



HOUSE COMMITTEE ON  
**VETERANS' AFFAIRS**  
*Chairman Phil Roe, M.D.*

**Summary of the Department of Veterans Affairs (VA) Asset and Infrastructure Review (AIR) Act of 2017**

**TITLE I – ASSET AND INFRASTRUCTURE REVIEW**

**Section 101 would:**

Establish a short title of “the Department of Veterans Affairs (VA) Asset and Infrastructure Review (AIR) Act of 2017.”

**Section 102 would:**

Establish a nine member Asset and Infrastructure Review (AIR) Commission.

Require the President, with the advice and consent of the Senate, to appoint AIR Commissioners and to transmit nominations to the Senate by May 31, 2021.

Require the President to consult with the Speaker and minority leader of the House of Representatives and the majority and minority leader of the Senate in selecting individuals for Commission nomination and congressionally chartered, membership-based veterans service organizations (VSOs) specifically concerning the appointment of three members.

Require the President to nominate one person to serve as the Chair of the Commission and one person to serve as the Vice Chair of the Commission.

Require the President, in nominating individuals for appointment to the Commission, to ensure: that veterans (reflecting current demographics of veterans enrolled in the VA health care system) are adequately represented in the membership of the Commission; that at least one member of the Commission has experience with a private integrated health care system that has annual gross revenue of more than \$50 million; that at least one member has experience as a senior manager for a Federally-qualified health center, the Department of Defense, or the Indian Health Service; that at least one member has experience with capital asset management for the Federal government and is familiar with trades related to building and real property (including construction, engineering, architecture, leasing, and strategic partnerships); and, that at least three members represent congressionally-chartered, membership-based VSOs.

Require the Commission to meet only during calendar years 2022 and 2023.

Require each meeting of the Commission to be open and all proceedings, information, and deliberations of the Commission to be available for review.

Require a vacancy in the Commission to be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy to serve only for the unexpired portion of the term for which the individual's predecessor was appointed. Require Commissioners to serve without pay and each member of the Commission who is an officer/employee of the United States to only receive compensation for their services as an officer/employee of the U.S.

Allow Commissioners to receive travel expenses, including per diem.

Require the Commission to appoint a staff Director who has not served as a VA employee during the one-year period preceding the date of appointment and who is not otherwise barred or prohibited from serving as Director under Federal ethics law and regulations by reason of post-employment conflict of interest and require the Director to be paid at the rate of basic pay payable for level IV of the Executive Schedule.

Require the Director, with the approval of the Commission, to appoint and fix the pay of additional personnel and to make such appointments without regard to the provisions of title 5 U.S.C. governing appointments in the competitive service and any personnel so appointed to be paid without regard to provisions relating to the classification and General Schedule pay rates except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-15.

Allow not more than two-thirds of the personnel employed by or detailed to the Commission to be on detail from VA and not more half of the professional analysts to be detailed from VA.

Prohibit a person from being detailed to the Commission from VA if, within 6 months before the detail is set to begin, the person participated personally or substantially in any matter concerning the preparation of recommendations regarding Veterans Health Administration (VHA) facilities.

Allow any Federal department or agency to detail personnel to the Commission upon request.

Allow the Commission to secure necessary information from Federal agencies and Federal agencies to furnish such information upon request.

Allow the Commission to procure, by contract to the extent funds are available, the temporary or intermittent services or experts of consultants.

Allow the Commission, to the extent funds are available, to lease real property and acquire personal property either of its own accord or in consultation with the General Services Administration (GSA).

Terminate the Commission on December 31, 2023.

Prohibit the restriction of lawful communication from a VA employee to the Commission.

**Section 103 would:**

Require VA - not later than February 1, 2021, and after consulting with VSOs – to publish in the Federal Register and transmit to the Committees on Veterans' Affairs of the House of Representatives and the Senate (HVAC/SVAC) the criteria proposed by VA to be used in assessment and making recommendations regarding the modernization or realignment of VHA facilities and require such criteria to include the veterans preference regarding access to VA health care.

Require a 90-day public comment period for VA's proposed criteria.

Require VA - not later than May 31, 2021 - to publish in the Federal Register and transmit to HVAC/SVAC, the final criteria to be used in making recommendations regarding the modernization or realignment of VHA facilities.

Require VA - not later than January 31, 2022, and after consulting with VSOs – to publish in the Federal Register and transmit to HVAC/SVAC a report detailing recommendations regarding the modernization or realignment of VHA facilities.

Require VA to consider the following factors in making recommendations regarding the modernization or realignment of VHA facilities: the degree to which health care delivery or other site for providing services to veterans reflect VA's metrics regarding market area health system planning; the provision of effective and efficient access to high-quality health care and services to veterans; the extent to which real property that no longer meets the needs of the Federal Government could be reconfigured, repurposed, consolidated, realigned, exchanged, outleased, repurposed, replaced, sold, or disposed; VHA's need to acquire infrastructure or facilities that will be used for the provision of health care and service to veterans; the extent to which operation and maintenance costs are reduced through consolidating, collocating, and reconfiguring space and through realizing other operational efficiencies; the extent and timing of potential costs and savings, including the number of years such costs and savings will be incurred, beginning with the date of completion of the proposed recommendation; the extent to which the real property aligns with VA's mission; the extent to which any action would impact other VA missions including education, research, or emergency preparedness; local stakeholder inputs and any factors identified through public field hearings; capacity and commercial Markey assessments; and, any other factors VA determines appropriate.

Require VA to assess the capacity of each Veterans Integrated Service Network (VISN) and VA medical facility to furnish hospital care or medical services to veterans and require each assessment to:

- Identify existing deficiencies in the furnishing of care and services to veterans and how such deficiencies may be filled by entering into contracts or agreements with community health care providers or other entities under other provisions of law and changing the way care and services are furnished at such VISNs or VA medical facilities (including through extending hours of operation, adding personnel, and expanding treatment space through construction, leasing, or sharing of health care facilities);
- Forecast both the short-term and long-term demand in furnishing care and services at such VISN or VA medical facility;
- Consider how demand affects the need to enter into contracts or agreements;
- Consider the commercial health care market of designated catchment areas conducted by a non-governmental entity; and,
- Consider the unique ability of the Federal government to retain a presence in a rural area otherwise devoid of commercial health care providers or from which such providers are at risk of leaving.

In carrying out the assessments, require the Secretary to consult with VSOs and veterans served by each VISN and medical facility affected by the assessment.

Require VA to submit the local capacity and commercial market assessments to HVAC/SVAC with the recommendations regarding the modernization or realignment of VHA facilities and to make the assessments publically available.

Require VA to include with the recommendations regarding the modernization or realignment of VHA facilities a summary of the selection process that resulted in the recommendation for each VHA facility and a justification for each recommendation and to transmit the summaries and justifications not later than 7 days after the date of transmittal to HVAC/SVAC.

Require VA to consider all facilities equally without regard to whether the facility has been previously considered or proposed for reuse, modernization, or realignment.

Require VA to make all information used by VA to prepare a recommendation available to the Commission and the Comptroller General.

Require each VA Under Secretary, VISN director, VA medical center director, VA program office director, and each person who is in a position of duties which includes personal and substantial involvement in the preparation and submission of information and recommendations concerning the modernization or realignment of VHA facilities to certify that information submitted to VA or to the Commission concerning the modernization or realignment of VHA facilities is accurate and complete to the best of that person's knowledge and belief.

Require the Commission to conduct public hearings on the Secretary's recommendations regarding the modernization or realignment of VHA facilities, to include required public hearings in regions affected by a VA recommendation for the closure of a facility and, to the greatest extent practicable, public hearings in regions affected by a recommendation for another (non-closure) action by VA.

Require each Commission public hearing to include, at a minimum, a local veteran who is enrolled in the VA healthcare system and identified by a local VSO and a local elected official.

Require the Commission – not later than January 31, 2023 – to transmit to the President a report and analysis of the recommendations made by VA together with the Commission's recommendations for the modernization or realignment of VHA facilities.

Authorize the Commission to change a recommendation made by VA for the modernization or realignment of a VHA facility only if the Commission: determines that VA deviated substantially from VA's final criteria in making such recommendation; determines that the change is consistent with the final criteria; publishes a notice of the proposed change in the Federal Register not less than 45 days before transmitting the Commission's recommendations to the President; and, conducts public hearings on the proposed change.

Require the Commission to explain and justify any recommendation made by the Commission that is different from the recommendations made by VA in the Commission's report that is transmitted to the President and to transmit the copy of such report to HVAC/SVAC on the same day that it is transmitted to the President.

Requires the Commission – after January 31, 2023 – to promptly provide information used by the Commission in making its recommendations to any Member of Congress upon request.

Require the President – not later than February 15, 2023 – to transmit to the Commission and to Congress a report containing the President's approval or disapproval of the Commission's recommendations.

- If the President approves of the Commission's recommendations, require the President to transmit a copy of the Commission's recommendations together with a certification of approval.
- If the President disapproves of the Commission's recommendations in whole or in part, require the President to transmit to the Commission and the Congress the reasons for that disapproval and require the Commission – not later than March 15, 2023 – to transmit a revised list of recommendations to the President.
- If the President approves of the Commission's revised recommendations, require the President to transmit a copy of the revised recommendations to Congress together with a certification of such approval.

- Require the process for modernization or realignment of VHA facilities to be terminated if the President does not transmit a certification of approval to Congress by March 30, 2023.

#### **Section 104 would:**

Require VA to initiate or begin the planning of all actions recommended by the Commission in the report transmitted to Congress by the President by no later than three years after the date in which the President transmits such report.

Prohibit VA from carrying out any action recommended by the Commission in the report transmitted to Congress by the President if a joint resolution is enacted in accordance with section 107 before the earlier of the end of the 45-day period beginning on the date in which the President transmits such report or the adjournment of Congress sine die for the session during which the report is transmitted.

- Require the days in which either House of Congress is not in session because of an adjournment of more than three days to be excluded from the 45-day period.

#### **Section 105 would:**

Authorize VA to:

- Take such action as may be necessary to modernize or realign any VHA facility (including the acquisition of such land, construction of replacement facilities, the performance of such activities, and the conduct of such advance planning and designed as may be required to transfer functions from a VHA facility to another facility) and may use funds in the account or funds appropriated to VA for such purposes;
- Carry out such activities for the purposes of environmental restoration and mitigation at any VHA facilities and use funds in the Account for such purposes;
- Provide outplacement assistance to VA employees at VHA facilities being closed or realigned and use funds in the Account or otherwise appropriated to VA for such purposes;
- Reimburse other Federal agencies for actions performed at VA's request with respect to such closure or realignment and use for such purposes funds in the Account or otherwise appropriated to VA and available; and,
- Exercise the authority of the Secretary under chapter 81 of title 38 U.S.C.

Require VA to carry out environmental abatement, mitigation, and restoration and compliance with historical preservation requirements with regard to any property made excess to VA's needs as a result of modernization or realignment.

Require VA to consult with the Governor of a State and the heads of local governments concerned for purposes of considering any plan for the use of such property by the local community concerned before any action is taken with respect to disposal or any surplus real property or infrastructure.

Require VA to consult with the Governor of a State and the heads of local government for the purpose of considering the continued availability of a road for public access through, into, or around a VHA facility that is to be modernized or realigned.

Authorize VA to transfer the title to a VHA facility approved for closure or realignment, which will be retained by VA or another Federal agency, to a redevelopment authority who agrees to lease, directly upon transfer and without requiring rental payments, one or more portions of the transferred property to VA or the head of another Federal department or agency for a term not to exceed 50 years (but which may provide options for renewal or extension).

- Require such a lease to include a provision specifying that, if the concerned entity ceases requiring the use of the leased property before the expiration of the lease, the remainder of the lease term may be satisfied by the same or a different Federal department or agency for a similar use in consultation with the redevelopment authority.
- Authorize a Federal department or agency lessee to obtain facility services for the leased property and common area maintenance (to include municipal services and firefighting or security guard functions) from the redevelopment authority or assignee at a rate no higher than the rate charged to a non-Federal tenant and to exclude those services that the State or local government is required by law to provide without direct charge.
- Require CERCLA to apply to any real property transfer and authorize any additional terms and conditions, as VA considers appropriate.
- Specify the application of the McKinney-Vento Homeless Assistance Act.

Specify that the National Environmental Policy Act of 1969 does not apply to the actions of the President, the Commission, or VA in carrying out this title with the exception of actions taken by VA during the process of property disposal and during the relocation process (however, even during those actions, VA will not need to consider the need for such action as recommended by the Commission).

Authorize VA to close or realign VHA facilities under this title without regard to any provision of law restricting the use of funds for such actions included in any appropriations or authorization Act.

Authorize VA to enter into an agreement to transfer by deed a VHA facility with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required under Federal and State laws, administrative decisions, agreements, and concurrences and to require additional terms and agreements as appropriate.

- Authorize such transfer agreement only if VA certifies to Congress that all costs otherwise paid by VA with respect to that facility are equal to or greater than the fair market value of the property of facility to be transferred or, if such costs are

lower, the recipient of such transfer agrees to pay the difference and authorize VA to pay the recipient an amount equal to the lesser of the two such amounts.

- Require VA to disclose information regarding environmental restoration, waste management, and environmental compliance activities before entering into a deed transfer.
- Specify the applicability of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 or the Solid Waste Disposal Act.

**Section 106 would:**

Establish a VA AIR Account to be administered by VA.

Credit the following to the VA Air Account: funds authorized and appropriated to the Account; funds transferred to the Account for any purpose except that funds may only be transferred after the latter of the dates in which VA transmits written notice of and justification for such transfer to HVAC/SVAC and receives approval of such transfer from the House and Senate Committees on Appropriations; and, proceeds received from the lease, transfer, or disposal of any VHA property.

Authorize VA to use the Account to carry out the AIR Act; to cover property management and disposal costs incurred at VHA facilities; to cover costs associated with the supervision, inspection, overhead, engineering, and design of construction projects undertaken under the AIR Act and subsequent claims related to such activities; and, other purposes the VA determines support the mission and operations of VA.

Require VA to establish and include in the budget submission a consolidated budget justification display in support of the Account for each fiscal year that details the amount and nature of credits to and expenditures from the Account during the preceding fiscal year, separately details the environmental remediation costs associated with the VHA facility for which a budget request is made, specifies the transfers into the Account and the purposes for which those transferred funds will be further obligated (to include caretaker and environmental remediation costs), and details any intra-budget activity transfers with the Account that exceeded \$1 million.

Require the Account to be closed at the time and in the manner provided under section 1555 of title 31 U.S.C. and unobligated funds to be held by the Treasury until transferred to VA.

Require VA to transmit to HVAC/SVAC and the HAC/SAC a report containing an accounting of all the funds credited to and expended from the Account or otherwise expended and any funds remaining in the Account.

**Section 107 would:**

Define the term “joint resolution” to mean only a joint resolution introduced within a 10-day period beginning on the date on which the President transmits the report to



Congress specified by section 103 and: which does not have a preamble; which, after the preamble, states “that Congress disapproves the recommendations of the VHA Asset and Infrastructure Review Commission as submitted by the President on [appropriate date]”; which includes the title of “Joint resolution disapproving the recommendations of the VHA Asset and Infrastructure Review Commission.”.

- Require the joint resolution to be referred to HVAC/SVAC
- Require that, if HVAC/SVAC has not discharged the joint resolution by the end of the 20-day period beginning on the date in which the President transmits the report to Congress specified by section 103, then the joint resolution will be considered to be discharged from further consideration and placed on the calendar of the appropriate house.

Specify that it is in order for any Member to move to proceed to the consideration of the joint resolution on or after the third day in which HVAC/SVAC has reported the resolution or the resolution has been discharged from further consideration.

- Authorize a Member to make such a motion only on the day after the calendar day in which the Member announces the Member’s intention to make such a motion except that, in the House, such motion may be made without prior announcement if the motion is made by the direction of HVAC.
- Waive all points of order against such a motion.
- Specify that such a motion is highly privileged in the House and is privileged in the Senate and not debatable in the Senate.
- Specify that such a motion is not subject to amendment, a motion to postpone, or a motion to proceed to other business.
- Specify that a motion to reconsider the vote by which such a motion is agreed to or disagreed to is not in order.
- Specify that, if a motion to proceed to the consideration of such joint resolution is agreed to, that the respective House shall immediately proceed to its consideration without intervening motion, order, or other business and the resolution will remain unfinished business until it is disposed of.

Limit debate on the joint resolution and on all debatable motions and appeals in connection with it to be limited to not more than two hours divided equally among those favoring and opposing.

- Specify that an amendment to the resolution is not in order.
- Specify that a motion to further limit debate is in order and not debatable.
- Specify that a motion to postpone or proceed or recommit is not in order.
- Specify that a motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

Require the vote on the final passage of the joint resolution to occur immediately follow the conclusion of the debate of the resolution and a single quorum call at the conclusion of debate if requested in accordance with the rules of the appropriate House.

Require appeals from the decisions of the Chair relating to the application of the rules of the Senate or House to be decided without debate.

Require, if one house receives the joint resolution from the other house, that the resolution of the other house not be referred to HVAC/SVAC and not be considered except in the case of final passage and the procedure for consideration be the same as if no joint resolution been received from the other house except that the vote on final be passage be on the resolution from the other house.

Stipulate that this section is enacted by Congress: (1) as an exercise in the rulemaking power of the Senate and House, respectively, and, as such, is deemed part of the rules of each house but applicable only to the consideration of the joint resolution authorized by this Act and supersedes other rules to the extent that it is inconsistent with such rules; (2) with full recognition of the constitutional rights of either house to change the rules at any time and in the same manner and extent as in the case of any other rule.

**Section 108 would:**

Require VA to publish any information transmitted or received by VA, the Commission, or the President regarding the AIR Act to be published online within 24 hours.

Prohibit VA from pausing major or minor construction activities as a result of the AIR Act.

Authorize VA – after consulting with VSOs – to include a recommendation for a future AIR Commission or other capital asset realignment and management process in a budget submission.

**Section 109 would:**

Define “Account” as the VA AIR Account established by section 106.

Define “Commission” as the AIR Commission established by section 102.

Define “date of approval” with respect to a modernization or realignment of a VHA facility as the date on which the authority of Congress to disapprove a recommendation of under this title expires.

Defines “VHA facility” as: (1) any land, building, structure, or infrastructure (including any medical center, nursing home, domiciliary facility, outpatient clinic, center that provides readjustment counseling, or leased facility) that is under VA’s jurisdiction, under VHA’s control, and not under GSA’s control; and, (2) with respect to a collocated VA facility, includes any land, building, or structure that is under VA’s jurisdiction, under control of another VA administration, and not under GSA’s control.

Define the term “infrastructure” as improvements to land other than buildings or structures.

Define the term “modernization” as any action required to align the form and function of a VHA facility to the provision of modern day health care (including utilities and environmental control systems), the closure, construction purchase, lease, or sharing of a VHA facility, and realignments, disposals, exchanges, collaborations, between VA and other Federal entities and strategic collaborations between VA and non-Federal entities.

Define the term “realignment” with respect to a VHA facility to include any action that changes the number of or relocates services, functions, and personnel positions; disposals or exchanges between VA and other Federal entities including DOD; and, strategic collaborations between VA and non-Federal entities.

Define the term “Secretary” to mean the Secretary of Veterans Affairs.

Define the term “redevelopment authority” to mean, in the case of a VHA facility closed or modernized under this title, any entity (including an entity established by a State or local government) recognized by VA as the entity responsible for developing the redevelopment plan with respect to the facility or for directing the implementation of such a plan.

Define the term “redevelopment plan” in the case of a VHA facility to be closed or realigned to mean a plan that is agreed to by the local redevelopment authority with respect to the facility and provides for the reuse or redevelopment of the real property and personal property of the facility that is available for such reuse and redevelopment as a result of the closure or realignment of a facility.

## **TITLE II – IMPROVEMENTS TO CONSTRUCTION MANAGEMENT AND LEASES**

### **Section 201 would:**

Define a VA major medical facility project as a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of \$20 million (was previously \$10 million) or the construction, alteration, or acquisition of a shared medical facility in which VA’s estimated costs exceed \$20 million and excluding acquisitions by exchange, non-recurring maintenance, and shared facilities in which VA’s estimated costs do not exceed \$20 million.

Amend the definition of a VA major medical facility lease as a lease for space for use as a new medical facility at an average annual rent that is equal to or exceeds the amount specified in subsection (a)(2) of section 3307 of title 40 U.S.C. or a lease for use as a shared medical facility in which VA’s estimated costs are equal to or would exceed such amount.

Specify that the amendments in this section apply with respect to major medical facility projects or leases authorized by law on or after the date of enactment of this Act.

### **Section 202 would:**

Require VA to include, in the Department's annual budget submission, prospectuses of both proposed major construction projects and construction projects in which VA's estimated costs are between \$10 million and \$20 million.

**Section 203 would:**

Require VA to implement a training and certification program for construction and facilities management personnel. This language amends and strengthens the existing requirement of 38 U.S. Code § 8123(g). The Language expands the existing statute to apply to all VA employees who are members of occupational series relating to construction or facilities management or VA employees who award or administer contracts for major construction, minor construction, or non-recurring maintenance (including contract specialists or contracting officers' representatives) and adds that such training must be taken to complete a formal certification program. The Secretary shall model the training and certification program, to the extent appropriate, on the existing Defense Acquisition Workforce Improvement Act program. The certification may consist of one or multiple levels. The training may be provided in person, over the internet, by another Federal agency, or a combination of the foregoing. The training and certification program must be created within one year of enactment, a majority of covered employees must be certified within two years of enactment, and then all covered employees are to be certified as quickly as possible thereafter.

Define the terms "covered certification program" and "covered training curriculum" as described above.

**Section 204 would:**

Facilitate VA's ability to share medical facilities with other federal agencies by: (1) authorizing VA to enter into agreements with other federal agencies for planning, designing, constructing, and/or leasing shared medical facilities with the goal of improving access to and the quality and cost-effectiveness of the healthcare provided by VA and other federal agencies to their beneficiaries; (2) authorizing VA to transfer minor or major construction funds to another federal agency for use in the planning, design, or construction of a shared medical facility; (3) authorizing funds transferred from other federal agencies to VA for use in the planning, design, or construction of a shared medical facility to be deposited in the minor or major construction accounts; and, (4) defining the terms partner agency, shared medical facility, shared medical facility construction project, shared medical facility lease project, and amending the definition of medical facility.

**Section 205 would:**

Amend VA's authority to enter into enhanced use leases (EULs) by authorizing VA to enter into EULs on or after the date of enactment if VA determines that such lease is not

inconsistent with and will not adversely affect VA's mission and will either enhance the use of the property or provide supportive housing.

### **TITLE III – OTHER MATTERS**

#### **Section 301 would:**

Repeal the recruitment, retention, and relocation bonus offset from CARA.

#### **Section 302 would:**

Appropriate \$2.1 billion to the Choice Fund.

Authorize and appropriate \$500 million for minor construction and non-recurring maintenance projects.