

114TH CONGRESS
2D SESSION

S. 2958

To establish a pilot program on partnership agreements to construct new facilities for the Department of Veterans Affairs.

IN THE SENATE OF THE UNITED STATES

MAY 19, 2016

Mrs. FISCHER introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To establish a pilot program on partnership agreements to construct new facilities for the Department of Veterans Affairs.

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. PILOT PROGRAM FOR PARTNERSHIP AGREE-**
4 **MENTS TO CONSTRUCT NEW FACILITIES FOR**
5 **THE DEPARTMENT OF VETERANS AFFAIRS.**

6 (a) PROGRAM AUTHORIZED.—

7 (1) IN GENERAL.—The Secretary of Veterans
8 Affairs may carry out a program under which the
9 Secretary may enter into not more than five partner-

ship agreements with entities described in paragraph
(2) to conduct one or more—

(A) super construction projects (as defined
in section 8103(e)(3) of title 38, United States
Code);

(B) major medical facility projects (as de-
fined in section 8104(a)(3) of title 38, United
States Code); or

(C) major construction projects to con-
struct new cemeteries or to develop additional
gravesites or columbarium niches at existing
cemeteries.

(2) ENTITIES DESCRIBED.—Entities described
in this paragraph are the following:

(A) A State or local authority.

(B) An organization that is described in
section 501(c)(3) of the Internal Revenue Code
of 1986 and is exempt from taxation under sec-
tion 501(a) of such Code.

(C) A limited liability corporation.

(D) A private entity.

(E) A donor or donor group.

(F) Any other non-Federal Government
entity.

1 (b) APPLICATION OF CERTAIN LAWS.—The authority
2 under this section may be carried out notwithstanding any
3 other provision of law (including section 8103(e) of title
4 38, United States Code), except for—

5 (1) Federal laws relating to environmental and
6 historic preservation; and

7 (2) subchapter IV of chapter 31 of title 40,
8 United States Code (commonly referred to as the
9 “Davis-Bacon Act”).

10 (c) SELECTION OF PROJECTS.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the projects that the Secretary may select
13 for the program are projects for which—

14 (A)(i) Congress has appropriated partial
15 funding for the project; or

16 (ii) The Department of Veterans Affairs
17 has identified a need for the project through its
18 long-range capital planning process by listing
19 the project on the Major Construction Strategic
20 Capital Investment Planning priority list in-
21 cluded in the budget submitted to Congress by
22 the President pursuant to section 1105(a) of
23 title 31, United States Code; and

24 (B) an entity described in subsection
25 (a)(2) has entered into or is willing to enter

1 into a formal agreement with the Secretary to
2 independently finance or donate amounts for
3 the project, in an amount acceptable and at no
4 additional cost to the Federal Government.

5 (2) SELECTED CONSTRUCTION PROJECT.—

6 (A) IN GENERAL.—One of the five partner-
7 ship agreements that the Secretary is author-
8 ized to enter into under subsection (a) is a
9 partnership agreement to conduct a project to
10 design, finance, and construct a new ambula-
11 tory care center in Omaha, Nebraska.

12 (B) SPACE AND PARKING.—The project
13 described in subparagraph (A) shall include
14 space and parking as determined necessary by
15 the Secretary.

16 (C) CONTRIBUTION OF FUNDS.—The Sec-
17 retary may contribute funds for the project de-
18 scribed in subparagraph (A) in an amount not
19 to exceed \$56,000,000, and in no event shall
20 the contribution or liability of the Secretary ex-
21 ceed such amount except to the extent that ad-
22 ditional funds are appropriated for the project.

23 (d) REQUIREMENTS OF ENTITIES.—

24 (1) AGREEMENTS.—Each partnership agree-
25 ment entered into under subsection (a) with an enti-

1 ty described in paragraph (2) of that subsection for
2 the conduct of a project under this section shall pro-
3 vide for the following:

4 (A) The entity shall conduct any necessary
5 environmental and historic preservation due
6 diligence, comply with local zoning requirements
7 (except for studies and consultations required of
8 the Department under Federal law), and obtain
9 any permits required before beginning construc-
10 tion in connection with the project.

11 (B) The entity shall use construction
12 standards required of the Department when de-
13 signing and building the project, except to the
14 extent the Secretary determines otherwise.

15 (C) The entity shall establish a Board of
16 Directors described in paragraph (2) to oversee
17 the conduct of the project (in this section re-
18 ferred to as the “Board”).

19 (2) BOARD OF DIRECTORS.—

20 (A) COMPOSITION.—

21 (i) IN GENERAL.—The Board shall be
22 comprised of not fewer than 5 and not
23 more than 10 members as follows:

1 (I) Not fewer than one member
2 shall be a veteran who is not an em-
3 ployee of the Department.

4 (II) Not fewer than one member
5 shall be an employee of the Depart-
6 ment and function as a nonvoting
7 member of the Board.

8 (ii) CHAIR.—The Board shall des-
9 ignate a Chair from among the members of
10 the Board to oversee the activities of the
11 Board.

12 (iii) CONFLICTS.—All current or pro-
13 posed members of the Board shall prompt-
14 ly disclose any actual or potential conflicts
15 to the Secretary and must agree as a con-
16 dition of their appointment to the Board to
17 remove themselves from membership on
18 the Board if the Chair and Secretary joint-
19 ly agree that doing so is appropriate due to
20 an actual or potential conflict.

21 (B) CHARTER.—Not later than 180 days
22 after inception, or such other timeframe as the
23 Secretary may approve, the Board shall estab-
24 lish a written charter to describe the roles, re-
25 sponsibilities, policies, and procedures of oper-

1 ation of the Board to ensure successful project
2 management, design, and construction, and
3 completion of the designated project.

4 (C) DUTIES.—

5 (i) IN GENERAL.—The Board shall be
6 responsible for overseeing the activities
7 needed to finance, design, and construct
8 the designated project for the Department.

9 (ii) UPDATES.—The Board shall sub-
10 mit to the Secretary written updates re-
11 garding the status of the designated
12 project at such time and in such manner
13 as the Secretary shall specify.

14 (D) DEFENSE TO DEPARTMENT.—The
15 Board shall defer to the Secretary on all mat-
16 ters that are inherent to the mission and oper-
17 ations of the Department, including conditional
18 or final acceptance of the designated project.

19 (E) DISSOLUTION.—The Board may not
20 dissolve until after the Secretary has provided
21 final acceptance of the completion of the des-
22 ignated project to the Board, plus such addi-
23 tional time or contingencies as the Board and
24 the Secretary may jointly approve.

25 (e) PROJECT FUNDS.—

1 (1) FROM DEPARTMENT.—

2 (A) IN GENERAL.—Except as provided in
3 subsection (c)(2), and except to the extent that
4 additional funds are appropriated for a project,
5 the Secretary may provide funds to help fi-
6 nance, design, and construct the project in an
7 amount not to exceed the total amount appro-
8 priated for the project at the time of the part-
9 nership agreement under subsection (a) between
10 the Department and the entity described in
11 subsection (a)(2) that is conducting the project.

12 (B) TERMS AND CONDITIONS.—The Sec-
13 retary shall provide funds pursuant to subpara-
14 graph (A) under such terms, conditions, and
15 schedule as the Secretary determines appro-
16 priate.

17 (2) FROM ENTITY.—The entity described in
18 subsection (a)(2) that is conducting the project shall
19 be required to contribute all funds in addition to the
20 funds provided under paragraph (1) that are needed
21 to complete the project.

22 (f) APPLICATION.—To be eligible to participate in the
23 program under this section, entities described in sub-
24 section (a)(2) shall submit to the Secretary an application
25 to address needs relating to facilities of the Department,

1 including health care needs, identified in the Construction
2 and Long-Range Capital Plan of the Department, at such
3 time, in such manner, and containing such information as
4 the Secretary may require, including the following:

5 (1) The name, resume, and description of the
6 experience of the project manager for each project
7 that the entity is proposing to pursue with the Sec-
8 retary under the program.

9 (2) A description of the proposed monetary and
10 non-monetary contributions of the entity for the
11 project, and how future funding will be secured.

12 (3) A description of the process the entity
13 would use to select a third-party contractor or devel-
14 oper, as applicable, to perform the work necessary to
15 complete the project.

16 (4) A description of the Board and project
17 management plan that the entity will use, to ensure
18 concise and consistent communication between all
19 parties involved in the project.

20 (5) A description of the procedures that the en-
21 tity will use to review, monitor, and process change
22 orders when received, including how input and feed-
23 back by the Department will be incorporated, par-
24 ticularly for issues that would affect the time or cost
25 of the project.

1 (6) A detailed estimate of the costs to complete
2 the project.

3 (7) A description of the estimated timeline for
4 completion of the project and milestones associated
5 with the activities needed to finance, design, and
6 construct the project.

7 (8) An agreement to obtain an independent an-
8 nual financial audit of all activities and costs relat-
9 ing to the project in accordance with generally ac-
10 cepted accounting principles.

11 (9) Such other information as the Secretary
12 may require.

13 (g) ANNUAL REPORT ON PROJECTS.—

14 (1) IN GENERAL.—The Secretary shall include
15 in the budget submitted to Congress by the Presi-
16 dent pursuant to section 1105(a) of title 31, United
17 States Code, information regarding any projects con-
18 ducted under this section during the year preceding
19 the submittal of the budget.

20 (2) ELEMENTS.—Each report submitted under
21 paragraph (1) shall provide a detailed status of
22 projects conducted under this section, including the
23 percentage completion of the project.

24 (h) COMPTROLLER GENERAL REPORT.—The Comp-
25 troller General of the United States shall submit to Con-

1 gress a biennial report on the partnership agreements en-
2 tered into under the program under this section.

3 (i) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion shall be construed as a limitation on the authority
5 of the Secretary to enter into other agreements that are
6 authorized by law and not inconsistent with this section.

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