

115TH CONGRESS
2D SESSION

H. R. 7352

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2018

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

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) The deferred maintenance backlog for De-
7 partment of Veterans Affairs facilities (including
8 hospitals, clinics, housing, and offices) is not sus-
9 tainable.

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

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

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

18 (a) IN GENERAL.—The Administrator of General
19 Services, in coordination with the Secretary of Veterans
20 Affairs, shall carry out a pilot program using authorities
21 of the Administrator pursuant to title 40, United States
22 Code, under which the Administrator may enter into
23 agreements with appropriate non-Government entities
24 pursuant to which—

25 (1) the non-Government entity will acquire
26 through ground-lease, finance, and execute improve-

ments or renovations to a Department of Veterans Affairs facility identified under subsection (b) or construct a new facility to address a shortage of capacity identified under such subsection;

(2) the Administrator will leaseback the facility from the non-Government entity for use by the Department; and

(3) the facility shall be operated and maintained by the non-Government entity subject to a performance-based management and operations agreement entered into between the entity and the Administrator.

(b) IDENTIFICATION OF FACILITIES.—

(1) COMPREHENSIVE EVALUATION OF DEPARTMENT OF VETERANS AFFAIRS PROPERTY.—

(A) REVIEW OF THE DEPARTMENT.—For purposes of carrying out the pilot program, not later than 180 days from enactment of this Act, the Secretary shall provide to the Administrator of General Services a report identifying potential sites based on a comprehensive evaluation of Department of Veterans Affairs real property to determine conditions, continued connectivity, and relevance to the broader mission of the Department. The Secretary shall take into consid-

1 eration such sites where the condition of facili-
2 ties is negatively impacting the ability of the
3 Department of Veterans Affairs to fulfill its
4 mission.

5 (B) EVALUATION BY THE ADMINIS-
6 TRATOR.—The Administrator of General Serv-
7 ices shall review the recommendations provided
8 by the Department pursuant to subparagraph
9 (A) and identify viable recapitalization opportu-
10 nities, consistent with other provisions of law.

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

14 (i) are used to evaluate Federal as-
15 sets;

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

19 (iii) maximize the use of the capital of
20 the Department (consistent with the Fed-
21 eral Assets Sale and Transfer Act of 2016
22 (40 U.S.C. 1303 note)).

23 (2) GSA DETERMINATION.—Not later than one
24 year after the date of the enactment of this Act,
25 based on the results of the evaluation under para-

1 graph (1), the Administrator of General Services
2 shall identify—

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

7 (B) shortages of Department capacity that
8 could be addressed through the construction of
9 a new facility under such an agreement.

10 (c) NUMBER OF PROJECTS.—The Administrator
11 shall enter into agreements with respect to no less than
12 five and no more than ten facilities under the pilot pro-
13 gram, including—

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

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

20 (d) REPORTS.—

21 (1) PROJECT REPORTS.—The Administrator
22 shall submit to Congress a report on each facility
23 that is improved, renovated, or constructed under an
24 agreement under the pilot program.

1 (2) FINAL REPORT.—Not later than 5 years
2 following the determination under subsection (b)(2),
3 the Administrator, in consultation with the Sec-
4 retary, shall submit to Congress a final report on
5 the effectiveness of the pilot program in providing
6 for the improvement of the assets of the Department
7 of Veterans Affairs.

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

11 (f) EXPERTS AND CONSULTANTS.—

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

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

22 (g) SUBMISSION OF PROSPECTUSES.—Not later than
23 1 year after the date of enactment of this Act, the Admin-
24 istrator shall submit to the Committee on Transportation
25 and Infrastructure of the House of Representatives and

1 the Committee on Environment and Public Works of the
2 Senate prospectuses, in accordance with section 3307 for
3 each project identified under this Act.

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

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

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

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

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

22 (D) stipulates the terms and conditions for
23 reductions of any and all availability payments
24 to the non-Government entity for any given pe-
25 riod the asset is unavailable to the Government

1 or otherwise not delivered, operated, or main-
2 tained in accordance with the requirements in-
3 cluded in the agreement.

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

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

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

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