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### § 2667. Leases: non-excess property of military departments

#### **(a) Lease Authority.—** Whenever the Secretary of a military department

considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

- (1) under the control of that department; and
- (2) not excess property, as defined by section [102](#) of title [40](#).

#### **(b) Conditions on Leases.—** A lease under subsection (a)—

- (1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;
- (2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;
- (3) shall permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;
- (4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary;
- (5) may provide, notwithstanding section [1302](#) of title [40](#) or any other provision of law, for the alteration, repair, or improvement, by the lessee, of the property leased as the payment of part or all of the consideration for the lease; and
- (6) except as otherwise provided in subsection (d), shall require the lessee to provide the covered entities specified in paragraph (1) of that subsection the right to establish and operate a community support facility or provide community support services, or seek equitable compensation for morale, welfare, and recreation programs of the Department of Defense in lieu of the operation of such a facility or the provision of such services, if the Secretary determines that the lessee will provide merchandise or services in direct competition with covered entities through the lease.

#### **(c) Types of In-Kind Consideration.—**

- (1) In addition to any in-kind consideration accepted under subsection (b)(5),

in-kind consideration accepted with respect to a lease under this section may include the following:

- (A) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities under the control of the Secretary concerned.
- (B) Construction of new facilities for the Secretary concerned.
- (C) Provision of facilities for use by the Secretary concerned.
- (D) Facilities operation support for the Secretary concerned.
- (E) Provision of such other services relating to activities that will occur on the leased property as the Secretary concerned considers appropriate.

(2) In-kind consideration under paragraph (1) may be accepted at any property or facilities under the control of the Secretary concerned that are selected for that purpose by the Secretary concerned.

(3) Sections 2662 and 2802 of this title shall not apply to any new facilities whose construction is accepted as in-kind consideration under this subsection.

(4) In the case of a lease for which all or part of the consideration proposed to be accepted by the Secretary concerned under this subsection is in-kind consideration with a value in excess of \$500,000, the Secretary concerned may not enter into the lease until 30 days after the date on which a report on the facts of the lease is submitted to the congressional defense committees.

**(d) Community Support Facilities and Community Support Services Under Lease; Waiver.—**

(1) In this subsection and subsection (b)(6), the term “covered entity” means each of the following:

- (A) The Army and Air Force Exchange Service.
- (B) The Navy Exchange Service Command.
- (C) The Marine Corps exchanges.
- (D) The Defense Commissary Agency.
- (E) The revenue-generating nonappropriated fund activities of the Department of Defense conducted for the morale, welfare, and recreation of members of the armed forces.

(2) The Secretary of a military department may waive the requirement in subsection (b)(6) with respect to a lease if—

- (A) the lease is entered into under subsection (g); or
- (B) the Secretary determines that the waiver is in the best interests of the Government.

(3) The Secretary of the military department concerned shall provide to the congressional defense committees written notice of each waiver under paragraph (2), including the reasons for the waiver.

(4) The covered entities shall exercise the right provided in subsection (b)(6) with respect to a lease, if at all, not later than 90 days after receiving notice from the Secretary of the military department concerned regarding the opportunity to

exercise such right with respect to the lease. The Secretary may, at the discretion of the Secretary, extend the period under this paragraph for the exercise of the right with respect to a lease for such additional period as the Secretary considers appropriate.

**(5)** The Secretary of Defense shall prescribe in regulations uniform procedures and criteria for the evaluation of proposals for enhanced use leases involving the operation of community support facilities or the provision of community support services by either a lessee under this section or a covered entity.

**(6)** The Secretary of the military department concerned shall provide written notification to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives regarding all leases under this section that include the operation of a community support facility or the provision of community support services, regardless of whether the facility will be operated by a covered entity or the lessee or the services will be provided by a covered entity or the lessee.

**(e) Deposit and Use of Proceeds.—**

**(1)**

**(A)** The Secretary of a military department shall deposit in a special account in the Treasury established for such military department the following:

**(i)** All money rentals received pursuant to leases entered into by that Secretary under this section.

**(ii)** All proceeds received pursuant to the granting of easements by that Secretary under sections 2668 and 2669 <sup>[1]</sup> of this title.

**(iii)** All proceeds received by that Secretary from authorizing the temporary use of other property under the control of that military department.

**(B)** Subparagraph (A) does not apply to the following proceeds:

**(i)** Amounts paid for utilities and services furnished lessees by the Secretary of a military department pursuant to leases entered into under this section.

**(ii)** Money rentals referred to in paragraph (4), (5), or (6).

**(C)** Subject to subparagraphs (D) and (E), the proceeds deposited in the special account of a military department pursuant to subparagraph (A) shall be available to the Secretary of that military department, in such amounts as provided in appropriation Acts, for the following:

**(i)** Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.

**(ii)** Construction or acquisition of new facilities.

**(iii)** Lease of facilities.

**(iv)** Facilities operation support.

**(D)** At least 50 percent of the proceeds deposited in the special account of a military department under subparagraph (A) shall be available for

activities described in subparagraph (C) only at the military installation where the proceeds were derived.

(E) The Secretary concerned may not expend under subparagraph (C) an amount in excess of \$500,000 at a single installation until 30 days after the date on which a report on the facts of the proposed expenditure is submitted to the congressional defense committees.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

[(3) Repealed. Pub. L. 107-314, div. A, title X, § 1041(a)(18), Dec. 2, 2002, 116 Stat. 2645.]

(4) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary of a military department (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(5) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law before January 1, 2005, shall be deposited into the account established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note ).

(6) Money rentals received by the United States from a lease under subsection (f) at a military installation approved for closure or realignment under a base closure law on or after January 1, 2005, shall be deposited into the account established under section 2906A(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note ).

**(f) Treatment of Lessee Interest in Property.—** The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

**(g) Special Rules for Base Closure and Realignment Property.—**

(1) Notwithstanding subsection (a)(2) or subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (to the extent subtitle I and title III are inconsistent with this subsection), pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary of the military department concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or local economic adjustment efforts.

(2) Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease interest if the Secretary concerned determines that—

- (A) a public interest will be served as a result of the lease; and
- (B) the fair market value of the lease is
  - (i) unobtainable, or
  - (ii) not compatible with such public benefit.

(3) Before entering into any lease under this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency in order to determine whether the environmental condition of the property proposed for leasing is such that the lease of the property is advisable. The Secretary and the Administrator shall enter into a memorandum of understanding setting forth procedures for carrying out the determinations under this paragraph.

(4)

(A) Notwithstanding the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the scope of any environmental impact analysis necessary to support an interim lease of property under this subsection shall be limited to the environmental consequences of activities authorized under the proposed lease and the cumulative impacts of other past, present, and reasonably foreseeable future actions during the period of the proposed lease.

(B) Interim leases entered into under this subsection shall be deemed not to prejudice the final disposal decision with respect to the property, even if final disposal of the property is delayed until completion of the term of the interim lease. An interim lease under this subsection shall not be entered into without prior consultation with the redevelopment authority concerned.

(C) Subparagraphs (A) and (B) shall not apply to an interim lease under this subsection if authorized activities under the lease would—

- (i) significantly affect the quality of the human environment; or
- (ii) irreversibly alter the environment in a way that would preclude any reasonable disposal alternative of the property concerned.

**(h) Competitive Procedures for Selection of Certain Lessees; Exception.—**

(1) If a proposed lease under subsection (a) involves only personal property, the lease term exceeds one year, and the fair market value of the lease interest exceeds \$100,000, as determined by the Secretary concerned, the Secretary shall use competitive procedures to select the lessee.

(2) Not later than 45 days before entering into a lease described in paragraph (1), the Secretary concerned shall submit to Congress written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee.

(3) Paragraph (1) does not apply to a renewal or extension of a lease by the Secretary of the Navy with a selected institution for operation of a ship within the University National Oceanographic Laboratory System if, under the lease, each of the following applies:

- (A) Use of the ship is restricted to federally supported research programs and to non-Federal uses under specific conditions with approval by the Secretary of the Navy.

**(B)** Because of the anticipated value to the Navy of the oceanographic research and training that will result from the ship's operation, no monetary lease payments are required from the lessee under the initial lease or under any renewal or extension.

**(C)** The lessee is required to maintain the ship in a good state of repair, readiness, and efficient operating condition, conform to all applicable regulatory requirements, and assume full responsibility for the safety of the ship, its crew, and scientific personnel aboard.

**(i) Definitions.—** In this section:

**(1)** The term "community support facility" includes an ancillary supporting facility (as that term is defined in section 2871 (1) of this title).

**(2)** The term "community support services" includes revenue-generating food, recreational, lodging support services, and resale operations and other retail facilities and services intended to support a community.

**(3)** The term "military installation" has the meaning given such term in section 2687 (e)(1) of this title.

**(j) Exclusion of Certain Lands.—** This section does not apply to oil, mineral, or phosphate lands.

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[1] See References in Text note below.

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