

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

the United States Code and available for obligation or expenditure during fiscal year 1987 or thereafter, for military construction or expenses of family housing for the military departments and Defense agencies, in order to maintain the budgeted level of operations for such appropriations and thereby eliminate substantial gains and losses to such appropriations caused by fluctuations in foreign currency exchange rates that vary substantially from those used in preparing budget submissions, an appropriation, to remain available until expended: *Provided*, That funds transferred from this appropriation shall be merged with and be available for the same purpose, and for the same time period, as the appropriation or fund to which transferred, and funds transferred to this appropriation shall be merged with, and available for the purpose of this appropriation until expended: *Provided further*, That transfers may be made from time to time from this appropriation to the extent the Secretary of Defense determines it may be necessary to do so to reflect downward fluctuations in the currency exchange rates from those used in preparing the budget submissions for such appropriations, but transfers shall be made from such appropriations to this appropriation to reflect upward fluctuations in currency exchange rates to prevent substantial net gains in such appropriations: *Provided further*, That authorizations or limitations now or hereafter contained within appropriations or other provisions of law limiting the amounts that may be obligated or expended for military construction and family housing expenses are hereby increased to the extent necessary to reflect downward fluctuations in foreign currency exchange rates from those used in preparing the applicable budget submission: *Provided further*, That for the purposes of the appropriation 'Foreign Currency Fluctuations, Construction, Defense' the foreign currency rates used in preparing budget submissions shall be the foreign currency exchange rates as adjusted or modified, as reflected in applicable Committee reports on the Acts making appropriations for military construction for the Department of Defense: *Provided further*, That the Secretary of Defense shall provide an annual report to the Congress on all transfers made to or made from this appropriation: *Provided further*, That contracts or other obligations entered into payable in foreign currencies may be recorded as obligations based on the currency exchange rates used in preparing budget submissions and adjustments to reflect fluctuations in such rates may be recorded as disbursements are made: *Provided further*, That, at the discretion of the Secretary of Defense, any savings generated in the military construction and family housing programs may be transferred to this appropriation."

**§ 2861. Military construction projects in connection with industrial facility investment program**

(a) **AUTHORITY.**—The Secretary of Defense may carry out a military construction project, not previously authorized, for the purpose of carrying out activities under section 2474(a)(2) of this title, using funds appropriated or otherwise made available for that purpose in military construction accounts.

(b) **CREDITING OF FUNDS TO CAPITAL BUDGET.**—Funds appropriated or otherwise made available in a fiscal year for the purpose of carrying out a military construction project with respect to a covered depot (as defined in subsection (e) of section 2476 of this title) may be credited to the amount required by subsection (a) of such section to be invested in the capital budgets of the covered depots in that fiscal year.

(c) **NOTICE AND WAIT REQUIREMENT.**—When a decision is made to carry out a project under subsection (a), the Secretary of Defense shall notify the appropriate committees of Congress

of that decision and the savings estimated to be realized from the project. 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.

(Added Pub. L. 109-364, div. B, title XXVIII, §2809(a), Oct. 17, 2006, 120 Stat. 2470; amended Pub. L. 115-91, div. A, title X, §1051(a)(23), div. B, title XXVIII, §2801(c)(4), Dec. 12, 2017, 131 Stat. 1562, 1844.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 2861, added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 100-26, §7(f)(1), (j)(9), Apr. 21, 1987, 101 Stat. 281, 283; Pub. L. 104-106, div. B, title XXVIII, §2811(b), Feb. 10, 1996, 110 Stat. 552; Pub. L. 104-201, div. B, title XXVIII, §2802(d)(1), Sept. 23, 1996, 110 Stat. 2787, required the Secretary of Defense to submit an annual report to the appropriate committees of Congress with respect to military construction activities and military family housing activities, prior to repeal by Pub. L. 107-107, div. B, title XXVIII, §2803(a), Dec. 28, 2001, 115 Stat. 1305.

**AMENDMENTS**

2017—Subsec. (c). Pub. L. 115-91, §2801(c)(4), struck out "in writing" after "shall notify" and "or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided" after "received by such committees" and substituted "14-day period" for "21-day period".

Subsec. (d). Pub. L. 115-91, §1051(a)(23), struck out subsec. (d). Text read as follows: "Not later than December 31 of each year, the Secretary shall submit to Congress a report describing actions taken under this section and the savings realized from such actions during the fiscal year ending in the year in which the report is submitted."

**§ 2862. Turn-key selection procedures**

(a) **AUTHORITY TO USE FOR CERTAIN PURPOSES.**—The Secretary concerned may use one-step turn-key selection procedures for the purpose of entering into a contract for any of the following purposes:

- (1) The construction of an authorized military construction project.
- (2) A repair project (as defined in section 2811(e) of this title) with an approved cost equal to or less than \$4,000,000.
- (3) The construction of a facility as part of an authorized security assistance activity.

(b) **DEFINITIONS.**—In this section:

(1) The term "one-step turn-key selection procedures" means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary concerned.

(2) The term "security assistance activity" means—

- (A) humanitarian and civic assistance authorized by sections 401 and 2561 of this title;
- (B) foreign disaster assistance authorized by section 404 of this title;
- (C) foreign military construction sales authorized by section 29 of the Arms Export Control Act (22 U.S.C. 2769);