

(Added Pub. L. 107-314, div. B, title XXVIII, §2811(a), Dec. 2, 2002, 116 Stat. 2705; amended Pub. L. 109-163, div. B, title XXVIII, §2822, Jan. 6, 2006, 119 Stat. 3513; Pub. L. 109-364, div. B, title XXVIII, §2811(g), Oct. 17, 2006, 120 Stat. 2473; Pub. L. 110-181, div. B, title XXVIII, §2825, Jan. 28, 2008, 122 Stat. 545; Pub. L. 111-84, div. A, title X, §1073(a)(27), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111-383, div. A, title X, §1075(b)(43), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112-81, div. B, title XXVIII, §2813, Dec. 31, 2011, 125 Stat. 1687; Pub. L. 113-66, div. A, title III, §312(a), Dec. 26, 2013, 127 Stat. 729; Pub. L. 113-291, div. A, title X, §1071(f)(23), Dec. 19, 2014, 128 Stat. 3511.)

#### AMENDMENT OF SECTION

*For termination of amendment by section 312(b) of Pub. L. 113-66, see Termination of 2013 Amendment note below.*

#### REFERENCES IN TEXT

The Sikes Act, referred to in subsec. (h), is Pub. L. 86-797, Sept. 15, 1960, 74 Stat. 1052, which is classified generally to chapter 5C (§670 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 670 of Title 16 and Tables.

#### AMENDMENTS

2014—Subsec. (h). Pub. L. 113-291 inserted “670” after “U.S.C.”.

2013—Subsecs. (h) to (j). Pub. L. 113-66 temporarily added subsec. (h) and temporarily redesignated former subsecs. (h) and (i) as (i) and (j), respectively. See Termination of 2013 Amendment note below.

2011—Subsec. (a)(3). Pub. L. 112-81, §2813(1), added par. (3).

Subsec. (c). Pub. L. 112-81, §2813(2), amended subsec. (c) generally. Prior to amendment, text read as follows: “Chapter 63 of title 31 shall not apply to any agreement entered into under this section.”

Subsec. (d)(3). Pub. L. 112-81, §2813(3)(A), inserted “, and the monitoring and enforcement of any right, title, or interest in,” after “resources on” and “and monitoring and enforcement” after “natural resource management”, and inserted at end “Any such payment by the United States—

“(A) may be paid in a lump sum and include an amount intended to cover the future costs of natural resource management and monitoring and enforcement; and

“(B) may be placed by the eligible entity in an interest-bearing account, and any interest shall be applied for the same purposes as the principal.”

Subsec. (d)(5). Pub. L. 112-81, §2813(3)(B), designated existing provisions as subpar. (A), inserted after first sentence “No such requirement need be included in the agreement if the property or interest is being transferred to a State, or the agreement requires it to be subsequently transferred to a State, and the Secretary concerned determines that the laws and regulations applicable to the future use of such property or interest provide adequate assurance that the property concerned will be developed and used in a manner appropriate for purposes of this section.”, and added subpar. (B).

Subsec. (g)(1). Pub. L. 111-383 substituted “March 1 each year” for “March 1, 2007, and annually thereafter”.

Subsec. (i)(3). Pub. L. 112-81, §2813(4), added par. (3).

2009—Subsec. (g)(2). Pub. L. 111-84 substituted “the following” for “the following the following” in introductory provisions.

2008—Subsec. (d)(3), (4). Pub. L. 110-181, §2825(a), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (d)(4)(C). Pub. L. 110-181, §2825(b)(2), substituted “equal to, at the discretion of the Secretary

concerned—” and cls. (i) and (ii) for “equal to the fair market value of any property or interest to be transferred to the United States upon the request of the Secretary concerned under paragraph (4).”

Subsec. (d)(4)(D), (E). Pub. L. 110-181, §2825(b)(1), (3), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (d)(5) to (7). Pub. L. 110-181, §2825(a)(1), redesignated pars. (4) to (6) as (5) to (7), respectively.

2006—Subsec. (a). Pub. L. 109-163, §2822(a)(1), in introductory provisions, inserted “or entities” after “entity” and substituted “in the vicinity of, or ecologically related to, a military installation or military airspace” for “in the vicinity of a military installation”.

Subsec. (d)(1). Pub. L. 109-163, §2822(a)(2)(A)(i), (b)(1)(A), inserted “or entities” after “eligible entity” and substituted “shall provide” for “may provide” in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 109-163, §2822(a)(2)(A)(ii), inserted “or entities” after “the entity”.

Subsec. (d)(1)(B). Pub. L. 109-163, §2822(b)(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: “the sharing by the United States and the entity of the acquisition costs.”

Subsec. (d)(3). Pub. L. 109-364 added subpar. (B), redesignated former subpars. (B) and (C) as (C) and (D), respectively, and in subpar. (C) substituted “under subparagraph (A), either through the contribution of funds or excess real property, or both,” for “in the sharing of acquisition costs of real property, or an interest in real property, under paragraph (1)(B)”.

Pub. L. 109-163, §2822(b)(3), added par. (3). Former par. (3) redesignated (4).

Pub. L. 109-163, §2822(a)(2)(B), inserted “or entities” after “the entity”.

Subsec. (d)(4) to (6). Pub. L. 109-163, §2822(b)(2), redesignated pars. (3) to (5) as (4) to (6), respectively.

Subsecs. (g) to (i). Pub. L. 109-163, §2822(c), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

#### TERMINATION OF 2013 AMENDMENT

Pub. L. 113-66, div. A, title III, §312(b), Dec. 26, 2013, 127 Stat. 729, provided that: “This section [amending this section] and subsection (h) of section 2684a of title 10, United States Code, as added by this section, shall expire on October 1, 2019, except that any agreement referred to in such subsection that is entered into on or before September 30, 2019, shall continue according to its terms and conditions as if this section has not expired.”

#### §2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities

(a) ADJUSTMENT OR SURCHARGE AUTHORIZED.—Notwithstanding any other provision of law, the Secretary of Defense may, for the purposes of this section, provide for an adjustment of, or surcharge on, sales prices of goods and services sold in commissary store facilities.

(b) USE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1) The Secretary of Defense may use the proceeds from the adjustments or surcharges authorized by subsection (a) only—

(A) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(B) to cover environmental evaluation and construction costs related to activities described in paragraph (1), including costs for

surveys, administration, overhead, planning, and design.

(2) In paragraph (1), the term “physical infrastructure” includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(c) **ADVANCE OBLIGATION.**—The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the adjustments or surcharges authorized by subsection (a) for any use specified in subsection (b) or (d), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in subsection (b) or (d).

(d) **COOPERATION WITH NONAPPROPRIATED FUND INSTRUMENTALITIES.**—(1) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of adjustments or surcharges authorized by subsection (a) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(2) In paragraph (1), the term “construction”, with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(e) **OTHER SOURCES OF FUNDS FOR CONSTRUCTION AND IMPROVEMENTS.**—Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in subsections (b), (c), and (d):

- (1) Sale of recyclable materials.
- (2) Sale of excess and surplus property.
- (3) License fees.
- (4) Royalties.
- (5) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

(Added Pub. L. 93-552, title VI, § 611, Dec. 27, 1974, 88 Stat. 1765; amended Pub. L. 95-82, title VI, § 614, Aug. 1, 1977, 91 Stat. 380; Pub. L. 97-321, title VIII, § 804, Oct. 15, 1982, 96 Stat. 1572; Pub. L. 103-337, div. B, title XXVIII, § 2851, Oct. 5, 1994, 108 Stat. 3072; Pub. L. 105-85, div. A, title III, § 374, Nov. 18, 1997, 111 Stat. 1707; Pub. L. 106-398, § 1 [[div. A], title III, § 333(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-60.)

#### AMENDMENTS

2000—Subsec. (a). Pub. L. 106-398, § 1 [[div. A], title III, § 333(b)(1)], substituted “Secretary of Defense” for “Secretary of a military department, under regulations established by him and approved by the Secretary of Defense.”.

Subsec. (b). Pub. L. 106-398, § 1 [[div. A], title III, § 333(a)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “The Secretary of a military department, under regulations established by him and approved by the Secretary of

Defense, may use the proceeds from the adjustments or surcharges authorized by subsection (a) to acquire, construct, convert, expand, install, or otherwise improve commissary store facilities at defense installations and for related environmental evaluation and construction costs, including surveys, administration, overhead, planning, and design.”

Subsec. (c). Pub. L. 106-398, § 1 [[div. A], title III, § 333(b)(2)], substituted “Secretary of Defense, with the approval of” for “Secretary of a military department, with the approval of the Secretary of Defense and” and “Secretary determines” for “Secretary of the military department determines”.

Subsec. (d)(1). Pub. L. 106-398, § 1 [[div. A], title III, § 333(b)(3)], substituted “Secretary of Defense” for “Secretary of a military department”.

1997—Subsecs. (a) to (d). Pub. L. 105-85, § 374(b), inserted subsec. headings.

Subsec. (e). Pub. L. 105-85, § 374(a), added subsec. (e). 1994—Subsec. (c). Pub. L. 103-337, § 2851(b), inserted “or (d)” after “subsection (b)” in two places.

Subsec. (d). Pub. L. 103-337, § 2851(a), added subsec. (d). 1982—Subsec. (c). Pub. L. 97-321 added subsec. (c).

1977—Subsec. (b). Pub. L. 95-82 struck out “within the United States” after “defense installations”.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, § 1 [[div. A], title III, § 333(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-60, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2001.”

#### § 2686. Utilities and services; sale; expansion and extension of systems and facilities

(a) Under such regulations and for such periods and at such prices as he may prescribe, the Secretary concerned or his designee may sell or contract to sell to purchasers within or in the immediate vicinity of an activity of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of national defense or in the public interest:

- (1) Electric power.
- (2) Steam.
- (3) Compressed air.
- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural, manufactured, or mixed gas.
- (7) Ice.
- (8) Mechanical refrigeration.
- (9) Telephone service.

(b) Proceeds of sales under subsection (a) shall be credited to the appropriation currently available for the supply of that utility or service.

(c) To meet local needs the Secretary concerned may make minor expansions and extensions of any distributing system or facility within an activity through which a utility or service is furnished under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 141, § 2481; Pub. L. 86-156, Aug. 14, 1959, 73 Stat. 338; renumbered § 2686, Pub. L. 105-85, div. A, title III, § 371(b)(1), Nov. 18, 1997, 111 Stat. 1705.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2481(a) .....	5:626s. 5:626s-1 (less words between semicolon and colon). 10:1269.	July 30, 1947, ch. 394, 61 Stat. 675; Aug. 8, 1949, ch. 403, § 5, 63 Stat. 576.