

§ 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, and, in the case of operational energy, from both training and operational missions, shall remain available for obligation under subsection (b) or (c), as the case may be, for that fiscal year and the succeeding fiscal year, without additional authorization or appropriation.

(b) USE.—Except as provided in subsection (c) with respect to operational energy cost savings, 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, including energy resilience and energy conservation construction projects, 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) USE OF OPERATIONAL ENERGY COST SAVINGS.—The amount that remains available for obligation under subsection (a) that relates to operational energy cost savings realized by the Department shall be used for the implementation of additional operational energy resilience, efficiencies, mission assurance, energy conservation, or energy security within the department, agency, or instrumentality that realized that savings.

(d) 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.

(e) TRANSFER OF AMOUNTS.—(1) The Secretary of Defense may transfer amounts described in subsection (a) that remain available for obliga-

tion to other funding accounts of the Department of Defense if the purpose for which such amounts will be used is a purpose specified in subsection (b) or (c).

(2) Amounts transferred to a funding account of the Department under paragraph (1) shall be available for obligation for the same period as amounts in that account.

(3) At the end of each fiscal year, the Secretary of Defense shall submit to Congress a report detailing any funds transferred pursuant to paragraph (1) during that fiscal year, including a detailed description of the purpose for which such amounts have been used.

(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; Pub. L. 115-232, div. A, title III, §312(h), Aug. 13, 2018, 132 Stat. 1711; Pub. L. 116-92, div. A, title III, §317, Dec. 20, 2019, 133 Stat. 1304; Pub. L. 116-283, div. A, title III, §317, Jan. 1, 2021, 134 Stat. 3519; Pub. L. 117-81, div. A, title III, §315, Dec. 27, 2021, 135 Stat. 1630.)

Editorial Notes

AMENDMENTS

2021—Subsec. (a). Pub. L. 117-81, §315(1), substituted “for that fiscal year and the succeeding fiscal year” for “until expended”.

Pub. L. 116-283 inserted “and, in the case of operational energy, from both training and operational missions,” after “under section 2913 of this title,”.

Subsec. (e). Pub. L. 117-81, §315(2), added subsec. (e).
2019—Subsec. (a). Pub. L. 116-92, §317(1), substituted “subsection (b) or (c), as the case may be,” for “subsection (b)”.

Subsec. (b). Pub. L. 116-92, §317(2), substituted “Except as provided in subsection (c) with respect to operational energy cost savings, the Secretary of Defense” for “The Secretary of Defense” in introductory provisions.

Subsecs. (c), (d). Pub. L. 116-92, §317(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

2018—Subsec. (b)(1). Pub. L. 115-232 inserted “, including energy resilience and energy conservation construction projects,” after “energy security measures”.

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”.

Statutory Notes and Related Subsidiaries

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 De-

partment 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 per-

mit 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 State or local government or 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; Pub. L. 115-232, div. A, title III, § 312(g), Aug. 13, 2018, 132 Stat. 1711; Pub. L. 116-92, div. A, title III, § 320(a)(1)(A), title XVII, § 1731(a)(58), Dec. 20, 2019, 133 Stat. 1306, 1815.)

Editorial Notes

AMENDMENTS

2019—Subsec. (c). Pub. L. 116-92, § 320(a)(1)(A), substituted “government or” for “government”.

Pub. L. 116-92, § 1731(a)(58), substituted “government gas or electric utility” for “government a gas or electric utility”. Amendment executed before amendment by section 320(a)(1)(A) of Pub. L. 116-92, see above, pursuant to section 1731(f) of Pub. L. 116-92, set out as a Coordination of Certain Sections of an Act With Other Provisions of That Act note under section 101 of this title.