

made to existing facilities or to real property, without regard to whether they were carried out with appropriated or nonappropriated funds.

(3) The term “nonappropriated funds” means funds received from—

(A) the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of this title; or

(B) a nonappropriated fund instrumentality.

(4) The term “nonappropriated fund instrumentality” means an instrumentality of the United States under the jurisdiction of the armed forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.

(Added Pub. L. 111-84, div. B, title XXVIII, §2822(a)(1), Oct. 28, 2009, 123 Stat. 2665; amended Pub. L. 111-383, div. A, title X, §1075(b)(44), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112-239, div. A, title X, §1076(f)(34), Jan. 2, 2013, 126 Stat. 1954; Pub. L. 113-66, div. B, title XXVIII, §2807(a), Dec. 26, 2013, 127 Stat. 1008; Pub. L. 113-291, div. B, title XXVIII, §2803(a), Dec. 19, 2014, 128 Stat. 3696; Pub. L. 114-92, div. A, title X, §1081(a)(11), (b)(7), Nov. 25, 2015, 129 Stat. 1001, 1002; Pub. L. 114-328, div. B, title XXVIII, §2811(a), (c), Dec. 23, 2016, 130 Stat. 2715, 2716; Pub. L. 115-91, div. A, title X, §1081(d)(15), Dec. 12, 2017, 131 Stat. 1600.)

REFERENCES IN TEXT

The date of the enactment of the Military Construction Authorization Act for Fiscal Year 2015, referred to in subsec. (f)(1)(B)(ii), is the date of enactment of div. B of Pub. L. 113-291, which was approved Dec. 19, 2014.

AMENDMENTS

2017—Subsec. (f). Pub. L. 115-91, §1081(d)(15), amended Pub. L. 114-328, §2811(c). See 2016 Amendment note below.

2016—Subsec. (f). Pub. L. 114-328, §2811(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to authorized use of payments-in-kind and in-kind contributions.

Pub. L. 114-328, §2811(c), as amended by Pub. L. 115-91, §1081(d)(15), repealed Pub. L. 113-291, §2803(a). See 2014 Amendment note below.

2015—Subsec. (d)(2). Pub. L. 114-92, §1081(a)(11), inserted “fair market” before “value”.

Subsec. (f). Pub. L. 114-92, §1081(b)(7), amended Pub. L. 113-291, §2803(a). See 2014 Amendment note below.

2014—Subsec. (f). Pub. L. 113-291, §2803(a), as amended by Pub. L. 114-92, §1081(b)(7), which amended subsec. (f) generally by substituting provisions related to authorized use of payments-in-kind and in-kind contributions for provisions related to authorized use of payments-in-kind, was repealed by Pub. L. 114-328, §2811(c), as amended by Pub. L. 115-91, §1081(d)(15).

2013—Pub. L. 113-66, §2807(a), amended section generally. Prior to amendment, section consisted of subssecs. (a) and (b) which related to an annual status report of overseas base closures, realignments, and basing master plans and required elements of the report, respectively.

Subsec. (a). Pub. L. 112-239, §1076(f)(34)(A), substituted “Foreign Relations” for “Foreign relations”.

Subsec. (b)(1). Pub. L. 112-239, §1076(f)(34)(B), struck out comma after “including” and substituted “the Treaty” for “The Treaty”.

2011—Subsec. (a). Pub. L. 111-383 substituted “31 for” for “31for” in introductory provisions.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-91, div. A, title X, §1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(15) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114-328 as enacted.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-92, div. A, title X, §1081(b), Nov. 25, 2015, 129 Stat. 1001, provided in part that the amendment made by section 1081(b)(7) is effective as of Dec. 19, 2014, and as if included in Pub. L. 113-291 as enacted.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-291, div. B, title XXVIII, §2803(d), Dec. 19, 2014, 128 Stat. 3697, which provided the effective date for the amendments made by section 2803 of Pub. L. 113-291, was repealed by Pub. L. 114-328, div. B, title XXVIII, §2811(c), Dec. 23, 2016, 130 Stat. 2716.

REPEAL OF 2014 AMENDMENT

Pub. L. 114-328, div. B, title XXVIII, §2811(c), Dec. 23, 2016, 130 Stat. 2716, as amended by Pub. L. 115-91, div. A, title X, §1081(d)(15), Dec. 12, 2017, 131 Stat. 1600, provided that: “Section 2803 of the Carl Levin and Howard ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3696) [amending this section and section 2802 of this title and enacting provisions set out as a note under this section] is repealed.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114-328, set out as a note under section 111 of this title.

§ 2688. Utility systems: conveyance authority

(a) CONVEYANCE AUTHORITY.—The Secretary of a military department may convey a utility system, or part of a utility system, under the jurisdiction of the Secretary to a municipal, private, regional, district, or cooperative utility company or other entity. The conveyance may consist of all right, title, and interest of the United States in the utility system or such lesser estate as the Secretary considers appropriate to serve the interests of the United States.

(b) SELECTION OF CONVEYEE.—(1) If more than one utility or entity referred to in subsection (a) notifies the Secretary concerned of an interest in a conveyance under such subsection, the Secretary shall carry out the conveyance through the use of competitive procedures.

(2) Notwithstanding paragraph (1), the Secretary concerned may use procedures other than competitive procedures, but only in accordance with subsections (c) through (f) of section 2304 of this title, to select the conveyee of a utility system (or part of a utility system) under subsection (a).

(3) With respect to the solicitation process used in connection with the conveyance of a utility system (or part of a utility system) under subsection (a), the Secretary concerned shall ensure that the process is conducted in a manner consistent with the laws and regulations of the State in which the utility system is located to the extent necessary to ensure that all interested regulated and unregulated utility companies and other interested entities receive an opportunity to acquire and operate the utility system to be conveyed.

(c) CONSIDERATION.—(1) The Secretary concerned may require as consideration for a conveyance under subsection (a) an amount equal to the fair market value (as determined by the Secretary) of the right, title, or interest of the United States conveyed. The consideration may take the form of—

(A) a lump sum payment; or

(B) a reduction in charges for utility services provided by the utility or entity concerned to the military installation at which the utility system is located.

(2) If the utility services proposed to be provided as consideration under paragraph (1) are subject to regulation by a Federal or State agency, any reduction in the rate charged for the utility services shall be subject to establishment or approval by that agency.

(d) CONTRACTS FOR UTILITY SERVICES.—(1) Except as provided in paragraph (2), a contract for the receipt of utility services as consideration under subsection (c), or any other contract for utility services entered into by the Secretary concerned in connection with the conveyance of a utility system under this section, may be for a period not to exceed 10 years.

(2) The Secretary of Defense, or the designee of the Secretary, may authorize a contract for utility services described in paragraph (1) to have a term in excess of 10 years, but not to exceed 50 years, if the Secretary determines that a contract for a longer term will be cost effective. The determination of cost effectiveness shall be made using a business case analysis that includes an independent estimate of the level of investment that should be required to maintain adequate operation of the utility system over the proposed term of the contract. The business case analysis must also demonstrate how a privatized system will operate in a manner consistent with subsection (g)(3).

(e) TREATMENT OF PAYMENTS.—(1) A lump sum payment received under subsection (c) shall be credited, at the election of the Secretary concerned—

(A) to an appropriation of the military department concerned available for the procurement of the same utility services as are provided by the utility system conveyed under this section;

(B) to an appropriation of the military department available for carrying out energy savings projects or water conservation projects; or

(C) to an appropriation of the military department available for improvements to other utility systems.

(2) Amounts so credited shall be merged with funds in the appropriation to which credited and shall be available for the same purposes, and subject to the same conditions and limitations, as the appropriation with which merged.

[(f) Repealed. Pub. L. 112-81, div. A, title X, §1061(21)(C), Dec. 31, 2011, 125 Stat. 1584.]

(g) ADDITIONAL TERMS AND CONDITIONS.—(1) The Secretary concerned may require such additional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(2) The Secretary concerned shall require in any contract for the conveyance of a utility system (or part of a utility system) under subsection (a) that the conveyee manage and operate the utility system in a manner consistent with applicable Federal and State regulations pertaining to health, safety, fire, and environmental requirements.

(3) The Secretary concerned shall require in any contract for the conveyance of a utility system (or part of a utility system) under subsection (a) that the conveyee manage and operate the utility system in a manner consistent with energy resilience and cybersecurity requirements and associated metrics provided to the conveyee to ensure that the reliability of the utility system meets mission requirements.

(4) The Secretary of Defense, in consultation with the Secretaries of the military departments, shall include in the installation energy report submitted under section 2925(a) of this title a description of progress in meeting energy resilience metrics for all conveyance contracts entered into pursuant to this section.

(h) ASSISTANCE FOR CONSTRUCTION, REPAIR, OR REPLACEMENT OF UTILITY SYSTEMS.—In lieu of carrying out a military construction project to construct, repair, or replace a utility system, the Secretary concerned may use funds authorized and appropriated for the project to facilitate the conveyance of the utility system under this section by making a contribution toward the cost of construction, repair, or replacement of the utility system by the entity to which the utility system is being conveyed.

(i) UTILITY SYSTEM DEFINED.—(1) In this section, the term “utility system” means any of the following:

(A) A system for the generation and supply of electric power.

(B) A system for the treatment or supply of water.

(C) A system for the collection or treatment of wastewater.

(D) A system for the generation or supply of steam, hot water, and chilled water.

(E) A system for the supply of natural gas.

(F) A system for the transmission of telecommunications.

(2) The term “utility system” includes the following:

(A) Equipment, fixtures, structures, and other improvements utilized in connection with a system referred to in paragraph (1).

(B) Real property, easements, and rights-of-way associated with a system referred to in that paragraph.

(j) CONVEYANCE OF ADDITIONAL UTILITY INFRASTRUCTURE AFTER CONVEYANCE OF A UTILITY SYSTEM.—(1) Upon conveyance of a utility system, the Secretary of a military department may convey additional utility infrastructure under the jurisdiction of the Secretary on a military installation to a utility or entity to which a utility system for the installation has been conveyed under subsection (a) if the Secretary determines that—

(A) the additional utility infrastructure cannot operate without being a part of the conveyed utility system or operation of the addi-

tional utility infrastructure by the utility or entity would be in the best interest of the Government; and

(B) the military department receives as consideration an amount for the utility infrastructure determined in the same manner as the consideration the Secretary could require under subsection (c) for a conveyance under subsection (a).

(2) The conveyance under this paragraph may consist of all right, title, and interest of the United States or such lesser estate as the Secretary considers appropriate to serve the interests of the United States.

(k) LIMITATION.—This section shall not apply to projects constructed or operated by the Army Corps of Engineers under its civil works authorities.

(Added Pub. L. 105-85, div. B, title XXVIII, §2812(a), Nov. 18, 1997, 111 Stat. 1992; amended Pub. L. 106-65, div. A, title X, §1067(1), div. B, title XXVIII, §2812, Oct. 5, 1999, 113 Stat. 774, 851; Pub. L. 106-398, §1 [[div. A], title X, §1087(a)(15), div. B, title XXVIII, §2813], Oct. 30, 2000, 114 Stat. 1654, 1654A-291, 1654A-418; Pub. L. 108-136, div. A, title X, §1031(a)(32), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 109-163, div. B, title XXVIII, §2823(a)-(d), Jan. 6, 2006, 119 Stat. 3514-3516; Pub. L. 110-417, div. B, title XXVIII, §2813, Oct. 14, 2008, 122 Stat. 4728; Pub. L. 111-84, div. B, title XXVIII, §2821, Oct. 28, 2009, 123 Stat. 2664; Pub. L. 112-81, div. A, title X, §1061(21), Dec. 31, 2011, 125 Stat. 1584; Pub. L. 113-66, div. B, title XXVIII, §2813, Dec. 26, 2013, 127 Stat. 1014; Pub. L. 114-92, div. B, title XXVIII, §2813, Nov. 25, 2015, 129 Stat. 1175; Pub. L. 115-91, div. B, title XXVIII, §2834, Dec. 12, 2017, 131 Stat. 1858; Pub. L. 115-232, div. A, title III, §312(e), Aug. 13, 2018, 132 Stat. 1710.)

PRIOR PROVISIONS

A prior section 2688, added Pub. L. 96-125, title VIII, §804(a)(1), Nov. 26, 1979, 93 Stat. 948; amended Pub. L. 96-418, title VIII, §804, Oct. 10, 1980, 94 Stat. 1777; Pub. L. 97-22, §11(a)(9), July 10, 1981, 95 Stat. 138; Pub. L. 97-99, title IX, §901, Dec. 23, 1981, 95 Stat. 1381, related to use of solar energy systems in new facilities, prior to repeal by Pub. L. 97-214, §§7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2915 of this title.

AMENDMENTS

2018—Subsec. (d)(2). Pub. L. 115-232, §312(e)(1), inserted at end “The business case analysis must also demonstrate how a privatized system will operate in a manner consistent with subsection (g)(3).”

Subsec. (g)(3). Pub. L. 115-232, §312(e)(2), substituted “shall require” for “may require” and “consistent with energy resilience and cybersecurity requirements and associated metrics” for “consistent with energy resilience requirements and metrics”.

2017—Subsec. (g)(3), (4). Pub. L. 115-91 added pars. (3) and (4).

2015—Subsec. (j). Pub. L. 114-92, §2813(1), substituted “Conveyance of Additional” for “Construction of” in heading.

Subsec. (j)(1). Pub. L. 114-92, §2813(2), redesignated subpar. (B) as (A) and substituted “utility system or operation of the additional utility infrastructure by the utility or entity would be in the best interest of the

Government; and” for “utility system;”, redesignated subpar. (D) as (B) and substituted “amount for” for “amount equal to the fair market value of”, and struck out former subpars. (A) and (C) which read as follows:

“(A) the additional utility infrastructure was constructed or installed after the date of the conveyance of the utility system;

“(C) the additional utility infrastructure was planned and coordinated with the entity operating the conveyed utility system; and”.

2013—Subsec. (d)(2). Pub. L. 113-66 inserted at end “The determination of cost effectiveness shall be made using a business case analysis that includes an independent estimate of the level of investment that should be required to maintain adequate operation of the utility system over the proposed term of the contract.”

2011—Subsec. (a). Pub. L. 112-81, §1061(21)(A), struck out par. (1) designation before “The Secretary of a military department” and struck out pars. (2) and (3) which related to conditions for entry into a contract to convey all or part of a utility system and conditions under which the Secretary concerned could not reconsider conversion to contractor operation under section 2461 of this title for a five-year period, respectively.

Subsec. (d)(2). Pub. L. 112-81, §1061(21)(B), struck out at end “The economic analysis submitted to the congressional defense committees under subsection (a)(2) for the conveyance of the utility system, or part thereof, with regard to which the utility services contract will be entered into by the Secretary concerned shall include the determination required by this paragraph, an explanation of the need for the longer term contract, and a comparison of costs between a 10-year contract and the longer-term contract.”

Subsec. (f). Pub. L. 112-81, §1061(21)(C), struck out subsec. (f). Prior to amendment, text read as follows: “Not later than 30 days after the end of each quarter of a fiscal year, the Secretary shall submit to the congressional defense committees a report on the conveyances made under subsection (a) during such fiscal quarter.”

Subsec. (h). Pub. L. 112-81, §1061(21)(D), struck out at end “The Secretary concerned shall consider any such contribution in the economic analysis required under subsection (a)(2).”

2009—Subsec. (a)(2)(A)(ii). Pub. L. 111-84, §2821(a), substituted “system by 10 percent of the long-term cost for provision of those utility services in the agency tender; and” for “system; and”.

Subsec. (a)(3). Pub. L. 111-84, §2821(b), added par. (3).
2008—Subsecs. (j), (k). Pub. L. 110-417 added subsec. (j) and redesignated former subsec. (j) as (k).

2006—Subsec. (a). Pub. L. 109-163, §2823(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 109-163, §2823(b), substituted “may require” for “shall require” in introductory provisions.

Subsec. (c)(3). Pub. L. 109-163, §2823(c)(2), redesignated subsec. (c)(3) as (d).

Subsec. (d). Pub. L. 109-163, §2823(c)(2), redesignated subsec. (c)(3) as (d), substituted “CONTRACTS FOR UTILITY SERVICES.—(1) Except as provided in paragraph (2), a contract” for “A contract”, “subsection (c)” for “paragraph (1)”, and “10 years” for “50 years”, and added par. (2). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 109-163, §2823(c)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109-163, §2823(d)(1), struck out at end “The report shall include, for each such conveyance, an economic analysis (based upon accepted life-cycle costing procedures approved by the Secretary of Defense) demonstrating that—

“(1) the long-term economic benefit of the conveyance to the United States exceeds the long-term economic cost of the conveyance to the United States; and

“(2) the conveyance will reduce the long-term costs of the United States for utility services provided by the utility system concerned.”

Pub. L. 109-163, §2823(c)(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 109-163, § 2823(c)(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109-163, § 2823(d)(2), substituted “subsection (a)(2)” for “subsection (e)”.

Pub. L. 109-163, § 2823(c)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 109-163, § 2823(c)(1), redesignated subsecs. (h) and (i) as (i) and (j), respectively.

2003—Subsec. (e). Pub. L. 108-136 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “The Secretary concerned may not make a conveyance under subsection (a) until—

“(1) the Secretary submits to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives an economic analysis (based upon accepted life-cycle costing procedures approved by the Secretary of Defense) demonstrating that—

“(A) the long-term economic benefit of the conveyance to the United States exceeds the long-term economic cost of the conveyance to the United States; and

“(B) the conveyance will reduce the long-term costs of the United States for utility services provided by the utility system concerned; and

“(2) a period of 21 days has elapsed after the date on which the economic analysis is received by the committees.”

2000—Subsec. (b). Pub. L. 106-398, § 1 [div. B, title XXVIII, § 2813(a)], designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f). Pub. L. 106-398, § 1 [div. B, title XXVIII, § 2813(b)], designated existing provisions as par. (1) and added par. (2).

Subsecs. (h) to (j). Pub. L. 106-398, § 1 [[div. A], title X, § 1087(a)(15)], redesignated subsecs. (i) and (j) as (h) and (i), respectively.

1999—Subsec. (c)(3). Pub. L. 106-65, § 2812(a), added par. (3).

Subsec. (e)(1). Pub. L. 106-65, § 1067(1), substituted “and the Committee on Armed Services” for “and the Committee on National Security” in introductory provisions.

Subsec. (g). Pub. L. 106-65, § 2812(c)(2), added subsec. (g). Former subsec. (g) redesignated (i).

Subsec. (g)(2)(B). Pub. L. 106-65, § 2812(b), substituted “Real property, easements,” for “Easements”.

Subsecs. (h) to (j). Pub. L. 106-65, § 2812(c)(1), redesignated subsecs. (g) and (h) as (i) and (j), respectively.

SENSE OF CONGRESS REGARDING INCLUSION OF STORMWATER SYSTEMS AND COMPONENTS WITHIN THE MEANING OF “WASTEWATER SYSTEM” UNDER THE DEPARTMENT OF DEFENSE AUTHORITY FOR CONVEYANCE OF UTILITY SYSTEMS

Pub. L. 114-328, div. B, title XXVIII, § 2813, Dec. 23, 2016, 130 Stat. 2717, provided that: “It is the sense of Congress that the reference to a system for the collection or treatment of wastewater in the definition of ‘utility system’ in section 2688 of title 10, United States Code, which authorizes the Department of Defense to convey utility systems, includes stormwater systems and components.”

[§ 2689. Renumbered § 2917]

[§ 2690. Renumbered § 2918]

§ 2691. Restoration of land used by permit or damaged by mishap; reimbursement of state costs of fighting wildland fires

(a) RESTORATION OF OTHER AGENCY LAND USED BY PERMIT.—The Secretary of the military department concerned may remove improvements and take any other action necessary in the judgment of the Secretary to restore land used by

that military department by permit from another military department or Federal agency if the restoration is required by the permit making that land available to the military department. The Secretary concerned may carry out this section using funds available for operations and maintenance or for military construction.

(b) SCREENING FOR USE OF IMPROVED LAND.—Unless otherwise prohibited by law or the terms of the permit, before restoration of any land under subsection (a) is begun, the Secretary concerned shall determine, under the provisions of subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, whether another military department or Federal agency has a use for the land in its existing, improved state. During the period required to make such a determination, the Secretary may provide for maintenance and repair of improvements on the land to the standards established for excess property by the Administrator of General Services.

(c) RESTORATION OF DEPARTMENT OF DEFENSE LAND USED BY OTHER AGENCY.—(1) As a condition of any permit, license, or other grant of access entered into by the Secretary of a military department with another Federal agency authorizing the agency to use lands under the control of the Secretary, the Secretary may require the agency to agree to remove any improvements and to take any other action necessary in the judgment of the Secretary to restore the land used by the agency to its condition before its use by the agency.

(2) In lieu of performing any removal or restoration work under paragraph (1), a Federal agency may elect, with the consent of the Secretary, to reimburse the Secretary for the costs incurred by the military department in performing such removal or restoration work.

(d) WILDLAND FIRES ON STATE LAND.—The Secretary of Defense may, in any lease, permit, license, or other grant of access for use of lands owned by a State, agree to reimburse the State for the reasonable costs of the State in suppressing wildland fires caused by the activities of the Department of Defense under such lease, permit, license, or other grant of access.

(e) RESTORATION OF LAND DAMAGED BY MISHAP.—(1) When land under the administrative jurisdiction of a Federal agency that is not a part of the Department of Defense is damaged as the result of a mishap involving a vessel, aircraft, or vehicle of the Department of Defense, the Secretary of Defense may, with the consent of the Federal agency, restore the land.

(2) When land under the administrative jurisdiction of the Department of Defense or a military department is damaged as the result of a mishap involving a vessel, aircraft, or vehicle of a Federal agency that is not a part of the Department of Defense, the head of the Federal agency under whose control the vessel, aircraft, or vehicle was operating may, with the consent of the Department of Defense, restore the land.

(3) The authority under paragraphs (1) and (2) includes activities and expenditures necessary to complete restoration to meet the regulations of the Federal department or agency with administrative jurisdiction over the affected land, which may be different than the regulations of the Department of Defense.