

Defense shall adopt the open protocol energy monitoring and utility control system specification required by section 2867 of title 10, United States Code, as added by paragraph (1), not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009].”

§ 2868. Utility services: furnishing for certain buildings

Appropriations for the Department of Defense may be used for utility services for buildings constructed at private cost, as authorized by law.

(Added Pub. L. 100-370, §1(j)(1), July 19, 1988, 102 Stat. 848, §2490; renumbered §2868, Pub. L. 105-85, div. A, title III, §371(b)(2), Nov. 18, 1997, 111 Stat. 1705; amended Pub. L. 108-375, div. A, title VI, §651(e)(2), Oct. 28, 2004, 118 Stat. 1972.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99-190, §101(b) [title VIII, §8006(b)], Dec. 19, 1985, 99 Stat. 1185.

In two instances, the source section for provisions to be codified provides that defense appropriations may be used for “welfare and recreation” or “welfare and recreational” purposes. (Section 735 of Public Law 98-212 and section 8006(b) of Public Law 99-190, to be codified as 10 U.S.C. 2241(a)(1) and 2490(2), respectively). The committee added the term “morale” in both of these two instances to conform to the usual “MWR” usage for morale, welfare, and recreation activities.

Editorial Notes

AMENDMENTS

2004—Pub. L. 108-375 substituted “for buildings constructed at private cost, as authorized by law.” for “for—

“(1) buildings constructed at private cost, as authorized by law; and

“(2) buildings on military reservations authorized by regulation to be used for morale, welfare, and recreational purposes.”

1997—Pub. L. 105-85 renumbered section 2490 of this title as this section.

§ 2869. Exchange of property at military installations

(a) EXCHANGE AUTHORIZED.—(1) The Secretary concerned may enter into an agreement to convey real property, including any improvements thereon, described in paragraph (2) to any person who agrees, in exchange for the real property, to transfer to the United States all right, title, and interest of the person in and to a parcel of real property, including any improvements thereon under the person’s control, or to carry out a land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations.

(2) Paragraph (1) applies with respect to real property under the jurisdiction of the Secretary concerned—

(A) that is located on a military installation that is closed or realigned under a base closure law; or

(B) that is located on a military installation not covered by subparagraph (A) and for which the Secretary concerned makes a determination that the conveyance under paragraph (1) is advantageous to the United States.

(3)(A) The Secretary of Defense shall establish a pilot program under which the Secretary concerned, during the term of the pilot program, may use the authority provided by paragraph (1) to also convey real property, including any improvements thereon, described in paragraph (2) to any person who agrees, in exchange for the real property, to provide—

(i) installation-support services (as defined in section 2679(f) of this title); or

(ii) a new facility or improvements to an existing facility.

(B) The acquisition of a facility or improvements to an existing facility using the authority provided by subparagraph (A) shall not be treated as a military construction project for which an authorization is required by section 2802 of this title.

(C) The expanded conveyance authority provided by subparagraph (A) applies only during the eight-year period beginning on the date on which the Secretary of Defense issues guidance regarding the use by the Secretaries concerned of such authority.

(b) CONDITIONS ON CONVEYANCE AUTHORITY.—(1) The fair market value of the real property, installation-support services, or facility or improvements to an existing facility obtained by the Secretary concerned under subsection (a) in exchange for the conveyance of real property by the Secretary under such subsection shall be at least equal to the fair market value of the conveyed real property, as determined by the Secretary. If the fair market value of the real property conveyed by the Secretary concerned exceeds the fair market value of the real property, installation-support services, or facility or improvements received by the Secretary, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values.

(2) In the case of a conveyance of real property to a political subdivision of a State, the value of the real property to be conveyed by the Secretary concerned under subsection (a) may exceed the fair market value of the land to be obtained, as determined under paragraph (1), by an amount not to exceed the reduction in value of the land which is attributable to voluntary zoning actions taken by such political subdivision to limit encroachment on a military installation, but only if the notice required by subsection (d)(2) contains—

(A) a certification by the Secretary concerned that the military value to the United States of the land to be acquired justifies a payment in excess of the fair market value; and

(B) a description of the military value to be obtained.

(3) The Secretary concerned may agree to accept a facility or improvements to an existing facility under subsection (a)(3) only if the Secretary concerned determines that the facility or improvements—

(A) are completed and usable, fully functional, and ready for occupancy;

(B) satisfy all operational requirements; and

(C) meet all Federal, State, and local requirements applicable to the facility relating to health, safety, and the environment.

(c) **LIMITATION ON USE OF CONVEYANCE AUTHORITY AT INSTALLATIONS CLOSED UNDER BASE CLOSURE LAWS.**—The authority under subsection (a)(2)(A) to convey property located on a military installation may only be used to the extent the conveyance is consistent with an approved redevelopment plan for such installation.

(d) **ADVANCE NOTICE OF USE OF AUTHORITY.**—(1) Notice of the proposed use of the conveyance authority provided by subsection (a) shall be provided in such manner as the Secretary of Defense may prescribe, including publication in the Federal Register and otherwise. When real property located at a military installation is proposed for conveyance by means of a public sale, the Secretary concerned may notify prospective purchasers that consideration for the property may be provided in the manner authorized by such subsection.

(2) The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—

(A) the Secretary submits to Congress notice of the conveyance, including—

(i) a description of the real property to be conveyed by the Secretary under the agreement;

(ii) a description of the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(iii) the amount of any payment to be made under subsection (b) or under section 2684a(d)¹ of this title to equalize the fair market values of the property to be conveyed and the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(B) the waiting period applicable to that notice under paragraph (3) expires.

(3) If the notice submitted under paragraph (2) deals with the conveyance of real property located on a military installation that is closed or realigned under a base closure law or the conveyance of real property under an agreement entered into under section 2684a of this title, the Secretary concerned may enter into the agreement under subsection (a) for the conveyance of the property after the end of the 14-day period beginning on the date of the submission of the notice in an electronic medium pursuant to section 480 of this title. In the case of other real property to be conveyed under subsection (a), the Secretary concerned may enter into the agreement only after the end of the 45-day period beginning on the date of the submission of the notice in an electronic medium pursuant to section 480 of this title.

(e) **DEPOSIT AND USE OF FUNDS.**—The Secretary concerned shall deposit funds received under subsection (b) in the appropriation “Foreign Currency Fluctuations, Construction, Defense”. The funds deposited shall be available, in such amounts as provided in appropriation Acts, for the purpose of paying increased costs of overseas military construction and family housing construction or improvement associated with unfavorable fluctuations in currency exchange rates.

The use of such funds for this purpose does not relieve the Secretary concerned from the duty to provide advance notice to Congress under section 2853(c) of this title whenever the Secretary approves an increase in the cost of an overseas project under such section.

(f) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of real property conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary concerned.

(g) **ADDITIONAL TERMS AND CONDITIONS.**—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.

(Added Pub. L. 108-136, div. B, title XXVIII, § 2805(a)(1), Nov. 24, 2003, 117 Stat. 1719; amended Pub. L. 109-364, div. B, title XXVIII, § 2811(a)-(f)(1), Oct. 17, 2006, 120 Stat. 2471-2473; Pub. L. 111-84, div. B, title XXVIII, § 2804(a)-(d)(1), Oct. 28, 2009, 123 Stat. 2661, 2662; Pub. L. 112-81, div. B, title XXVIII, § 2815(a), (b), Dec. 31, 2011, 125 Stat. 1688, 1689; Pub. L. 112-239, div. B, title XXVIII, § 2811, Jan. 2, 2013, 126 Stat. 2150; Pub. L. 115-91, div. B, title XXVIII, §§ 2801(c)(6), 2815, 2816, Dec. 12, 2017, 131 Stat. 1844, 1850; Pub. L. 116-283, div. B, title XXVIII, § 2862(a), (b), Jan. 1, 2021, 134 Stat. 4357; Pub. L. 118-159, div. B, title XXVIII, § 2851, Dec. 23, 2024, 138 Stat. 2269.)

REFERENCES IN TEXT

Section 2684a(d) of this title, referred to in subsec. (d)(2)(A)(iii), was redesignated section 2684a(e) of this title by Pub. L. 118-31, div. A, title III, § 314(1), Dec. 22, 2023, 137 Stat. 216.

Editorial Notes

AMENDMENTS

2024—Subsec. (a)(3)(A)(i). Pub. L. 118-159, § 2851(b), substituted “section 2679(f)” for “2679(e)”.

Subsec. (a)(3)(C). Pub. L. 118-159, § 2851(a), substituted “eight-year period” for “five-year period”.

2021—Subsec. (a)(3). Pub. L. 116-283, § 2862(a), added par. (3).

Subsec. (b)(1). Pub. L. 116-283, § 2862(b)(1), substituted “of the real property, installation-support services, or facility or improvements to an existing facility” for “of the land to be” and “of the real property conveyed by the Secretary concerned exceeds the fair market value of the real property, installation-support services, or facility or improvements received by the Secretary” for “of the land is less than the fair market value of the real property to be conveyed”.

Subsec. (b)(3). Pub. L. 116-283, § 2862(b)(2), added par. (3).

2017—Subsec. (a)(2). Pub. L. 115-91, § 2815, amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Paragraph (1) applies with respect to real property under the jurisdiction of the Secretary concerned that—

“(A) is located on a military installation that is closed or realigned under a base closure law; or

“(B) is located on a military installation not covered by subparagraph (A) and is determined to be excess to the needs of the Department of Defense.”

Subsec. (b). Pub. L. 115-91, § 2816, amended subsec. (b) generally. Prior to amendment, text read as follows: “The fair market value of the land to be obtained by the Secretary concerned under subsection (a) in exchange for the conveyance of real property by the Secretary under such subsection shall be at least equal to

¹ See References in Text note below.

the fair market value of the conveyed real property, as determined by the Secretary. If the fair market value of the land is less than the fair market value of the real property to be conveyed, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values.”

Subsec. (d)(3). Pub. L. 115-91, §2801(c)(6), substituted “after the end of the 14-day period beginning on the date of the submission of the notice in an electronic medium pursuant to section 480 of this title.” for “after a period of 21 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.” and “only after the end of the 45-day period beginning on the date of the submission of the notice in an electronic medium pursuant to section 480 of this title.” for “only after a period of 60 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 45 days has elapsed from the date on which the electronic copy is provided.”

2013—Subsec. (a)(1). Pub. L. 112-239 substituted “any person” for “any eligible entity”, “the person” for “the entity”, and “the person’s control” for “their control”.

2011—Pub. L. 112-81, §2815(a)(1), substituted “Exchange of property at military installations” for “Conveyance of property at military installations to limit encroachment” in section catchline.

Subsec. (a). Pub. L. 112-81, §2815(a)(2)(A), substituted “Exchange Authorized” for “Conveyance Authorized; Consideration” in heading.

Subsec. (a)(1). Pub. L. 112-81, §2815(a)(2)(B), substituted “to any eligible entity who agrees, in exchange for the real property, to transfer to the United States all right, title, and interest of the entity in and to a parcel of real property, including any improvements thereon under their control, or to carry out a land acquisition” for “to any person who agrees, in exchange for the real property, to carry out a land acquisition”.

Subsecs. (f) to (h). Pub. L. 112-81, §2815(b), redesignated subsecs. (g) and (h) as (f) and (g), respectively, and struck out former subsec. (f), which provided that authority to enter into an agreement under this section would expire on September 30, 2013.

2009—Pub. L. 111-84, §2804(d)(1), amended section catchline generally. Prior to amendment, catchline read as follows: “Conveyance of property at military installations to support military construction or limit encroachment”.

Subsec. (a)(1). Pub. L. 111-84, §2804(a)(1)(A), struck out subpar. (A) designation before “to carry out”, substituted “real property,” for “real property—”, “to carry out a land acquisition” for “to carry out a military construction project or land acquisition”, and a period for “; or”, and struck out subpar. (B) which read as follows: “to transfer to the Secretary concerned housing that is constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable military family housing, military unaccompanied housing, or both.”

Subsec. (a)(3). Pub. L. 111-84, §2804(a)(1)(B), struck out par. (3) which read as follows: “Subparagraph (B) of paragraph (2) shall apply only during the period beginning on the date of the enactment of the John Warner National Defense Authorization Act for Fiscal Year 2007 and ending on September 30, 2008. Any conveyance of real property described in such subparagraph for which the Secretary concerned has provided the advance public notice required by subsection (d)(1) before the expiration date may be completed after that date.”

Subsec. (b). Pub. L. 111-84, §2804(a)(2), substituted “fair market value of the land” for “fair market value of the military construction, military family housing, or military unaccompanied housing” in two places.

Subsec. (c). Pub. L. 111-84, §2804(a)(3), added subsec. (c) and struck out former subsec. (c) which related to pilot program for use of conveyance authority.

Subsec. (d)(2)(A)(ii), (iii). Pub. L. 111-84, §2804(a)(4), substituted “land acquisition” for “military construction project, land acquisition, military family housing, or military unaccompanied housing”.

Subsec. (e). Pub. L. 111-84, §2804(b), designated par. (3) as entire subsec., substituted “The Secretary concerned shall deposit funds received under subsection (b) in the appropriation ‘Foreign Currency Fluctuations, Construction, Defense’. The funds deposited shall be available” for “The funds deposited under paragraph (2) shall be available”, and struck out pars. (1) and (2), which read as follows:

“(1) Except as provided in paragraph (2), the Secretary concerned may deposit funds received under subsection (b) in the Department of Defense housing funds established under section 2883(a) of this title.

“(2) During the period specified in paragraph (3) of subsection (a), the Secretary concerned shall deposit funds received under subsection (b) in the appropriation ‘Foreign Currency Fluctuations, Construction, Defense’.”

Subsec. (f). Pub. L. 111-84, §2804(c), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to annual reports on conveyances and effect of failure to submit report.

2006—Pub. L. 109-364, §2811(f)(1), substituted “to support military construction or limit encroachment” for “closed or realigned to support military construction” in section catchline.

Subsec. (a). Pub. L. 109-364, §2811(a), (b), designated existing provisions as par. (1), in introductory provisions substituted “described in paragraph (2)” for “located on a military installation that is closed or realigned under a base closure law”, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, in subpar. (A) substituted “land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations” for “land acquisition”, and added pars. (2) and (3).

Subsec. (d)(1). Pub. L. 109-364, §2811(c)(1), substituted “is proposed for conveyance” for “closed or realigned under the base closure laws is to be conveyed”.

Subsec. (d)(2), (3). Pub. L. 109-364, §2811(c)(2), added pars. (2) and (3) and struck out former par. (2) which read as follows: “The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—

“(A) the Secretary submits to Congress notice of the conveyance, including the military construction activities, military family housing, or military unaccompanied housing to be obtained in exchange for the conveyance; and

“(B) a period of 14 days expires beginning on the date on which the notice is submitted.”

Subsec. (e). Pub. L. 109-364, §2811(d), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “The Secretary concerned may deposit funds received under subsection (b) in the Department of Defense housing funds established under section 2883(a) of this title.”

Subsec. (f). Pub. L. 109-364, §2811(e), in heading substituted “Annual Reports; Effect of Failure to Submit” for “Annual Report”, designated existing provisions as par. (1), in introductory provisions substituted “Not later than March 15 of each year, the Secretary of Defense shall submit to Congress a report detailing the following:” for “In the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense shall include a report detailing the following:”, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in subpar. (C) inserted “and of excess real property at military installations” before period at end, and added par. (2).

Statutory Notes and Related Subsidiaries

ISSUANCE OF GUIDANCE

Pub. L. 116-283, div. B, title XXVIII, §2862(c), Jan. 1, 2021, 134 Stat. 4358, provided that: “Not later than 180

days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall issue guidance providing for the implementation of the pilot program required by section 2869(a)(3) of title 10, United States Code, as added by this section.”

[§ 2870. Repealed. Pub. L. 116–283, div. A, title VIII, § 818(a), Jan. 1, 2021, 134 Stat. 3751]

Section, added Pub. L. 116–92, div. A, title VIII, § 865(a)(1), Dec. 20, 2019, 133 Stat. 1523, related to use of qualified apprentices by military construction contractors.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VIII, § 865(b), Dec. 20, 2019, 133 Stat. 1524, which provided that the amendments made by section 865 of Pub. L. 116–92 (enacting this section) would apply with respect to contracts awarded on or after 180 days after Dec. 20, 2019, was repealed by Pub. L. 116–283, div. A, title VIII, § 818(b)(2), Jan. 1, 2021, 134 Stat. 3751.

SUBCHAPTER IV—ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING

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Editorial Notes

AMENDMENTS

2021—Pub. L. 117–81, div. B, § 2003(b), title XXVIII, § 2812(a), Dec. 27, 2021, 135 Stat. 2162, 2191, renumbered item 2879 as 2857 and transferred it to appear after item 2856 in analysis under subchapter III of this chapter.

2019—Pub. L. 116–92, div. B, title XXX, §§ 3014(d)(2), 3033(b), Dec. 20, 2019, 133 Stat. 1926, 1936, added item 2872b and struck out item 2886 “Prohibiting collection of amounts in addition to rent from members assigned to units”.

2018—Pub. L. 115–232, div. A, title X, § 1081(c)(5), Aug. 13, 2018, 132 Stat. 1985, made technical amendment to directory language of Pub. L. 115–91, § 2817(a)(2), effective as of Dec. 12, 2017, and as if included in Pub. L. 115–91 as enacted. See 2017 Amendment note below.

2017—Pub. L. 115–91, div. B, title XXVIII, § 2817(a)(2), Dec. 12, 2017, 131 Stat. 1852, as amended by Pub. L. 115–232, div. A, title X, § 1081(c)(5), Aug. 13, 2018, 132 Stat. 1985, added item 2879.

Pub. L. 115–91, div. A, title VI, § 602(b), Dec. 12, 2017, 131 Stat. 1418, added item 2886.

2008—Pub. L. 110–417, div. B, title XXVIII, § 2805(a)(2), (e)(2), Oct. 14, 2008, 122 Stat. 4722, 4724, added items 2882 and 2885 and struck out former item 2882 “Assignment of members of the armed forces to housing units”.

2004—Pub. L. 108–375, div. B, title XXVIII, § 2805(b)(2), Oct. 28, 2004, 118 Stat. 2122, struck out item 2885 “Expiration of authority”.

2002—Pub. L. 107–314, div. B, title XXVIII, §§ 2802(b)(3), (c)(2), 2803(a)(2), Dec. 2, 2002, 116 Stat. 2703, 2705, struck out “to be constructed” after “Leasing of housing” in item 2874, struck out item 2879 “Interim leases”, and added item 2881a.

2001—Pub. L. 107–107, div. B, title XXVIII, § 2804(b), Dec. 28, 2001, 115 Stat. 1306, added item 2883a.

2000—Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2805(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415, added item 2872a.

1999—Pub. L. 106–65, div. B, title XXVIII, § 2803(h)(2), Oct. 5, 1999, 113 Stat. 849, added item 2875 and struck out former item 2875 “Investments in nongovernmental entities”.

§ 2871. Definitions

In this subchapter and subchapter V of this chapter:

(1) The term “ancillary supporting facilities” means facilities related to housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(2) The term “child development center” includes a facility, and the utilities to support such facility, the function of which is to support the daily care of children aged six weeks old through five years old for full-day, part-day, and hourly service.

(3) The term “construction” means the construction of housing units and ancillary supporting facilities or the improvement or rehabilitation of existing units or ancillary supporting facilities.

(4) The term “contract” includes any contract, lease, or other agreement entered into under the authority of this subchapter. The fact that an agreement between an eligible entity and the Secretary concerned is designated as an agreement rather than a contract shall not be construed to exclude the agreement from the term “contract” for purposes of this subchapter and subchapter V.

(5) The term “eligible entity” means any private person, corporation, firm, partnership, company, State or local government, or housing authority of a State or local government that is prepared to enter into a contract as a partner with the Secretary concerned for the construction of housing units and ancillary supporting facilities.

(6) The term “Fund” means the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund established under section 2883(a) of this title.

(7) The term “housing document” means a document developed by the Secretary of Defense under section 2890 of this title and known as the Military Housing Privatization