

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
125(a)	5:171a(c)(1), (2), 5:171n(a) (as applicable to 5:171a(c)(1)).	July 26, 1947, ch. 343, §202(c)(1), (2), (4), (5), (6); added Aug. 10, 1949, ch. 412, §5(3d, 4th, 6th, 7th, and 8th pars.); re-stated Aug. 6, 1958, Pub. L. 85-599, §3(a), (1st, 2d, 5th, 6th, and 7th pars.), 72 Stat. 514, 515.
125(b)	5:171a(c)(5), 5:171n(a) (as applicable to 5:171a(c)(5)).	July 26, 1947, ch. 343, §308(a) (as applicable to §202(c)(1), (5), (6)), 61 Stat. 509.
125(c)	5:171a(c)(4).	
125(d)	5:171a(c)(6), 5:171n(a) (as applicable to 5:171a(c)(6)).	

In subsection (a), the following substitutions are made: “Except as provided by subsections (b) and (c)” for “except as otherwise provided in this subsection”; “vested . . . by law” for “established by law to be performed by”; “recommending” for “stating”; “proposes” for “contemplates”; and “the period” for “the thirty-day period or the forty-day period”. The words “on the first day after” are inserted for clarity. The words “if carried out” are omitted as surplusage.

In subsection (b), the words “Notwithstanding subsection (a)” are substituted for the words “Notwithstanding other provisions of this subsection”; and “Unless the President determines otherwise” for “subject to the determination of the President”.

In subsection (c), the following substitutions are made: “Notwithstanding subsection (a)” for “Notwithstanding the provisions of paragraph (1) hereof”; and “armed forces” for “services”.

In subsection (d), the following substitutions are made: “In subsection (a) (1)” for “within the meaning of paragraph (1) hereof”; and “considers” for “deems”. The words “advantageous to the Government in terms of” are omitted as surplusage.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-232 substituted “section 7062(b), 8062, 8063, or 9062(c)” for “section 3062(b), 5062, 5063, or 8062(c)”.

2014—Subsec. (a). Pub. L. 113-291 substituted “(50 U.S.C. 3002)” for “(50 U.S.C. 401)”.

1990—Subsec. (c). Pub. L. 101-510 struck out at end “However, notwithstanding any other provision of this title or any other law, the Secretary of Defense shall not direct or approve a plan to initiate or effect a substantial reduction or elimination of a major weapons system until the Secretary of Defense has reported all the pertinent details of the proposed action to the Congress of the United States while the Congress is in session.”

1986—Subsec. (a). Pub. L. 99-433, §103(1), struck out provision under which the Secretary of Defense could substantially transfer, reassign, consolidate, or abolish functions, powers, or duties vested in the Department of Defense by law if the Secretary reported the details of the proposed transfer, reassignment, consolidation, or abolition to Congress and if Congress did not affirmatively reject the proposal.

Subsec. (b). Pub. L. 99-433, §§103(2), 514(c)(1), inserted “vested by law in the Department of Defense, or an officer, official, or agency thereof” and substituted “5062, 5063” for “5012, 5013”.

Subsec. (d). Pub. L. 99-433, §301(b)(1), struck out subsec. (d) which read as follows: “In subsection (a)(1), ‘major combatant function, power, or duty’ does not include a supply or service activity common to more than one military department. The Secretary of Defense shall, whenever he determines it will be more effective, economical, or efficient, provide for the performance of such an activity by one agency or such other organizations as he considers appropriate.”

1984—Subsec. (a). Pub. L. 98-525 substituted “section 2 of the National Security Act of 1947 (50 U.S.C. 401)” for “section 401 of title 50”.

1966—Subsec. (c). Pub. L. 89-501 required the Secretary of Defense to report to the Congress all the per-

tinent details regarding any substantial reduction or elimination of a major weapons system before action could be initiated or effected by the Department of Defense.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

RESOLUTIONS RELATING TO TRANSFERS, REASSIGNMENTS, CONSOLIDATIONS, OR ABOLITIONS OF COMBATANT FUNCTIONS

Pub. L. 87-651, title III, §303, Sept. 7, 1962, 76 Stat. 525, provided that:

“(a) For the purposes of this section, any resolution reported to the Senate or the House of Representatives pursuant to the provisions of section 125 of title 10, United States Code, shall be treated for the purpose of consideration by either House, in the same manner as a resolution with respect to a reorganization plan reported by a committee within the meaning of the Reorganization Act of 1949 as in effect on July 1, 1958 (5 U.S.C. 133z and the following) [63 Stat. 203; 71 Stat. 611], and shall be governed by the provisions applicable to the consideration of any such resolution by either House of the Congress as provided by sections 205 and 206 of that Act [63 Stat. 207].

“(b) The provisions of this section are enacted by the Congress—

“(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, and supersede other rules only to the extent that they are inconsistent therewith; and

“(2) with full recognition of the constitutional right of either House to change the rules (as far as relating to the procedure in that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.”

§ 126. Transfer of funds and employees

(a) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred or assigned to another department or agency of that department, balances of appropriations that the Secretary of Defense determines are available and needed to finance or discharge that function, power, duty, or activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty or activity, as the case may be, is transferred, and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—

(1) be credited to any applicable appropriation account of the receiving department or agency; or

(2) be credited to a new account that may be established on the books of the Department of the Treasury;

and be merged with the funds already credited to that account and accounted for as one fund. Balances of appropriations credited to an account under clause (1) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under clause (2) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

(b) When a function, power, or duty or an activity of a department or agency of the Depart-

ment of Defense is transferred to another department or agency of that department, those civilian employees of the department or agency from which the transfer is made that the Secretary of Defense determines are needed to perform that function, power, or duty, or for that activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty, or activity, as the case may be, is transferred. The authorized strength in civilian employees of a department or agency from which employees are transferred under this section is reduced by the number of employees so transferred. The authorized strength in civilian employees of a department or agency to which employees are transferred under this section is increased by the number of employees so transferred.

(Added Pub. L. 87-651, title II, §201(a), Sept. 7, 1962, 76 Stat. 516; amended Pub. L. 96-513, title V, §511(2), Dec. 12, 1980, 94 Stat. 2920.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
126(a)	5:172f(a). 5:171n(a) (as applicable to 5:172f(a)).	July 26, 1947, ch. 343, § 407; added Aug. 10, 1949, ch. 412, § 11 (21st and 22d pars.), 63 Stat. 589.
126(b)	5:172f (less (a)).	July 26, 1947, ch. 343, § 308(a) (as applicable to § 407), 61 Stat. 509.

In subsection (a), the words “under authority of law” are omitted as surplusage. The following substitutions are made: “needed” for “necessary”; “used” for “be available for use by”; and “those appropriations” for “said funds”.

In subsection (b), 5 U.S.C. 172f(b) is restated to reflect more clearly its purpose to authorize “transfers of personnel” (Senate Report No. 366, 81st Congress, p. 23).

AMENDMENTS

1980—Subsec. (b) Pub. L. 96-513 substituted “President” for “Director of the Bureau of the Budget”.

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.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to approve transfers of balances of appropriations provided for therein delegated to Director of Office of Management and Budget, see section 9(2) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 127. Emergency and extraordinary expenses

(a) Subject to the limitations of subsection (c), and within the limitation of appropriations made for the purpose, the Secretary of Defense, the Inspector General of the Department of Defense, and the Secretary of a military department within his department, may provide for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary concerned or the Inspector General for any purpose he determines to be proper, and such a determination is final and conclusive

upon the accounting officers of the United States. The Secretary concerned or the Inspector General may certify the amount of any such expenditure authorized by him that he considers advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount.

(b) The authority conferred by this section may be delegated by the Secretary of Defense to any person in the Department of Defense, by the Inspector General to any person in the Office of the Inspector General, or by the Secretary of a military department to any person within his department, with or without the authority to make successive redelegations.

(c)(1) Funds may not be obligated or expended in an amount in excess of \$500,000 under the authority of subsection (a) or (b) until the Secretary of Defense has notified congressional defense committees¹ of the intent to obligate or expend the funds, and—

(A) in the case of an obligation or expenditure in excess of \$1,000,000, 15 days have elapsed since the date of the notification; or

(B) in the case of an obligation or expenditure in excess of \$500,000, but not in excess of \$1,000,000, 5 days have elapsed since the date of the notification.

(2) Subparagraph (A) or (B) of paragraph (1) shall not apply to an obligation or expenditure of funds otherwise covered by such subparagraph if the Secretary of Defense determines that the national security objectives of the United States will be compromised by the application of the subparagraph to the obligation or expenditure. If the Secretary makes a determination with respect to an obligation or expenditure under the preceding sentence, the Secretary shall immediately notify the committees referred to in paragraph (1) that such obligation or expenditure is necessary and provide any relevant information (in classified form, if necessary) jointly to the chairman and ranking minority member (or their designees) of such committees.

(3) A notification under paragraph (1) and information referred to in paragraph (2) shall include the amount to be obligated or expended, as the case may be, and the purpose of the obligation or expenditure.

(4)(A) Notwithstanding paragraph (1), funds may not be obligated or expended in an amount in excess of \$100,000 under the authority of subsection (a) or (b) for intelligence or counter-intelligence activities until the Secretary of Defense has notified the congressional defense committees and the congressional intelligence committees of the intent to obligate or expend the funds and 15 days have elapsed since the date of the notification.

(B) The Secretary of Defense may waive subparagraph (A) if the Secretary determines that such a waiver is necessary due to extraordinary circumstances that affect the national security of the United States. If the Secretary issues a waiver under this subparagraph, the Secretary shall submit to the congressional defense and congressional intelligence committees, by not later than 48 hours after issuing the waiver,

¹ So in original. Probably should be “the congressional defense committees”.