

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[§ 2666. Repealed. Pub. L. 108-375, div. B, title XXVIII, § 2821(a)(2), Oct. 28, 2004, 118 Stat. 2129]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 149, related to limitation on commission on a contract for the purchase of land payable from funds appropriated for the Department of Defense.

§ 2667. Leases: non-excess property of military departments and Defense Agencies

(a) LEASE AUTHORITY.—Whenever the Secretary concerned considers it advantageous to the United States, the Secretary concerned may lease to such lessee and upon such terms as the Secretary concerned considers will promote the national defense or to be in the public interest, real or personal property that—

- (1) is under the control of the Secretary concerned;
- (2) is not for the time needed for public use; and
- (3) is not excess property, as defined by section 102 of title 40.

(b) CONDITIONS ON LEASES.—A lease under subsection (a)—

- (1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;
- (2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;
- (3) shall permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;
- (4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary;
- (5) may provide, notwithstanding section 1302 of title 40 or any other provision of law, for the alteration, repair, or improvement, by the lessee, of the property leased as the payment of part or all of the consideration for the lease;
- (6) except as otherwise provided in subsection (d), shall require the lessee to provide the covered entities specified in paragraph (1) of that subsection the right to establish and operate a community support facility or provide community support services, or seek

equitable compensation for morale, welfare, and recreation programs of the Department of Defense in lieu of the operation of such a facility or the provision of such services, if the Secretary determines that the lessee will provide merchandise or services in direct competition with covered entities through the lease; and

(7) may not provide for a leaseback by the Secretary concerned with an annual payment in excess of \$500,000, or otherwise commit the Secretary concerned or the Department of Defense to annual payments in excess of such amount.

(c) TYPES OF IN-KIND CONSIDERATION.—(1) In addition to any in-kind consideration accepted under subsection (b)(5), in-kind consideration accepted with respect to a lease under this section may include the following:

(A) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities under the control of the Secretary concerned.

(B) Construction of new facilities for the Secretary concerned.

(C) Provision of facilities for use by the Secretary concerned.

(D) Provision or payment of utility services for the Secretary concerned.

(E) Provision of real property maintenance services for the Secretary concerned.

(F) Provision of such other services relating to activities that will occur on the leased property as the Secretary concerned considers appropriate.

(2) In-kind consideration under paragraph (1) may be accepted at any property or facilities under the control of the Secretary concerned that are selected for that purpose by the Secretary concerned.

(3) Sections 2662 and 2802 of this title shall not apply to any new facilities whose construction is accepted as in-kind consideration under this subsection.

(d) COMMUNITY SUPPORT FACILITIES AND COMMUNITY SUPPORT SERVICES UNDER LEASE; WAIVER.—(1) In this subsection and subsection (b)(6), the term “covered entity” means each of the following:

(A) The Army and Air Force Exchange Service.

(B) The Navy Exchange Service Command.

(C) The Marine Corps exchanges.

(D) The Defense Commissary Agency.

(E) The revenue-generating nonappropriated fund activities of the Department of Defense conducted for the morale, welfare, and recreation of members of the armed forces.

(2) The Secretary concerned may waive the requirement in subsection (b)(6) with respect to a lease if—

(A) the lease is entered into under subsection (g); or

(B) the Secretary determines that the waiver is in the best interests of the Government.

(3) The Secretary concerned shall provide to the congressional defense committees written notice of each waiver under paragraph (2), including the reasons for the waiver.