

Editorial Notes

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 struck out “in writing” after “submit a report” and “or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided” after “such committees” and substituted “five-day period” for “seven-day period”.

2011—Subsec. (b). Pub. L. 112–81 substituted “after the end of the seven-day period” for “after the end of the 21-day period”.

2006—Subsec. (c)(1). Pub. L. 109–364 substituted “\$50,000,000” for “\$45,000,000”.

2003—Subsec. (b). Pub. L. 108–136, §1031(a)(34), inserted before period at end “or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

Subsec. (c)(1). Pub. L. 108–136, §2802, substituted “\$45,000,000” for “\$30,000,000”.

1992—Subsec. (b). Pub. L. 102–484 made technical amendment to directory language of Pub. L. 102–190, §2870(2). See 1991 Amendment note below.

1991—Subsec. (a). Pub. L. 102–190, §2803, substituted “or to the protection of health, safety, or the quality of the environment, and” for “, and” in cl. (1) and inserted “or the protection of health, safety, or environmental quality, as the case may be” before period at end of cl. (2).

Subsec. (b). Pub. L. 102–190, §2870(2), as amended by Pub. L. 102–484, struck out “, or after each such committee has approved the project, if the committee approves the project before the end of that period” after “by such committees”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title X, §1053, Oct. 23, 1992, 106 Stat. 2501, provided that the amendment made by that section is effective Dec. 5, 1991.

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.

§ 2804. Contingency construction

(a) Within the amount appropriated for such purpose, the Secretary of Defense may carry out a military construction project not otherwise authorized by law, or may authorize the Secretary of a military department to carry out such a project, if the Secretary of Defense determines that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or national interest.

(b) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report to the appropriate committees of Congress on that decision. Each such report shall include the justification for the project, the current estimate of the cost of the project, and the justification for carrying out the project under this section. The project may then be carried out only after the end of the seven-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. 97–214, §2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 102–190, div. B, title XXVIII, §2870(3), Dec. 5, 1991, 105 Stat. 1563; Pub.

L. 108–136, div. A, title X, §1031(a)(35), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 109–163, div. B, title XXVIII, §2801(a), Jan. 6, 2006, 119 Stat. 3504; Pub. L. 115–91, div. B, title XXVIII, §2801(a)(2), Dec. 12, 2017, 131 Stat. 1840; Pub. L. 116–92, div. A, title XVII, §1731(a)(54), Dec. 20, 2019, 133 Stat. 1815; Pub. L. 116–283, div. A, title X, §1081(a)(44), Jan. 1, 2021, 134 Stat. 3873.)

Editorial Notes

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283 struck out “; and” after “seven-day period”.

2019—Subsec. (b). Pub. L. 116–92 substituted “include the justification” for “include (1) the justification”, “project, the current” for “project and the current”, and “and the justification” for “and (2) the justification”.

2017—Subsec. (b). Pub. L. 115–91 struck out “in writing” after “submit a report” and “or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided” after “such committees” and substituted “seven-day period; and” for “14-day period”.

2006—Subsec. (b). Pub. L. 109–163 substituted “14-day period” for “21-day period” and “seven-day period” for “14-day period”.

2003—Subsec. (b). Pub. L. 108–136 inserted before period at end “or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

1991—Subsec. (b). Pub. L. 102–190 struck out before period at end “, or after each such committee has approved the project, if the committees approve the project before the end of that period”.

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.

AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CERTAIN CONSTRUCTION PROJECTS OUTSIDE THE UNITED STATES

Pub. L. 108–136, div. B, title XXVIII, §2808, Nov. 24, 2003, 117 Stat. 1723, as amended by Pub. L. 108–375, div. B, title XXVIII, §2810, Oct. 28, 2004, 118 Stat. 2128; Pub. L. 109–163, div. B, title XXVIII, §2809, Jan. 6, 2006, 119 Stat. 3508; Pub. L. 109–364, div. B, title XXVIII, §2802, Oct. 17, 2006, 120 Stat. 2466; Pub. L. 110–181, div. B, title XXVIII, §2801(a)–(d), Jan. 28, 2008, 122 Stat. 538, 539; Pub. L. 110–417, div. B, title XXVIII, §2806, Oct. 14, 2008, 122 Stat. 4724; Pub. L. 111–84, div. B, title XXVIII, §2806, Oct. 28, 2009, 123 Stat. 2662; Pub. L. 111–383, div. B, title XXVIII, §2804, Jan. 7, 2011, 124 Stat. 4459; Pub. L. 112–81, div. B, title XXVIII, §2804, Dec. 31, 2011, 125 Stat. 1685; Pub. L. 112–239, div. B, title XXVIII, §2804, Jan. 2, 2013, 126 Stat. 2149; Pub. L. 113–66, div. B, title XXVIII, §2808, Dec. 26, 2013, 127 Stat. 1012; Pub. L. 113–291, div. B, title XXVIII, §2806, Dec. 19, 2014, 128 Stat. 3699; Pub. L. 114–92, div. B, title XXVIII, §2802, Nov. 25, 2015, 129 Stat. 1169; Pub. L. 114–328, div. B, title XXVIII, §2804, Dec. 23, 2016, 130 Stat. 2713; Pub. L. 115–91, div. B, title XXVIII, §2804, Dec. 12, 2017, 131 Stat. 1846; Pub. L. 115–232, div. B, title XXVIII, §2807, Aug. 13, 2018, 132 Stat. 2264; Pub. L. 116–283, div. B, title XXVIII, §2806, Jan. 1, 2021, 134 Stat. 4322; Pub. L. 117–81, div. B, title XXVIII, §2806, Dec. 27, 2021, 135 Stat. 2190; Pub. L. 117–263, div. B, title XXVIII, §2809(a), (b)(1), (3)–(c), 136 Stat. 2996, provided that:

“(a) IN GENERAL.—The Secretary of Defense may obligate appropriated funds available for operation and maintenance to carry out a construction project outside the United States that the Secretary determines meets each of the following conditions:

“(1) The construction is necessary to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of a declaration of war, the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621), or a contingency operation.

“(2) The construction is not carried out at a military installation where the United States is reasonably expected to have a long-term presence.

“(3) The United States has no intention of using the construction after the operational requirements have been satisfied.

“(4) The level of construction is the minimum necessary to meet the temporary operational requirements.

“(b) NOTIFICATION OF OBLIGATION OF FUNDS.—Before using appropriated funds available for operation and maintenance to carry out a construction project outside the United States that has an estimated cost in excess of the amounts authorized for unspecified minor military construction projects under section 2805(c) of title 10, United States Code, the Secretary of Defense shall submit to the congressional committees specified in subsection (d) a notice regarding the construction project. The project may be carried out only after the end of the 14-day period beginning on the date the notice is received by the committees, including when a copy of the notification is provided in an electronic medium pursuant to section 480 of title 10, United States Code. The notice shall include the following:

“(1) Certification that the conditions specified in subsection (a) are satisfied with regard to the construction project.

“(2) A description of the purpose for which appropriated funds available for operation and maintenance are being obligated.

“(3) All relevant documentation detailing the construction project.

“(4) An estimate of the total amount obligated for the construction.

“(c) ANNUAL LIMITATION ON USE OF AUTHORITY.—(1) The total cost of the construction projects carried out under the authority of this section using, in whole or in part, appropriated funds available for operation and maintenance shall not exceed \$50,000,000 during each of the following periods:

“(A) The period beginning October 1, 2021, and ending on the earlier of December 31, 2022, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year 2023 [Dec. 23, 2022].

“(B) The period beginning October 1, 2022, and ending on the earlier of December 31, 2023, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year 2024.

“(2) Notwithstanding paragraph (1), the Secretary of Defense may authorize the obligation under this section of not more than an additional \$10,000,000 of appropriated funds available for operation and maintenance for a fiscal year if the Secretary determines that the additional funds are needed for costs associated with contract closeouts.

“(3) The total amount of operation and maintenance funds used for a single construction project carried out under the authority of this section shall not exceed \$15,000,000. The Secretary of Defense may waive this limitation on a project-by-project basis. This waiver authority may not be delegated.

“(d) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in this section are the following:

“(1) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the Senate.

“(2) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on

Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the House of Representatives.

“(e) EFFECT OF FAILURE TO SUBMIT PROJECT NOTIFICATIONS.—If the advance notice of the proposed obligation of the funds for a construction project required by subsection (b) is not submitted to the congressional committees specified in subsection (d) by the required date, appropriated funds available for operation and maintenance may not be obligated or expended after that date under the authority of this section to carry out construction projects outside the United States until the date on which the notice is finally submitted.”

[Pub. L. 117-263, div. B, title XXVIII, §2809(d), Dec. 23, 2022, 136 Stat. 2997, provided that: “The Law Revision Counsel is directed to classify section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723), as amended by subsection (a), as a note following section 2804 of title 10, United States Code.”]

§ 2805. Unspecified minor construction

(a) AUTHORITY TO CARRY OUT UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—(1) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law.

(2) An unspecified minor military construction project is a military construction project, land acquisition, or demolition project that has an approved cost equal to or less than \$9,000,000.

(3) Notwithstanding the requirements of this section, the Secretary concerned may use amounts authorized pursuant to another law or regulation to carry out a demolition project described in paragraph (2).

(b) APPROVAL AND CONGRESSIONAL NOTIFICATION.—(1) An unspecified minor military construction project costing more than \$750,000 may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable and which costs more than \$4,000,000, the Secretary concerned shall notify the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of 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 the committees in an electronic medium pursuant to section 480 of this title.

(c) USE OF OPERATION AND MAINTENANCE FUNDS.—The Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than \$4,000,000.

(d) LABORATORY REVITALIZATION.—(1) For the revitalization and recapitalization of laboratories owned by the United States and under the jurisdiction of the Secretary concerned, the Secretary concerned may obligate and expend—

(A) from appropriations available to the Secretary concerned for operation and maintenance, amounts necessary to carry out an un-