

TO AUTHORIZE THE PRINCIPAL OFFICE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS TO BE AT ANY LOCATION IN THE WASHINGTON, D.C. METROPOLITAN AREA

JUNE 25, 2004.—Ordered to be printed.

Mr. SMITH of New Jersey, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany H.R. 3936]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 3936) to amend title 38, United States Code, to authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, D.C., metropolitan area, rather than only in the District of Columbia, and expressing the sense of Congress that a dedicated Veterans Courthouse and Justice Center should be provided for that Court and those it serves and should be located, if feasible, at a site owned by the United States that is part of or proximate to the Pentagon Reservation, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

INTRODUCTION

On March 11, 2004, the Chairman and Ranking Member of the Veterans' Affairs Committee, Honorable Christopher H. Smith and Honorable Lane Evans, along with Honorable Ike Skelton, introduced H.R. 3936, which would authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, D.C., metropolitan area, rather than only in the District of Columbia, and express the sense of Congress that a dedicated Veterans Courthouse and Justice Center should be provided for that Court and those it serves and should be located,

if feasible, at a site owned by the United States that is part of or proximate to the Pentagon Reservation.

On April 29, 2004, the Subcommittee on Benefits held a hearing on 10 bills, including H.R. 3936.

On May 13, 2004, the Subcommittee on Benefits met and ordered H.R. 3936 reported favorably to the full Committee by unanimous voice vote.

On May 19, 2004, the full Committee met and ordered H.R. 3936 reported favorably to the House by unanimous voice vote.

SUMMARY OF THE REPORTED BILL

H.R. 3936 would:

1. Authorize the principal office of the U.S. Court of Appeals for Veterans Claims to be located at any location in the Washington, D.C., metropolitan area, rather than only in the District of Columbia.
2. Make findings and express the sense of Congress that all other Article I courts of the United States are located in a dedicated courthouse; that the U.S. Court of Appeals for Veterans Claims, since its creation in 1988, has been located in a commercial office building; and that a dedicated Veterans Courthouse and Justice Center should be provided for the Court and the veterans it serves, and should be located, if feasible, at a site owned by the United States that is part of or proximate to the Pentagon Reservation.
3. Requires not later than 90 days after the date of enactment of this bill that the Secretary of Defense, the Secretary of Veterans Affairs, and the Administrator of General Services submit to the House and Senate Committees on Veterans' Affairs and Armed Services a joint report on the feasibility of locating a new Veterans Courthouse and Justice Center at an appropriate Pentagon Reservation site.

BACKGROUND AND DISCUSSION

H.R. 3936 would authorize the U.S. Court of Appeals for Veterans Claims, now located in commercial office space in the District of Columbia, to seek a new location in the greater national capital region. This measure would also express the sense of Congress that a dedicated Veterans Courthouse and Justice Center should be provided for the Court and the veterans it serves. It would be located, if possible, next to Interstate Highway 395 on one of three small parking lots that are part of the Pentagon Reservation in Arlington, Virginia.

The Court, created by Public Law 100-687 in 1988, is an independent Article I judicial tribunal that for the first time gave our Nation's veterans the right to judicial review of the Department of Veterans Affairs (VA) benefits decisions on their disability, pension, education and other claims. It should, like all other Article I courts, have a permanent courthouse.

In addition to the Court, occupants of the new Courthouse would be representatives of veterans that regularly practice before the Court, for example, the Veterans Consortium Pro Bono Program, the National Veterans Legal Services Program, and the appellate

attorneys of veterans service organizations. The Court and the offices of its constituents pay over \$3.7 million per year for their rent. The General Services Administration anticipates that the Court's rental costs will increase substantially in the not-too-distant future. Therefore, the Committee believes that it would be desirable to relocate the Court on a government-owned site, if possible.

In testimony before the Subcommittee on Benefits on April 29, 2004, Honorable Kenneth B. Kramer, Chief Judge of the U.S. Court of Appeals for Veterans Claims, stated the rationale for a dedicated Veterans Courthouse and Justice Center. (See Statement of the Views of the U.S. Court of Appeals for Veterans Claims, page 6.) During his testimony, Chief Judge Kramer referred to a letter he had written to Secretary of Defense Rumsfeld to ask for his support for the construction on presently available Pentagon Reservation land of a courthouse that would become a permanent home for the Court. The Committee believes that the letter and its reply provide useful background for understanding the proposed courthouse, and they follow:

U.S. COURT OF APPEALS FOR VETERANS CLAIMS,
CHAMBERS OF CHIEF JUDGE KEN KRAMER,
Washington, DC, October 24, 2003

Hon. DONALD H. RUMSFELD
Secretary of Defense,
Washington, DC

DEAR MR. SECRETARY: I ask for your support for the construction of a **United States Veterans Courthouse and Justice Center** (Courthouse) on presently available Pentagon Reservation land. The Courthouse would become the permanent home for the United States Court of Appeals for Veterans Claims (the Court).

It is my understanding that the Department of Defense (DoD) has initiated a feasibility study to determine the "highest and best possible use" of three sites in Arlington, Virginia: the Hayes, Eads, and Fern Street parking lots, located on the Pentagon Reservation, south of Interstate 395, just north of Army Navy Drive (an aerial map of the sites is enclosed) [map not included]; and that, after the study has been completed, the DoD may use its enhanced leasing authority to request proposals for private development. I ask that this enhanced leasing authority be utilized to construct the Courthouse on one of these sites.

The Court is an independent Article I judicial tribunal created by statute in 1988 to hear appeals from final decisions of the Board of Veterans' Appeals denying benefits administered by the Department of Veterans Affairs (VA). By creating the Court, Congress gave our nation's veterans, for the first time, the right to judicial review of VA benefits decisions. The Court, housed since its founding in a commercial office building in the District of Columbia, is presently the only Article I court not located in a dedicated courthouse (the other Article I courts are the U.S. Court of Appeals for the Armed Forces, the U.S. Tax Court, and the U.S. Court of Federal Claims).

In addition to the Court, occupants of the Courthouse would be members of those constituencies that regularly practice before the Court—VA General Counsel Group VII, the Veterans Consortium Pro Bono Program, and appellate attorneys of the Disabled American Veterans (DAV), the Paralyzed Veterans of America (PVA), and the National Veterans Legal Services Program (NVLSP). The Veterans Consortium Pro Bono Program is a federally funded grant program, administered through the Legal Services Corporation, to recruit, train, and mentor attorneys to provide pro bono representation to veterans and their families in cases before the Court. The DAV and PVA are veterans service organizations that have historically had staff members housed at Department of Veterans Affairs (VA) facilities where they represent veterans benefits claimants. The NVLSP is a public-interest program devoted to representing veterans and their families. Consultation is also underway with other veterans organizations to determine their interest in having a presence in the Courthouse.

The General Services Administration (GSA) has estimated that the Courthouse would require 121,000 gross square feet or 112,000 rentable square feet of interior

space. (It is not anticipated that, if additional veterans organizations were to occupy space, there would be any significant impact on square footage requirements.) GSA could work with DoD to coordinate pre-design and pre-construction studies to determine the feasibility of use of one of the sites for the Courthouse, would provide input during design and construction based on guidelines for federal courthouses, and, once construction was completed, act as the federal leasing agent. The Court and its constituencies that have expressed an intent to relocate in the Courthouse pay (or expressed a willingness to pay, based upon present rental costs) over \$3.7 million per year for rent. GSA anticipates that, at least for the Court and VA, rental costs will increase substantially in the not-too-distant future. Arlington County government officials have indicated that they support the Courthouse and have offered to assist in this project.

Given the past, present, and future sacrifices of the many men and women of our Armed Forces, I cannot imagine a higher or better use for one of these present parking-lot sites than a stand-alone, dedicated Veterans Courthouse and Justice Center which would embody the gratitude this nation holds towards every veteran who—in Abraham Lincoln's words—"shall have borne the battle and for his widow and his orphan." The Pentagon Reservation site, would be the ideal setting, given its proximity to the Pentagon, Arlington Cemetery, and the soon-to-be-constructed Air Force Memorial. The Courthouse would express our government's strong commitment to the ideal of justice for veterans and DoD's use of its enhanced leasing authority would permit the project to come to fruition with a minimum of appropriated funds.

I thank you for your consideration of this undertaking as a timely and tangible means of demonstrating to the nation's veterans and their families how much their sacrifices are valued. I would very much appreciate an opportunity to meet with you to discuss this matter. A member of my staff will call your scheduler to request a meeting at your convenience.

Sincerely,

KENNETH B. KRAMER

Enclosure.

cc: [courtesy copies omitted].

U.S. DEPARTMENT OF DEFENSE,
OFFICE OF THE SECRETARY OF DEFENSE,
Washington, DC, December 30, 2003

Hon. KEN KRAMER
*Chief Judge, U.S. Court of Appeals for Veterans Claims,
Washington, DC*

DEAR CHIEF JUDGE KRAMER: Thank you for your recent letter to Secretary Rumsfeld and your corresponding note to me requesting Department of Defense (DoD) support for the construction of a United States Veterans Courthouse and Justice Center on land that is part of the Pentagon Reservation. I am responding on behalf of the Secretary. I regret that the Department cannot support your request. The land is not presently available because it is being used to provide essential parking for DoD employees. In addition, we have a continuing need for the property in the longer term, both for parking and as part of our security buffer from uncontrolled development proximate to the Pentagon.

As you mentioned in your letter, DoD has initiated a feasibility study to gauge the level of private sector interest in entering into an "Enhanced-Use Lease" agreement in accordance with the provisions of Section 2667 of Title 10, United States Code. The study includes the requirement to accommodate continuing DoD requirements for the land, as well as our anti-terrorism and force protection needs; specifically: maintaining the present level of employee parking, the possible relocation of the Navy Exchange Service Station (which sits on land that will be transferred to the Secretary of the Army for use by Arlington National Cemetery), compliance with line-of-site restrictions, and effecting other critical structural security and design features. Should "Enhanced-Use-Leasing" prove feasible, we would not object to the General Services Administration working with our selected developer to see if your requirement for a new United States Veterans Courthouse and Justice Center could be met within this context.

As an alternative, you may wish to consider leasing or purchasing other land in the area. There are some private sector sites well suited to your requirements that would provide you with a prominent location.

I hope this information will be helpful in your search for a site to accommodate the United States Veterans Courthouse and Justice Center.

Sincerely,

RAYMOND F. DUBOIS,
Director

H.R. 3936 would also require the Secretary of Defense, the Secretary of Veterans Affairs and the Administrator of General Services to submit a joint report to the House and Senate Committees on Armed Services and Veterans' Affairs on the feasibility of locating a new Veterans Courthouse and Justice Center at an appropriate site owned by the United States that is part of or near the Pentagon Reservation.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill would authorize the principal office of the United States Court of Appeals for Veterans Claims to be located at any location in the Washington, D.C., metropolitan area.

Section 2(a) of the bill would make the following findings: that every Article I court of the United States other than the United States Court of Appeals for Veterans Claims is located in a dedicated courthouse; that the United States Court of Appeals for Veterans Claims has since its creation in 1988 been located in a commercial office building in the District of Columbia; that the court should be housed in a dedicated courthouse, as are all other Article I courts; that a dedicated courthouse for that court constituting a Veterans Courthouse and Justice Center would express the gratitude and respect of the Nation for the sacrifices of those serving and those who have served in the Armed Forces, and their families; and location of such a courthouse and judicial center in an area proximate to the Pentagon, Arlington National Cemetery and the Air Force Memorial (as planned) in Arlington, Virginia, would be symbolic of the high esteem that the Nation holds for its veterans.

Section 2(b) of the bill would express the sense of Congress that a dedicated Veterans Courthouse and Justice Center should be provided for the United States Court of Appeals for Veterans Claims; and that the Secretary of Defense, in cooperation with the United States Court of Appeals for Veterans Claims, the Secretary of Veterans Affairs, and the Administrator of General Services should determine the feasibility of locating such a Veterans Courthouse and Justice Center at an appropriate site owned by the United States that is part of or proximate to the Pentagon Reservation in Arlington, Virginia.

Section 2(c) of the bill would require the Secretary of Defense, the Secretary of Veterans Affairs, and the Administrator of General Services to submit a report on the feasibility of locating a new Veterans Courthouse and Justice Center at an appropriate site owned by the United States, not later than 90 days after the date of enactment of the Act, to the Committees on Veterans' Affairs and the Committees on Armed Services of the Senate and House of Representatives.

PERFORMANCE GOALS AND OBJECTIVES

The reported bill pertains to the U.S. Court of Appeals for Veterans Claims which is established under Article I of the Constitution of the United States. The Court is subject to the Committee's regular oversight.

STATEMENT OF THE VIEWS OF THE U.S. COURT OF APPEALS FOR
VETERANS CLAIMS

**STATEMENT OF HONORABLE KENNETH B. KRAMER, CHIEF JUDGE,
U.S. COURT OF APPEALS FOR VETERANS CLAIMS**

APRIL 29, 2004

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE:

On behalf of the United States Court of Appeals for Veterans Claims (the Court), I appreciate the opportunity to testify concerning H.R. 3936. I speak in support of the bill. H.R. 3936 would amend title 38 of the United States Code to authorize the Court to locate its principal office in the Washington, D.C., metropolitan area, rather than only in the District of Columbia, and would express the sense of Congress that a dedicated Veterans Courthouse and Justice Center (Courthouse) should be provided for the Court and those it serves. The proposed legislation would also require the Secretary of Defense, the Secretary of Veterans Affairs, the Administrator of General Services, and other appropriate government officials to work with the Court to explore the feasibility of using a site owned by the United States and located on or proximate to the Pentagon Reservation. A report to the Congress on this matter would be due 90 days after enactment of the legislation.

The Court is an independent Article I judicial tribunal created by statute in 1988 to hear appeals from adverse final decisions of the Board of Veterans' Appeals concerning benefits administered by the Department of Veterans Affairs (VA). By creating the Court, Congress gave our nation's veterans, for the first time, the right to judicial review of VA benefits decisions. The Court, housed since its founding in a commercial office building in the District of Columbia, is presently the only Article I court not located in a dedicated courthouse (the other Article I courts are the U.S. Court of Appeals for the Armed Forces, the U.S. Tax Court, and the U.S. Court of Federal Claims).

Last October, I wrote to DoD Secretary Rumsfeld to ask for his support for the construction on presently available Pentagon Reservation land of a Courthouse that would become the permanent home for the Court. It was my understanding that the Department of Defense (DoD) had initiated a feasibility study to determine the "highest and best possible use" of three sites in Arlington, Virginia: the Hayes, Eads, and Fern Street parking lots, located on the Pentagon Reservation, south of Interstate 395, just north of Army Navy Drive; and that, after the study had been completed, the DoD might use its enhanced-leasing authority to request proposals for private development. I asked Secretary Rumsfeld to consider using this enhanced-leasing authority to construct the Courthouse on one of these sites.

In addition to the Court, occupants of the Courthouse would be members of those entities that regularly practice before the Court—VA General Counsel Group VII, the Veterans Consortium Pro Bono Program, and appellate attorneys of the Disabled American Veterans (DAV), the Paralyzed Veterans of America (PVA), and the National Veterans Legal Services Program (NVLSP), as well as the executive office of the U.S. Court of Appeals for Veterans Claims Bar Association (CAVC Bar Association). The Veterans Consortium Pro Bono Program is a federally funded grant program, administered through the Legal Services Corporation, to recruit, train, and mentor attorneys to provide pro bono representation to veterans and their families in cases before the Court. The DAV and PVA are veterans service organizations that have historically had staff members housed at Department of Veterans Affairs (VA) facilities where they represent veterans benefits claimants. The NVLSP is a public-interest program devoted to representing veterans and their families. The CAVC Bar Association is a tax-exempt voluntary organization of practitioners before the Court that qualifies to receive grants of funds for, e.g., educational programs, pursuant to 38 U.S.C. § 7285(b)(2). We are asking other veterans organizations about their interest in having their legal offices in the Courthouse.

The General Services Administration (GSA) has preliminarily estimated that an appropriate Courthouse would require 121,000 gross square feet or 112,000 rentable square feet of interior space. (It is not anticipated that, if additional veterans orga-

nizations were to occupy space, there would be any significant impact on square-footage requirements.) GSA can work with DoD on predesign and preconstruction studies to determine the feasibility of use of one of the DoD sites for the Courthouse, can provide input during design and construction based on guidelines for federal courthouses, and, once construction was completed, act as the federal leasing agent. The Court and its constituencies that have expressed an intent to relocate in the Courthouse pay (or have expressed a willingness to pay, based upon present rental costs) over \$3.7 million per year for rent. GSA anticipates that, at least for the Court and VA, rental costs at our present D.C. location will increase substantially in the near future.

In December 2003, I received a response to my letter to Secretary Rumsfeld. The response came from the Honorable Raymond F. DuBois, the DoD Deputy Under Secretary for Installations and the Environment. In his letter, Mr. DuBois stated that a feasibility study had been initiated to “gauge the level of private sector interest in entering into an ‘Enhanced-Use Lease’ agreement in accordance with the provisions of Section 2667 of Title 10, United States Code.” He pointed out that requirements for use of the land include DoD’s anti-terrorism and force-protection needs”; specifically, he listed “maintaining the present level of employee parking, the possible relocation of the Navy Exchange Service Station (which sits on land that will be transferred to the Secretary of the Army for use by Arlington National Cemetery), compliance with line-of-site [sic] restrictions, and effecting other critical structural security and design features.” He went on to say the following: “Should ‘Enhanced-Use-Leasing’ prove feasible, we would not object to the [GSA] working with our selected developer to see if your requirement for a new United States Veterans Courthouse and Justice Center could be met within this context.”

GSA has been supportive, with members of the National Capital Region staff providing assistance and preliminary analysis. In a December 2003 letter, Administrator Stephen A. Perry wrote as follows, concerning the initiative to locate the Courthouse on or near the Pentagon Reservation: “We share your vision for this worthy undertaking, and we will continue to support you on this or any other alternatives you may consider.” Arlington County government officials have indicated that they support the Courthouse and have offered to assist in this project.

I continue to follow the progress of the DoD feasibility study, and have been informed that it is not yet final, but should be complete within the next few weeks. Should the study be positive concerning enhanced-lease development by the private sector, the Court would work with DoD, the developer it selects, GSA, and the constituents who intend to co-locate with the Court to try to make the Veterans Courthouse and Justice Center a reality.

Given the past, present, and future sacrifices of the many men and women of our Armed Forces, I cannot imagine a higher or better use for one of these present parking-lot sites than a stand-alone, dedicated Veterans Courthouse and Justice Center to embody the gratitude that this nation holds for those who—in Abraham Lincoln’s words—“shall have borne the battle and for his widow and his orphan.” The Pentagon Reservation site would be the ideal setting, given its proximity to the Pentagon, Arlington Cemetery, and the soon-to-be-constructed Air Force Memorial. The Courthouse would express our government’s strong commitment to the ideal of justice for veterans and DoD’s use of its enhanced-leasing authority would permit the project to come to fruition with a minimum expenditure of appropriated funds. We would, of course, be glad to cooperate in the preparation of the report called for by section 2(c) of H.R. 3936.

In closing, I want to express my gratitude for the support of the sponsors of this legislation, Chairman Smith, ranking minority member Evans, and Armed Services Committee ranking minority member Skelton and for the invaluable assistance of your Committees staff, especially Pat Ryan, Kingston Smith, and Mary Ellen McCarthy. I thank you for your consideration of H.R. 3936, which would greatly advance this undertaking, as a timely and tangible symbol of justice for our nation’s veterans and their families whose sacrifices are greatly valued.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, May 26, 2004

Hon. CHRISTOPHER H. SMITH
 Chairman, Committee on Veterans' Affairs,
 House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3936, a bill to amend title 38, United States Code, to authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, D.C., metropolitan area, rather than only in the District of Columbia, and expressing the sense of Congress that a dedicated Veterans Courthouse and Justice Center should be provided for that Court and those it serves and should be located, if feasible, at a site owned by the United States that is part of or proximate to the Pentagon Reservation, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright, who can be reached at 226-2840.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
 Director

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 26, 2004

H.R. 3936, a bill to amend title 38, United States Code, to authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, D.C., metropolitan area, rather than only in the District of Columbia, and expressing the sense of Congress that a dedicated Veterans Courthouse and Justice Center should be provided for that Court and those it serves and should be located, if feasible, at a site owned by the United States that is part of or proximate to the Pentagon Reservation, and for other purposes

As ordered reported by the House Committee on Veterans' Affairs on May 19, 2004

H.R. 3936 would authorize the Court of Appeals for Veterans Claims (CAVC) to locate its principal office anywhere in the Washington, D.C., metropolitan area. Under current law, the principal office of the CAVC must be located in the District of Columbia. According to the CAVC, it currently has no plans to move from the current location in the District, nor are there plans to dedicate a Veterans Courthouse in the District of Columbia, or in the metropolitan area within the next five years. Therefore, CBO estimates that implementing H.R. 3936 would not have any significant near-term effect on federal spending.

While the CAVC indicates it does not plan to move from its current location in the near future, the bill contains the sense of the Congress that appears to urge the CAVC to pursue acquiring a

dedicated Veterans Courthouse and Justice Center at an appropriate site owned by the United States that is near or proximate to the Pentagon Reservation in Arlington, Virginia. In fact, according to the General Services Administration (GSA), the Court has begun the process of inquiry into a possible relocation at some point in time but GSA has not incorporated a specific project or funding in its five-year plan for CAVC relocation. GSA indicates that, once CAVC decides to relocate, the process of site acquisition and building design and construction could take about five years to accomplish and cost about \$35 million—\$1 million for project studies and site acquisition, \$6 million for building design, and \$28 million for building construction. If the CAVC chose to seriously pursue relocation during the next several years, it is possible that some or all this cost could occur over the 2006–2009 period, subject to the availability of appropriated funds.

H.R. 3936 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On May 14, CBO transmitted a cost estimate for H.R. 3936, as introduced on March 11, 2004. The two versions of the legislation are identical, as are the two estimates.

The CBO staff contact for this estimate is Dwayne M. Wright, who can be reached at 226–2840. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

STATEMENT OF FEDERAL MANDATES

The preceding Congressional Budget Office cost estimate states that the bill contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8, of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 7255 OF TITLE 38, UNITED STATES CODE

§ 7255. Offices

The principal office of the Court of Appeals for Veterans Claims shall be in the District of Columbia, *Washington, D.C., metropolitan area*, but the Court may sit at any place within the United States.

* * * * *