

“(5) explore opportunities for energy efficiency in industrial facilities for steam systems, boiler operation, air compressor systems, industrial processes, and fuel switching; and

“(6) retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs.

“(e) REPORTING REQUIREMENTS.—Not later than January 1, 2002, and each January 1 thereafter through 2010, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the report required to be prepared by the Secretary pursuant to section 303 of Executive Order 13123 (64 Fed. Reg. 30851; [former] 42 U.S.C. 8251 note) regarding the progress made toward achieving the energy efficiency goals of the Department of Defense.”

#### § 2912. Availability and use of energy cost savings

(a) AVAILABILITY.—An amount of the funds appropriated to the Department of Defense for a fiscal year that is equal to the amount of energy cost savings realized by the Department, including financial benefits resulting from shared energy savings contracts entered into under section 2913 of this title, shall remain available for obligation under subsection (b) until expended, without additional authorization or appropriation.

(b) USE.—The Secretary of Defense shall provide that the amount that remains available for obligation under subsection (a) and the funds made available under section 2916(b)(2) of this title shall be used as follows:

(1) One-half of the amount shall be used for the implementation of additional energy resilience, mission assurance, weather damage repair and prevention, energy conservation, and energy security measures at buildings, facilities, or installations of the Department of Defense or related to vehicles and equipment of the Department, which are designated, in accordance with regulations prescribed by the Secretary of Defense, by the head of the department, agency, or instrumentality that realized the savings referred to in subsection (a).

(2) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for—

(A) improvements to existing military family housing units;

(B) any unspecified minor construction project that will enhance the quality of life of personnel; or

(C) any morale, welfare, or recreation facility or service.

(c) TREATMENT OF CERTAIN FINANCIAL INCENTIVES.—Financial incentives received from gas or electric utilities under section 2913 of this title shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.

(Added Pub. L. 109-364, div. B, title XXVIII, § 2851(a)(1), Oct. 17, 2006, 120 Stat. 2491; amended Pub. L. 112-239, div. B, title XXVIII, § 2822, Jan. 2, 2013, 126 Stat. 2152; Pub. L. 115-91, div. A, title

X, § 1051(a)(26), div. B, title XXVIII, § 2832, Dec. 12, 2017, 131 Stat. 1562, 1858.)

#### AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115-91, § 2832, substituted “energy resilience, mission assurance, weather damage repair and prevention, energy conservation, and” for “energy conservation and”.

Subsec. (d). Pub. L. 115-91, § 1051(a)(26), struck out subsec. (d). Text read as follows: “The Secretary of Defense shall include in the budget material submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31 a separate statement of the amounts available for obligation under this section in that fiscal year.”

2013—Subsec. (b)(1). Pub. L. 112-239 inserted “and energy security” after “additional energy conservation”.

#### TRANSFER OF FUNDS FOR ENERGY AND WATER EFFICIENCY IN FEDERAL BUILDINGS

Pub. L. 109-148, div. A, title VIII, § 8054, Dec. 30, 2005, 119 Stat. 2710, provided that: “Appropriations available under the heading ‘Operation and Maintenance, Defense-Wide’ for the current fiscal year and hereafter for increasing energy and water efficiency in Federal buildings may, during their period of availability, be transferred to other appropriations or funds of the Department of Defense for projects related to increasing energy and water efficiency, to be merged with and to be available for the same general purposes, and for the same time period, as the appropriation or fund to which transferred.”

Similar provisions for specified fiscal years were contained in the following prior appropriation acts:

Pub. L. 108-287, title VIII, § 8058, Aug. 5, 2004, 118 Stat. 983.

Pub. L. 108-87, title VIII, § 8058, Sept. 30, 2003, 117 Stat. 1085.

Pub. L. 107-248, title VIII, § 8059, Oct. 23, 2002, 116 Stat. 1550.

Pub. L. 107-117, div. A, title VIII, § 8064, Jan. 10, 2002, 115 Stat. 2261.

Pub. L. 106-259, title VIII, § 8063, Aug. 9, 2000, 114 Stat. 688.

Pub. L. 106-79, title VIII, § 8066, Oct. 25, 1999, 113 Stat. 1245.

Pub. L. 105-262, title VIII, § 8066, Oct. 17, 1998, 112 Stat. 2312.

Pub. L. 105-56, title VIII, § 8072, Oct. 8, 1997, 111 Stat. 1235.

Pub. L. 104-208, div. A, title I, § 101(b) [title VIII, § 8081], Sept. 30, 1996, 110 Stat. 3009-71, 3009-104.

Pub. L. 104-61, title VIII, § 8097, Dec. 1, 1995, 109 Stat. 671.

Pub. L. 103-139, title VIII, § 8149, Nov. 11, 1993, 107 Stat. 1475.

#### § 2913. Energy savings contracts and activities

(a) SHARED ENERGY SAVINGS CONTRACTS.—(1) The Secretary of Defense shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts with respect to military installations and will reduce the administrative effort and cost on the part of the Department of Defense as well as the private sector.

(2) In carrying out paragraph (1), the Secretary of Defense may—

(A) request statements of qualifications (as prescribed by the Secretary of Defense), including financial and performance information, from firms engaged in providing shared energy savings contracting;

(B) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;

(C) select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and

(D) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.

(3) In carrying out paragraph (1), the Secretary may also provide for the direct negotiation, by departments, agencies, and instrumentalities of the Department of Defense, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

(b) PARTICIPATION IN GAS OR ELECTRIC UTILITY PROGRAMS.—The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by any gas or electric utility for the management of energy demand or for energy conservation.

(c) ACCEPTANCE OF FINANCIAL INCENTIVE, GOODS, OR SERVICES.—The Secretary of Defense may authorize any military installation to accept any financial incentive, goods, or services generally available from a gas or electric utility, to adopt technologies and practices that the Secretary determines are in the interests of the United States and consistent with the energy performance goals for the Department of Defense.

(d) AGREEMENTS WITH GAS OR ELECTRIC UTILITIES.—(1) The Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs (including energy management services, facilities alterations, and the installation and maintenance of energy saving devices and technologies by the utilities) to address the requirements and circumstances of the installation.

(2) If an agreement under this subsection provides for a utility to advance financing costs for the design or implementation of a program referred to in that paragraph to be repaid by the United States, the cost of such advance may be recovered by the utility under terms no less favorable than those applicable to its most favored customer.

(3) Subject to the availability of appropriations, repayment of costs advanced under paragraph (2) shall be made from funds available to a military department for the purchase of utility services.

(4) An agreement under this subsection shall provide that title to any energy-saving device or technology installed at a military installation pursuant to the agreement vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(Added and amended Pub. L. 109-364, div. B, title XXVIII, §§ 2851(a)(1), 2853, Oct. 17, 2006, 120 Stat. 2491, 2496; Pub. L. 110-140, title V, § 511(c), Dec. 19, 2007, 121 Stat. 1658; Pub. L. 110-181, div. B, title XXVIII, § 2861, Jan. 28, 2008, 122 Stat. 559.)

#### AMENDMENTS

2008—Subsec. (e). Pub. L. 110-181, which directed the amendment of this section by striking out subsec. (e), could not be executed because subsec. (e) was previously repealed by Pub. L. 110-140, § 511(c). See 2007 Amendment note below.

2007—Subsec. (e). Pub. L. 110-140 struck out heading and text of subsec. (e). Text read as follows: “When a decision is made to award an energy savings performance contract that contains a clause setting forth a cancellation ceiling in excess of \$7,000,000, the Secretary of Defense shall submit to the appropriate committees of Congress written notification of the proposed contract and of the proposed cancellation ceiling for the contract. The notification shall include the justification for the proposed cancellation ceiling. The contract may then be awarded only after the end of the 30-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 15-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.”

2006—Subsec. (e). Pub. L. 109-364, § 2853, added subsec. (e).

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

### § 2914. Energy resiliency<sup>1</sup> and conservation construction projects

(a) PROJECTS AUTHORIZED.—The Secretary of Defense may carry out a military construction project for energy resilience, energy security, or energy conservation, not previously authorized, using funds appropriated or otherwise made available for that purpose.

(b) CONGRESSIONAL NOTIFICATION.—(1) When a decision is made to carry out a project under this section, the Secretary of Defense shall notify the appropriate committees of Congress of that decision. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by such committees in an electronic medium pursuant to section 480 of this title.

(2) The Secretary of Defense shall include in each notification submitted under paragraph (1) the following information:

(A) In the case of a military construction project for energy conservation, the justification and current cost estimate for the project, the expected savings-to-investment ratio, simple payback estimates, and the project’s measurement and verification cost estimate.

(B) In the case of a military construction project for energy resilience or energy security, the rationale for how the project would enhance mission assurance, support mission critical functions, and address known vulnerabilities.

(c) ANNUAL REPORT.—Not later than 90 days after the end of each fiscal year (beginning with

<sup>1</sup> So in original. Probably should be “resilience”.