

§ 2663. Land acquisition authorities

(a) ACQUISITION OF LAND BY CONDEMNATION FOR CERTAIN MILITARY PURPOSES.—(1) Subject to subsection (f), the Secretary of a military department may have proceedings brought in the name of the United States, in a court of proper jurisdiction, to acquire by condemnation any interest in land, including temporary use, needed for—

(A) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(B) the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives or other munitions of war; or

(C) the development and transmission of power for the operation of plants under subparagraph (B).

(2) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under paragraph (1), take and use the land to the extent of the interest sought to be acquired.

(b) ACQUISITION BY PURCHASE IN LIEU OF CONDEMNATION.—The Secretary of the military department concerned may contract for or buy any interest in land, including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and the Secretary considers that price to be reasonable.

(c) ACQUISITION OF LOW-COST INTERESTS IN LAND.—(1) The Secretary of a military department may acquire any interest in land that—

(A) the Secretary determines is needed in the interest of national defense; and

(B) does not cost more than \$750,000, exclusive of administrative costs and the amounts of any deficiency judgments.

(2) The Secretary of a military department may acquire any interest in land that—

(A) the Secretary determines is needed solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; and

(B) does not cost more than \$1,500,000, exclusive of administrative costs and the amounts of any deficiency judgments.

(3) This subsection does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than \$750,000, in the case of an acquisition under paragraph (1), or \$1,500,000, in the case of an acquisition under paragraph (2).

(4) Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of land or interests in land under this subsection.

(d) ACQUISITION OF INTERESTS IN LAND WHEN NEED IS URGENT.—(1) The Secretary of a military department may acquire any interest in land in any case in which the Secretary determines that—

(A) the acquisition is needed in the interest of national defense;

(B) the acquisition is required to maintain the operational integrity of a military installation; and

(C) considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

(2) Not later than 10 days after the date on which the Secretary of a military department determines to acquire an interest in land under the authority of this subsection, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives written notice containing a description of the property and interest to be acquired and the reasons for the acquisition.

(3) Appropriations available for military construction may be used for the purposes of this subsection.

(e) SURVEY AUTHORITY; ACQUISITION METHODS.—Authority provided the Secretary of a military department by law to acquire an interest in real property (including a temporary interest) includes authority—

(1) to make surveys; and

(2) to acquire the interest in real property by gift, purchase, exchange of real property owned by the United States, or otherwise.

(f) ADVANCE NOTICE OF USE OF CONDEMNATION.—(1) Before commencing any legal proceeding to acquire any interest in land under subsection (a), including acquisition for temporary use, by condemnation, eminent domain, or seizure, the Secretary of the military department concerned shall—

(A) pursue, to the maximum extent practicable, all other available options for the acquisition or use of the land, such as the purchase of an easement or the execution of a land exchange; and

(B) submit to the congressional defense committees a report containing—

(i) a description of the land to be acquired;

(ii) a certification that negotiations with the owner or owners of the land occurred, and that the Secretary tendered consideration in an amount equal to the fair market value of the land, as determined by the Secretary; and

(iii) an explanation of the other approaches considered for acquiring use of the land, the reasons for the acquisition of the land, and the reasons why alternative acquisition strategies are inadequate.

(2) The Secretary concerned may have proceedings brought in the name of the United States to acquire the land after the end of the 21-day period beginning on the date on which the report is received by the committees or, if over sooner, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(g) EXCEPTION TO ADVANCE NOTICE REQUIREMENT.—If the Secretary of a military department determines that the use of condemnation, eminent domain, or seizure to acquire an interest in land is required under subsection (a) to satisfy a requirement vital to national security, and that any delay would be detrimental to national security or the protection of health, safety, or the environment, the Secretary may have

proceedings brought in the name of the United States to acquire the land in advance of submitting the report required by subsection (f)(1)(B). However, the Secretary shall submit the report not later than seven days after commencement of the legal proceedings with respect to the land.

(h) LAND ACQUISITION OPTIONS IN ADVANCE OF MILITARY CONSTRUCTION PROJECTS.—(1) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if the Secretary considers it suitable and likely to be needed for a military project of the military department under the jurisdiction of the Secretary.

(2) As consideration for an option acquired under paragraph (1), the Secretary may pay, from funds available to the military department under the jurisdiction of the Secretary for real property activities, an amount that is not more than 12 percent of the appraised fair market value of the property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; Pub. L. 85-861, § 33(a)(14), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 109-163, div. B, title XXVIII, § 2821(a), Jan. 6, 2006, 119 Stat. 3511; Pub. L. 109-364, div. B, title XXVIII, § 2821(b), Oct. 17, 2006, 120 Stat. 2474; Pub. L. 110-181, div. B, title XXVIII, § 2822(a), Jan. 28, 2008, 122 Stat. 544; Pub. L. 111-383, div. A, title X, § 1075(g)(6), Jan. 7, 2011, 124 Stat. 4377.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2663(a)	50:171 (less provisos).	July 2, 1917, ch. 35; re-
2663(b)	50:171 (last proviso).	stated Apr. 11, 1918, ch.
2663(c)	50:171 (1st proviso).	51, 40 Stat. 518.
2663(d)	50:171 (2d proviso).	Oct. 25, 1951, ch. 563, §101
	[50:171 is made applicable to the Navy by 50:171-1 (less 16th through 21st words)].	(less 22d through 43d words), 65 Stat. 641.

In subsection (a), the words “brought * * * in a court of proper jurisdiction” are substituted for the words “instituted * * * in any court having jurisdiction of such proceedings”. The words “any interest in land, including temporary use” are substituted for the words “any land, temporary use thereof or other interest therein, or right pertaining thereto”. The words “relating to suits for the condemnation of property” are omitted as surplusage. The last sentence is substituted for 50:171 (words between semicolon and first proviso). The Act of July 2, 1917, ch. 35, as restated by the Act of April 11, 1918, ch. 51 (last 77 words), are not contained in 50:171. They are also omitted from the revised section as executed.

In subsection (a)(1), the word “location” is omitted as surplusage. The words “operation of” are substituted for the words “prosecution of works for”.

In subsection (b), the words “That when such property is acquired” are omitted as surplusage. The words “under subsection (a)” are substituted for the words “of any land, temporary use thereof or other use therein or right pertaining thereto to be acquired for any of the purposes aforesaid”. The words “take and use” are substituted for the words “possession thereof may be taken * * * and used for military purposes”.

In subsection (c), the words “as soon as the owner fixes a price for it” are substituted for the words “That when the owner of such land, interest, or rights pertaining thereto shall fix a price for the same”. The word “considers” is substituted for the words “which in the opinion”. The words “contract for or buy” are substituted for the words “purchase or enter into a con-

tract”. The words “without further delay” are omitted as surplusage.

In subsection (d), the words “a gift of any interest in land * * * for any purpose named in subsection (a)” are substituted for 50:171 (last 15 words of 2d proviso).

1958 ACT

The deletion of the last sentence of section 2663(a) and the last sentence of section 2664(a) reflects their implied repeal by Rule 71A of the Rules of Civil Procedure for the United States District Courts (see 28 U.S.C. 2072). (See letter from Assistant Attorney General (Lands Division), Department of Justice, August 1957, to General Counsel, Department of Defense.) The other changes conform section 2664 to section 2663, both of which were based on the same source statute (sec. 8 of the Act of July 9, 1918, ch. 143, subch. XV, 40 Stat. 888) and both of which include the temporary use of the kinds of property respectively covered.

CODIFICATION

The text of section 2672, part of which was transferred to this section, redesignated subsec. (c), and amended by Pub. L. 109-163, div. B, title XXVIII, § 2821(a)(2)-(5), was based on Pub. L. 85-861, § 1(51), Sept. 2, 1958, 72 Stat. 1459; amended Pub. L. 87-651, title I, § 112(a), Sept. 7, 1962, 76 Stat. 511; Pub. L. 92-145, title VII, § 707(2), (3), Oct. 27, 1971, 85 Stat. 411; Pub. L. 96-418, title VIII, § 806(a), Oct. 10, 1980, 94 Stat. 1777; Pub. L. 99-167, title VIII, § 810(a), (b)(1), Dec. 3, 1985, 99 Stat. 989, 990; Pub. L. 99-661, div. A, title XIII, § 1343(a)(16), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100-456, div. B, title XXVIII, § 2804, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 105-85, div. B, title XXVIII, § 2811(a), (b)(1), Nov. 18, 1997, 111 Stat. 1991; Pub. L. 108-136, div. B, title XXVIII, § 2811(a)-(b)(2), Nov. 24, 2003, 117 Stat. 1724, 1725; Pub. L. 108-375, div. B, title XXVIII, § 2821(d)(1), Oct. 28, 2004, 118 Stat. 2130.

The text of section 2672a of this title, which was transferred to this section, redesignated subsec. (d), and amended by Pub. L. 109-163, div. B, title XXVIII, § 2821(a)(6)-(9), was based on Pub. L. 94-107, title VI, § 607(8), Oct. 7, 1975, 89 Stat. 566; amended Pub. L. 98-525, title XIV, § 1405(39), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 104-106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-136, div. A, title X, § 1031(a)(29), Nov. 24, 2003, 117 Stat. 1599; Pub. L. 108-375, div. A, title X, § 1084(d)(23), Oct. 28, 2004, 118 Stat. 2062.

The text of section 2676(b) of this title, which was transferred to this section, redesignated subsec. (e), and amended by Pub. L. 109-163, div. B, title XXVIII, § 2821(a)(10), (11), was based on Pub. L. 85-861, § 1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 97-214, § 5, July 12, 1982, 96 Stat. 170.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111-383 made technical amendment to directory language of Pub. L. 109-364, § 2821(b)(1). See 2006 Amendment note below.

2008—Subsec. (h). Pub. L. 110-181 added subsec. (h).

2006—Pub. L. 109-163, § 2821(a)(1)(A), substituted “Land acquisition authorities” for “Acquisition” in section catchline.

Subsec. (a). Pub. L. 109-163, § 2821(a)(1)(B), (C), inserted “ACQUISITION OF LAND BY CONDEMNATION FOR CERTAIN MILITARY PURPOSES.—(1)” before “The Secretary” in introductory provisions, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1), in subpar. (C), substituted “subparagraph (B)” for “clause (2)”, redesignated subsec. (b) as par. (2) and substituted “paragraph (1)” for “subsection (a)”.

Subsec. (a)(1). Pub. L. 109-364, § 2821(b)(1), as amended by Pub. L. 111-383, substituted “Subject to subsection (f), the Secretary” for “The Secretary” in introductory provisions.

Subsec. (b). Pub. L. 109-163, § 2821(a)(1)(D), redesignated subsec. (c) as (b) and inserted heading.

Pub. L. 109-163, § 2821(a)(1)(C), redesignated subsec. (b) as subsec. (a)(2).

Subsec. (c). Pub. L. 109-163, § 2821(a)(2)-(5), redesignated pars. (1) and (2) of subsec. (a) and subssecs. (b) and (d) of section 2672 of this title as pars. (1), (2), (3), and (4), respectively, of subsec. (c) of this section, inserted subsec. heading, in par. (3), substituted "This subsection" for "This section", "paragraph (1)" for "subsection (a)(1)", and "paragraph (2)" for "subsection (a)(2)", in par. (4), substituted "this subsection" for "this section", and struck out headings for former subssecs. (a), (b), and (d) of section 2672.

Pub. L. 109-163, § 2821(a)(1)(D), redesignated subsec. (c) as (b).

Subsec. (d). Pub. L. 109-163, § 2821(a)(6)-(9), redesignated subssecs. (a), (c), and (b) of section 2672a of this title as pars. (1), (2), and (3), respectively, of subsec. (d) of this section, inserted subsec. heading, in par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in par. (2), substituted "this subsection" for "this section", and in par. (3), substituted "this subsection" for "this section" in first sentence and struck out second sentence which read as follows: "The authority to acquire an interest in land under this section includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise."

Pub. L. 109-163, § 2821(a)(1)(E), struck out subsec. (d) which read as follows: "The Secretary of the military department concerned may accept for the United States a gift of any interest in land, including temporary use, for any purpose named in subsection (a)."

Subsec. (e). Pub. L. 109-163, § 2821(a)(10), (11), redesignated subsec. (b) of section 2676 of this title as subsec. (e) of this section and inserted heading.

Subsecs. (f), (g). Pub. L. 109-364, § 2821(b)(2), added subssecs. (f) and (g).

1958—Subsec. (a). Pub. L. 85-861 struck out provisions requiring proceedings under this subsection to be in accordance with the law of the State in which the suit is brought.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title X, § 1075(g), Jan. 7, 2011, 124 Stat. 4376, provided that amendment by section 1075(g)(6) is effective as of Oct. 17, 2006, and as if included in Pub. L. 109-364 as enacted.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of this title.

SENSE OF CONGRESS

Pub. L. 109-364, div. B, title XXVIII, § 2821(a), Oct. 17, 2006, 120 Stat. 2473, provided that: "It is the sense of Congress that the Secretary of Defense, when acquiring land for military purposes, should—

"(1) make every effort to acquire the land by means of purchases from willing sellers; and

"(2) employ condemnation, eminent domain, or seizure procedures only as a measure of last resort in cases of compelling national security requirements or at the request of the seller."

§ 2664. Limitations on real property acquisition

(a) **AUTHORIZATION FOR ACQUISITION REQUIRED.**—No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. The foregoing limitation shall not apply to the acceptance by a military department of real property acquired under the authority of the Administrator of General Services to acquire property by the exchange of Government property pursuant to subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(b) **COMMISSIONS ON LAND PURCHASE CONTRACTS.**—The maximum amount payable as a commission on a contract for the purchase of land from funds appropriated for the Department of Defense is two percent of the purchase price.

(c) **COST LIMITATIONS.**—(1) Except as provided in paragraph (2), the cost authorized for a land acquisition project may be increased by not more than 25 percent of the amount appropriated for the project by Congress or 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser, if the Secretary concerned determines (A) that such an increase is required for the sole purpose of meeting unusual variations in cost, and (B) that such variations in cost could not have been reasonably anticipated at the time the project was originally approved by Congress.

(2) Until subsection (d) is complied with, a land acquisition project may not be placed under contract if, based upon the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land—

(A) the scope of the acquisition, as approved by Congress, is proposed to be reduced by more than 25 percent; or

(B) the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land, exceeds the amount appropriated for the project by more than (i) 25 percent, or (ii) 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser.

(d) **CONGRESSIONAL NOTIFICATION.**—The limitations on reduction in scope or increase in cost of a land acquisition in subsection (c) do not apply if the reduction in scope or the increase in cost, as the case may be, is approved by the Secretary concerned and a written notification of the facts relating to the proposed reduced scope or increased cost (including a statement of the reasons therefor) is submitted by the Secretary concerned to the congressional defense committees. A contract for the acquisition may then be awarded only after a period of 21 days elapses from the date the notification is received by the committees or, if over sooner, a period of 14 days elapses from the date on which a copy of that notification is provided in an electronic medium pursuant to section 480 of this title.

(e) **PAYMENT OF JUDGEMENTS AND SETTLEMENTS.**—The Secretary concerned shall promptly pay any deficiency judgment against the United States awarded by a court in an action for condemnation of any interest in land or resulting from a final settlement of an action for condemnation of any interest in land. Payments under this subsection may be made from funds available to the Secretary concerned for military construction projects and without regard to the limitations of subsections (c) and (d).

(Added Pub. L. 85-861, § 1(51), Sept. 2, 1958, 72 Stat. 1460, § 2676; amended Pub. L. 93-166, title VI, § 608(2), Nov. 29, 1973, 87 Stat. 682; Pub. L.