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(Original Signature of Member)

117TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To establish a public buildings public-private partnership pilot program, and  
for other purposes.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

Mr. PENCE introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To establish a public buildings public-private partnership  
pilot program, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Performance-Based  
5 Public Buildings Act of 2021”.

1 **SEC. 2. PUBLIC BUILDINGS PUBLIC-PRIVATE PARTNERSHIP**  
2 **PILOT PROGRAM.**

3 (a) IN GENERAL.—Chapter 33 of title 40, United  
4 States Code is amended by adding at the end the fol-  
5 lowing:

6 **“§ 3319. Public buildings public-private partnership**  
7 **pilot program**

8 “(a) ESTABLISHMENT.—The Administrator shall  
9 carry out a pilot program to enter into public-private part-  
10 nerships to acquire public buildings pursuant to the re-  
11 quirements of this section.

12 “(b) IDENTIFICATION OF PROJECTS.—Not later than  
13 1 year after the date of enactment of this section, the Ad-  
14 ministrator shall identify not less than 5 and not more  
15 than 10 projects for acquiring space for the purposes of  
16 public buildings using public-private partnerships.

17 “(c) SUBMISSION OF PLAN AND PROSPECTUSES.—  
18 Not later than 2 years after the date of enactment of this  
19 section, the Administrator shall submit to the Committee  
20 on Transportation and Infrastructure of the House of  
21 Representatives and the Committee on Environment and  
22 Public Works of the Senate—

23 “(1) prospectuses, in accordance with section  
24 3307 of title 40, United States Code, for each  
25 project identified under subsection (b); and

1           “(2) an execution and management plan detail-  
2           ing how each project will be managed, project team  
3           timelines for each project, and, notwithstanding sub-  
4           section (d), recommendations on commencement  
5           dates based on ensuring proper staffing, resources,  
6           and management.

7           “(d) COMMENCEMENT.—Subject to the availability of  
8           appropriations, a project submitted under subsection (c)  
9           that is authorized pursuant to section 3307 shall com-  
10          mence not later than 1 year after the date on which such  
11          authorization occurs, unless otherwise indicated in the re-  
12          spective committee resolution authorizing the project.

13          “(e) EXPERTS AND CONSULTANTS.—

14                 “(1) GSA PERSONNEL.—In carrying out the  
15                 pilot program the Administrator shall identify and  
16                 use General Services Administration personnel with  
17                 knowledge and experience in complex real estate  
18                 transactions.

19                 “(2) CONTRACTED SERVICES.—The Adminis-  
20                 trator shall, to the extent practicable and subject to  
21                 appropriations Acts, use contracts, including non-  
22                 appropriated contracts, for services necessary to  
23                 carry out this section.

24          “(f) COMPLIANCE WITH BUDGETARY RULES.—For  
25          budgetary scorekeeping purposes, a project carried out

1 under this section shall be treated in a manner consistent  
2 with the requirements for scoring a leaseback from a pub-  
3 lic-private partnership under Appendix B of Circular A-  
4 11 of the Office of Management and Budget, as of the  
5 date of enactment of this section.

6 “(g) GAO STUDY.—Not later than 1 year after the  
7 occupancy of projects authorized under this section, the  
8 Comptroller General of the United States shall conduct  
9 a review of such projects and submit to the Committee  
10 on Transportation and Infrastructure of the House of  
11 Representatives and the Committee on Environment and  
12 Public Works of the Senate a report that includes—

13 “(1) a review and evaluation of the public-pri-  
14 vate partnerships executed under this section and a  
15 comparison of such agreements to similar projects  
16 completed as Government construction, including a  
17 comparison of timetables and costs; and

18 “(2) any recommendations on the use of public-  
19 private partnerships as options for meeting Federal  
20 Government space needs.

21 “(h) DEFINITIONS.—In this section, the following  
22 definitions apply:

23 “(1) ADMINISTRATOR.—The term ‘Adminis-  
24 trator’ means the Administrator of General Services.

1           “(2) PUBLIC BUILDING.—The term ‘public  
2 building’ has the meaning given the term in section  
3 3301.

4           “(3) PERFORMANCE-BASED MANAGEMENT AND  
5 OPERATIONS AGREEMENT.—The term ‘performance-  
6 based management and operations agreement’  
7 means an agreement that—

8                   “(A) reflects an obligation by the non-Fed-  
9 eral entity to design, build, finance, deliver, op-  
10 erate and maintain an asset;

11                   “(B) requires the non-Federal entity to  
12 provide the General Services Administration a  
13 single point of responsibility and obligation;

14                   “(C) stipulates all requirements of the  
15 General Services Administration and contains  
16 the terms and conditions for annual perform-  
17 ance-based availability payments in accordance  
18 with the non-Federal entity meeting or exceed-  
19 ing those requirements;

20                   “(D) stipulates the terms and conditions  
21 for reductions of any or all availability pay-  
22 ments to the non-Federal entity for any given  
23 period the asset is unavailable to the Govern-  
24 ment or otherwise not delivered, operated, or

1 maintained in accordance with the requirements  
2 included in the agreement; and

3 “(E) stipulates the terms and conditions  
4 for termination and includes no obligation on  
5 the part of the Government to renew any suc-  
6 cessive leases that may be included in such  
7 project.

8 “(4) PUBLIC-PRIVATE PARTNERSHIP.—The  
9 term ‘public-private partnership’ means a real prop-  
10 erty agreement for the purposes of providing office  
11 space for the Federal Government that meets the  
12 following criteria:

13 “(A) The agreement includes a ground-  
14 lease to a non-Federal party with a subsequent  
15 lease back of the improvements.

16 “(B) The entity that is the lessor of the  
17 leaseback of improvements is entirely non-Fed-  
18 eral.

19 “(C) The leaseback meets the criteria for  
20 an operating lease under Appendix B of Cir-  
21 cular A–11 of the Office of Management and  
22 Budget, as of the date of enactment of this sec-  
23 tion.

24 “(D) The project shall, to the extent prac-  
25 ticable, be operated and maintained by the non-

1 Federal entity subject to a performance-based  
2 management and operations agreement entered  
3 into between the entity and the Adminis-  
4 trator.”.

5 (b) TECHNICAL AND CONFORMING AMENDMENT.—

6 The table of sections at the beginning of chapter 33 of  
7 title 40, United States Code, is amended by adding at the  
8 end the following:

“3319. Public buildings public-private partnership pilot program.”.