6 ability Act of 2007”.

1 **SEC. 2. IMPROVED OVERSIGHT AND ACCOUNTABILITY FOR**
 2 **MILITARY HOUSING PRIVATIZATION INITIA-**
 3 **TIVE PROJECTS.**

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

7 **“§ 2885. Oversight and accountability for privatiza-**
 8 **tion projects**

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

11 “(1) IN GENERAL.—Each military housing pri-
 12 vatization initiative project shall be carried out
 13 under a guaranteed maximum price contract and ac-
 14 companied by a performance schedule.

15 “(2) TERMS.—Each contract under this sub-
 16 section shall be reviewed by an independent third
 17 party and certified as reasonable and consistent with
 18 local construction prices and geographic costs of liv-
 19 ing standards established by the Department of De-
 20 fense.

21 “(b) OVERSIGHT AND ACCOUNTABILITY MEAS-
 22 URES.—Each Secretary concerned shall prescribe regula-
 23 tions to effectively oversee and manage military housing
 24 privatization initiative projects under the Secretary’s ju-
 25 risdiction in order to maintain project performance and

1 schedule. The regulations shall include the following re-
2 quirements for each privatization project:

3 “(1) MONTHLY SITE VISITS.—The chief engi-
4 neering officer at the local military installation shall
5 conduct monthly site visits and provide reports on
6 the progress of the privatization project. The reports
7 shall be endorsed by the commander at such instal-
8 lation and submitted quarterly to the chief officer
9 for installations and environment of the respective
10 military department and the Deputy Under Sec-
11 retary of Defense for Installations and Environment.

12 “(2) MONTHLY MEETINGS.—The chief engi-
13 neering officer at the local military installation, and,
14 as applicable, the resident construction manager,
15 privatization asset manager, bondholder representa-
16 tive, project owner, developer, general contractor,
17 and construction consultant for the project shall con-
18 duct monthly meetings to ensure that the project
19 meets performance and schedule requirements and
20 that appropriate operating and ground lease agree-
21 ments are in place and adhered to.

22 “(3) NOTICES OF DEFICIENCY.—If a project is
23 90 days or more behind schedule or more than 20
24 percent over budget, the chief officer for installa-
25 tions and environment of the respective military de-

1 partment shall submit a notice of deficiency to the
2 Deputy Under Secretary of Defense for Installations
3 and Environment, the Secretary concerned, the
4 bondholder representative, and the trustee for the
5 project.

6 “(4) CORRECTION OF DEFICIENCIES.—

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

14 “(B) OFFICIAL LETTER OF NOTICE.—If
15 the project owner, developer, or general con-
16 tractor responsible for the project is unable,
17 within 30 days after receiving a cure notice
18 under subparagraph (A), to make progress on
19 the issues outlined in such notice, the Secretary
20 concerned shall submit to the project owner, de-
21 veloper, or general contractor, the bondholder
22 representative, and the trustee an official letter
23 of notice addressing the deficiencies and detail-
24 ing the corrective actions that should be taken
25 to correct the deficiencies.

1 “(C) CERTIFICATION REQUIRED TO CON-
2 TINUE CERTAIN PROJECTS.—If the project
3 owner, developer, or general contractor respon-
4 sible for the privatization project is unable,
5 within 60 days after receiving a cure notice
6 under subparagraph (A), to make progress on
7 the issues outlined in such notice, the Deputy
8 Under Secretary of Defense for Installations
9 and Environment shall certify to the congres-
10 sional defense committees that continuing the
11 project is in the best interest of the United
12 States or the project shall be terminated for de-
13 fault.

14 “(c) OPTIONS FOR COMBINING DEFICIENT
15 PROJECTS WITH PROJECTS OF OTHER MILITARY DE-
16 PARTMENTS.—Before terminating a ground lease or fore-
17 closing on a military construction privatization project, the
18 Secretary concerned, in conjunction with the Deputy
19 Under Secretary of Defense for Installations and Environ-
20 ment, shall examine options for combining the project with
21 a planned project or projects for which a request for pro-
22 posal or request for qualification is expected to be issued
23 within 180 days by another military department.

24 “(d) AVAILABILITY OF SUFFICIENT RESERVES.—
25 The Secretary concerned shall ensure that sufficient funds

1 are available for the completion of each military housing
 2 privatization initiative project to provide for the timely
 3 completion of the project in the event of default, including
 4 to provide for the payment of subcontractors for the per-
 5 formance of work already accomplished and necessary to
 6 complete the project.

7 “(e) CONDITIONAL RELEASE OF PAYMENTS FOR
 8 PROJECTS.—

9 “(1) SEQUESTRATION OF FUNDS.—Each con-
 10 tract or agreement for a military housing privatiza-
 11 tion initiative project shall provide for the sequestra-
 12 tion of funds to be paid under such contract or
 13 agreement into a separate account to be known as
 14 the ‘project lockbox’.

15 “(2) RELEASE OF FUNDS.—Funds sequestered
 16 under paragraph (1) shall not be paid to the project
 17 owner, developer, or general contractor under the
 18 project contract or agreement until the Secretary
 19 concerned is provided a report signed by the project
 20 owner, developer, or general contractor, the bond-
 21 holder representative, the trustee, and construction
 22 consultant that includes the following:

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

25 “(B) The amount of each such payment.

1 “(C) The total amount of such payments
2 that have been made to date.

3 “(D) A comparison between—

4 “(i) the percentage of the total capital
5 sources for the project that have been ex-
6 pended; and

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

9 “(f) COMMUNITY MEETINGS.—

10 “(1) IN GENERAL.—Whenever a military con-
11 struction privatization project is awarded, the chief
12 officer for installations and environment of the re-
13 spective military department and the commanding
14 officer of the local military installation shall hold a
15 meeting with the local community to communicate
16 the following information:

17 “(A) The nature of the project.

18 “(B) Any contractual arrangements.

19 “(C) Potential liabilities to local construc-
20 tion management companies and subcontractors.
21 tors.

22 “(2) PUBLICATION IN FEDERAL REGISTER.—

23 The requirement under paragraph (1) may be met
24 by publishing the information described in such

1 paragraph on the Federal Business Opportunities
2 (FedBizOpps) Internet website.

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

9 “(h) REQUIRED BONDING LEVELS.—

10 “(1) IN GENERAL.—Except as provided in para-
11 graph (2), the Secretary concerned shall ensure that
12 the project owner, developer, or general contractor
13 responsible for a military housing privatization ini-
14 tiative project is fully bonded for the project, includ-
15 ing by obtaining payment and performance bonds in
16 an amount not less than 100 percent of the max-
17 imum price allowable under the contract or agree-
18 ment for the overall project and each phase of the
19 project.

20 “(2) EXCEPTIONS.—

21 “(A) WAIVER.—The Deputy Under Sec-
22 retary of Defense for Installations and Environ-
23 ment may waive the bonding requirement under
24 paragraph (1) to permit a bonding level as low
25 as 50 percent. Notice of such waiver shall be

1 submitted to the congressional defense commit-
2 tees, including the rationale for such lower
3 bonding level.

4 “(B) ALTERNATIVE SECURITIES.—The
5 Secretary concerned may accept in lieu of the
6 full bonding required under paragraph (1) an
7 alternative type of security, including a cor-
8 porate guarantee, if the Secretary determines
9 that such security meets or exceeds the levels of
10 coverage required under such paragraph. Notice
11 of such alternative security shall be submitted
12 to the congressional defense committees, includ-
13 ing the rationale for accepting such alternative
14 security.

15 “(i) CERTIFICATIONS REGRADING PREVIOUS BANK-
16 RUPTCY DECLARATIONS.—If a military department
17 awards a contract or agreement for a military housing pri-
18 vatization initiative project to a project owner, developer,
19 or general contractor that has previously declared bank-
20 ruptcy, the Secretary concerned shall specify in the notifi-
21 cation to Congress of the project award the extent to
22 which the issues related to the previous bankruptcy impact
23 the ability of the project owner, developer, or general con-
24 tractor to complete the project.

1 “(j) COMMUNICATION REGARDING POOR PERFORM-
2 ANCE.—The Deputy Under Secretary of Defense for In-
3 stallations and Environment shall prescribe regulations to
4 provide for regular and appropriate communication be-
5 tween representatives of the military departments and
6 bondholders for military housing privatization initiative
7 projects to ensure timely action to address inadequate per-
8 formance in carrying out projects.

9 “(k) REPORTING OF EFFORTS TO SELECT SUC-
10 CESSOR IN EVENT OF DEFAULT.—In the event a military
11 housing privatization initiative project enters into default,
12 the chief officer for installations and environment of the
13 respective military department shall submit a report to the
14 congressional defense committees every 30 days detailing
15 the status of negotiations to award the project to a new
16 project owner, developer, or general contractor.

17 “(l) EFFECT OF UNSATISFACTORY PERFORMANCE
18 RATING ON AFFILIATED ENTITIES.—In the event the
19 project owner, developer, or general contractor for a mili-
20 tary construction project receives an unsatisfactory per-
21 formance rating due to poor performance, each parent,
22 subsidiary, affiliate, or other controlling entity of such
23 owner, developer, or contractor shall also receive an unsat-
24 isfactory performance rating.

1 “(m) EFFECT OF CURE NOTICES ON CONTRACTORS
2 AND AFFILIATED ENTITIES.—

3 “(1) IN GENERAL.—The Deputy Under Sec-
4 retary of Defense for Installations and Environment
5 shall keep a record of all plans of action or cure no-
6 tices issued to a project owner, developer, or general
7 contractor under subsection (b)(4), including the
8 identity of each parent, subsidiary, affiliate, or other
9 controlling entity of such owner, developer, or con-
10 tractor.

11 “(2) CONSULTATION.—Each military depart-
12 ment shall consult the records maintained under
13 paragraph (1) when reviewing the past performance
14 of owners, developers, and contractors in the bidding
15 process for a contract or other agreement for a mili-
16 tary housing privatization initiative project.

17 “(n) ANNUAL REPORTS.—Each Secretary concerned
18 shall submit to the congressional defense committees an
19 annual report outlining lessons learned from the selection,
20 approval, and implementation of military housing privat-
21 ization initiative projects by the respective military depart-
22 ment.”.

- 1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of such subchapter is amended by adding
3 at the end the following new item:

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

