

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

**§ 2859. Construction requirements related to antiterrorism and force protection or urban-training operations**

(a) **ANTITERRORISM AND FORCE PROTECTION GUIDANCE AND CRITERIA.**—The Secretary of Defense shall develop common guidance and criteria to be used by each Secretary concerned—

(1) to assess the vulnerability of military installations located inside and outside of the United States to terrorist attack;

(2) to develop construction standards that, taking into consideration other security or force-protection measures available for the facility or military installation concerned, are designed to reduce the vulnerability of structures to terrorist attack and improve the security of the occupants of such structures;

(3) to prepare and carry out military construction projects, such as gate and fenceline construction, to improve the physical security of military installations; and

(4) to assist in prioritizing such projects within the military construction budget of each of the armed forces.

(b) **VULNERABILITY ASSESSMENTS.**—The Secretary of Defense shall require vulnerability assessments of military installations to be conducted, at regular intervals, using the criteria developed under subsection (a).

(c) **CERTIFICATION REQUIRED FOR MILITARY CONSTRUCTION PROJECTS DESIGNED TO PROVIDE TRAINING IN URBAN OPERATIONS.**—(1) Except as provided in paragraph (3), the Secretary concerned may not carry out a military construction project to construct a facility designed to provide training in urban operations for members of the armed forces or personnel of the Department of Defense or other Federal agencies until—

(A) the Secretary of Defense approves a strategy for training and facility construction for operations in urban terrain; and

(B) the Under Secretary of Defense for Personnel and Readiness evaluates the project and certifies to the appropriate committees of Congress that the project—

(i) is consistent with the strategy; and

(ii) incorporates the appropriate capabilities for joint and interagency use in accordance with the strategy.

(2) This subsection shall not apply with respect to a military construction project carried out under the authority of section 2803, 2804, or 2808 of this title or section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723).

(Added Pub. L. 108-375, div. B, title XXVIII, §2804(a)(1), Oct. 28, 2004, 118 Stat. 2121; amended Pub. L. 109-364, div. B, title XXVIII, §2808(a), (b)(1), Oct. 17, 2006, 120 Stat. 2469; Pub. L. 112-239, div. A, title X, §1081(2), Jan. 2, 2013, 126 Stat. 1960; Pub. L. 113-66, div. B, title XXVIII, §2803(a),

Dec. 26, 2013, 127 Stat. 1006; Pub. L. 115-91, div. A, title X, §1051(a)(22), Dec. 12, 2017, 131 Stat. 1562.)

**Editorial Notes**

## REFERENCES IN TEXT

Section 2808 of the Military Construction Authorization Act for Fiscal Year 2004, referred to in subsec. (c)(2), is section 2808 of title XXVIII of div. B of Pub. L. 108-136, Nov. 24, 2003, 117 Stat. 1723, which is not classified to the Code except for section 2808(e), which is set out as a note under section 2805 of this title.

## PRIOR PROVISIONS

A prior section 2859, added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 97-295, §1(36), Oct. 12, 1982, 96 Stat. 1296, provided for transmission of annual military construction authorization request, prior to repeal by Pub. L. 108-136, div. A, title X, §1044(b)(1), Nov. 24, 2003, 117 Stat. 1612.

## AMENDMENTS

2017—Subsecs. (c), (d). Pub. L. 115-91 redesignated subsec. (d) as (c) and struck out former subsec. (c) which required annual reports describing vulnerability assessments and military construction requirements.

2013—Subsec. (a)(2). Pub. L. 113-66 substituted “develop construction standards that, taking into consideration other security or force-protection measures available for the facility or military installation concerned, are designed” for “develop construction standards designed”.

Subsec. (d)(2), (3). Pub. L. 112-239 redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “The Under Secretary of Defense for Personnel and Readiness shall conduct the evaluation required by paragraph (1)(B) in consultation with the Commander of the United States Joint Forces Command.”

2006—Pub. L. 109-364, §2808(b)(1), inserted “or urban-training operations” after “force protection” in section catchline.

Subsec. (d). Pub. L. 109-364, §2808(a), added subsec. (d).

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. B, title XXVIII, §2808(c), Oct. 17, 2006, 120 Stat. 2470, provided that: “Subsection (d) [now (c)] of section 2859 of title 10, United States Code, as added by subsection (a), shall apply with respect to military construction projects described in such subsection (d) [(c)] for which funds are first provided for fiscal year 2007 or thereafter.”

**JOINT STRATEGY FOR AIR BASE DEFENSE AGAINST MISSILE THREATS**

Pub. L. 116-283, div. A, title I, §156, Jan. 1, 2021, 134 Stat. 3447, provided that:

“(a) **STRATEGY REQUIRED.**—The Chief of Staff of the Air Force and the Chief of Staff of the Army shall jointly develop and carry out a strategy to address the defense of air bases and prepositioned sites outside the continental United States against current and emerging missile threats, as validated by the Defense Intelligence Agency.

“(b) **CERTIFICATION AND STRATEGY.**—Not later than June 1, 2021, the Chief of Staff of the Air Force and the Chief of Staff of the Army shall jointly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the following:

“(1) A certification that the defense of air bases and prepositioned sites outside the continental United States against threats described in subsection (a) is being addressed jointly.

“(2) The strategy developed pursuant to subsection (a).”

**SPECIAL REQUIREMENT FOR 2006 REPORT**

Pub. L. 108-375, div. B, title XXVIII, §2804(b), Oct. 28, 2004, 118 Stat. 2122, required the 2006 report under

former subsec. (c) of this section to include a certification that since Sept. 11, 2001, terrorist attack vulnerability assessments had been undertaken for all major military installations.

### § 2860. Availability of appropriations

Funds appropriated to a military department or to the Secretary of Defense for a fiscal year for military construction or military family housing purposes may remain available for obligation beyond such fiscal year to the extent provided in appropriation Acts.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 99-167, title VIII, §812(a), Dec. 3, 1985, 99 Stat. 991; Pub. L. 99-173, §121(b), Dec. 10, 1985, 99 Stat. 1029; Pub. L. 99-661, div. A, title XIII, §1343(a)(21)(A), Nov. 14, 1986, 100 Stat. 3994.)

#### Editorial Notes

##### AMENDMENTS

1986—Pub. L. 99-661 substituted “to the Secretary of Defense” for “defense agency”, inserted “for obligation” after “remains available”, and struck out “the” before “appropriation Acts”.

1985—Pub. L. 99-173 substituted “Availability of appropriations” for “Availability of appropriations for five years” as section catchline, and amended text generally. Prior to amendment, text read as follows: “Subject to the provisions of appropriation Acts, any funds appropriated to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were appropriated if the funds obligated for such project (1) are obligated from funds available for military construction projects, and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.”

Pub. L. 99-167 struck out subsection designation “(a)” and “and except as otherwise provided under subsection (b)” after “provisions of appropriation Acts”, and struck out subsec. (b) which provided: “Should a requirement develop to obligate funds for a military construction project after the end of the fourth fiscal year after the fiscal year for which such funds were appropriated, such obligation may be made after the end of the 21-day period beginning on the date on which the appropriate committees of Congress receive notification of the need for such obligation and the reasons therefor.”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1985 AMENDMENTS

Pub. L. 99-173, §121(c), Dec. 10, 1985, 99 Stat. 1029, provided that: “The amendment made by subsection (b) [amending this section] shall apply to funds appropriated after the date of the enactment of Public Law 99-103 [Sept. 30, 1985].”

Pub. L. 99-167, title VIII, §812(b), Dec. 3, 1985, 99 Stat. 991, provided that: “The amendments made by subsection (a) [amending this section] shall apply to funds appropriated after September 30, 1985.”

##### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

##### AVAILABILITY OF APPROPRIATIONS FOR FIVE YEARS

Pub. L. 109-114, title I, §117, Nov. 30, 2005, 119 Stat. 2378, which provided that any funds made available to

a military department or defense agency for the construction of military projects could be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were made available, if the funds obligated for such project: (1) were obligated from funds available for military construction projects; and (2) did not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law, was from the Military Construction, Military Quality of Life and Veterans Affairs Appropriations Act, 2006 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 108-324, div. A, §117, Oct. 13, 2004, 118 Stat. 1227.

Pub. L. 108-132, §117, Nov. 22, 2003, 117 Stat. 1380.

Pub. L. 107-249, §117, Oct. 23, 2002, 116 Stat. 1583.

Pub. L. 107-64, §117, Nov. 5, 2001, 115 Stat. 479.

Pub. L. 106-246, div. A, §117, July 13, 2000, 114 Stat. 516.

Pub. L. 106-52, §117, Aug. 17, 1999, 113 Stat. 264.

Pub. L. 105-237, §117, Sept. 20, 1998, 112 Stat. 1558.

Pub. L. 105-45, §117, Sept. 30, 1997, 111 Stat. 1147.

Pub. L. 104-196, §117, Sept. 16, 1996, 110 Stat. 2391.

Pub. L. 104-32, §117, Oct. 3, 1995, 109 Stat. 289.

Pub. L. 103-307, §118, Aug. 23, 1994, 108 Stat. 1664.

Pub. L. 103-110, §118, Oct. 21, 1993, 107 Stat. 1043.

Pub. L. 102-380, §119, Oct. 5, 1992, 106 Stat. 1371.

Pub. L. 102-136, §119, Oct. 25, 1991, 105 Stat. 643.

Pub. L. 101-519, §119, Nov. 5, 1990, 104 Stat. 2246.

Pub. L. 101-148, §121, Nov. 10, 1989, 103 Stat. 925.

Pub. L. 100-447, §124, Sept. 27, 1988, 102 Stat. 1835.

##### TRANSFER OF FUNDS FOR FOREIGN CURRENCY FLUCTUATIONS

Pub. L. 108-132, §118, Nov. 22, 2003, 117 Stat. 1380, which provided that during the 5-year period after appropriations available to the Department of Defense for military construction and family housing operation and maintenance and construction have expired for obligation, upon a determination that such appropriations would not be necessary for the liquidation of obligations or for making authorized adjustments to such appropriations for obligations incurred during the period of availability of such appropriations, unobligated balances of such appropriations could be transferred into the appropriation “Foreign Currency Fluctuations, Construction, Defense” to be merged with and to be available for the same time period and for the same purposes as the appropriation to which transferred, was from the Military Construction Appropriations Act, 2005 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 107-249, §118, Oct. 23, 2002, 116 Stat. 1584.

Pub. L. 107-64, §118, Nov. 5, 2001, 115 Stat. 480.

Pub. L. 106-246, div. A, §118, July 13, 2000, 114 Stat. 516.

Pub. L. 106-52, §118, Aug. 17, 1999, 113 Stat. 264.

Pub. L. 105-237, §118, Sept. 20, 1998, 112 Stat. 1559.

Pub. L. 105-45, §118, Sept. 30, 1997, 111 Stat. 1147.

Pub. L. 104-196, §118, Sept. 16, 1996, 110 Stat. 2392.

Pub. L. 104-32, §118, Oct. 3, 1995, 109 Stat. 289.

Pub. L. 103-307, §119, Aug. 23, 1994, 108 Stat. 1665.

Pub. L. 103-110, §120, Oct. 21, 1993, 107 Stat. 1043.

Pub. L. 102-380, §121, Oct. 5, 1992, 106 Stat. 1372.

Pub. L. 102-136, §122, Oct. 25, 1991, 105 Stat. 643.

Pub. L. 99-500, §101(k) [title I, §121], Oct. 18, 1986, 100 Stat. 1783-287, 1783-293, and Pub. L. 99-591, §101(k) [title I, §121], Oct. 30, 1986, 100 Stat. 3341-287, 3341-293, as amended by Pub. L. 102-136, §122, Oct. 25, 1991, 105 Stat. 643, provided that: “For Transfer by the Secretary of Defense to and from appropriations and funds not merged pursuant to subsection 1552(a)(1) of title 31 of