Public Law 101-148
101st Congress

An Act

Nov. 10, 1989
[H.R. 3012]

Making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1990, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1990, for military construction functions administered by the Department of Defense, and for other purposes, namely:

MILITARY CONSTRUCTION, ARMY

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Army as currently authorized by law, and for construction and operation of facilities in support of the functions of the Commander in Chief, $819,129,000, to remain available until September 30, 1994: *Provided,* That of this amount, not to exceed $79,420,000 shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor.

MILITARY CONSTRUCTION, NAVY

For acquisition, construction, installation, and equipment of temporary or permanent public works, naval installations, facilities, and real property for the Navy as currently authorized by law, including personnel in the Naval Facilities Engineering Command and other personal services necessary for the purposes of this appropriation, $1,139,250,000, to remain available until September 30, 1994: *Provided,* That of this amount, not to exceed $82,000,000 shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor: *Provided further,* That none of the funds available to the Department of the Navy in this or any other Act may be utilized to initiate agricultural leases of more than one year's duration on land in or around Naval Air Station Fallon, Nevada.

MILITARY CONSTRUCTION, AIR FORCE

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Air Force as currently authorized by law, $1,227,296,000, to remain available until September 30, 1994: *Pro-*

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vided, That of this amount, not to exceed $99,000,000 shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor: *Provided further,* That of the funds appropriated for "Military Construction, Air Force" under Public Law 100-447, $18,500,000 is hereby rescinded.

MILITARY CONSTRUCTION, DEFENSE AGENCIES

(INCLUDING TRANSFER OF FUNDS)

(INCLUDING RESCISSIONS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, installations, facilities, and real property for activities and agencies of the Department of Defense (other than the military departments), as currently authorized by law, $537,440,000, to remain available until September 30, 1994: *Provided,* That such amounts of this appropriation as may be determined by the Secretary of Defense may be transferred to such appropriations of the Department of Defense available for military construction as he may designate, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided further,* That of the amount appropriated, not to exceed $86,300,000 shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor: *Provided further,* That of the funds appropriated for "Military Construction, Defense Agencies" under Public Law 100-202, $10,000,000 is hereby rescinded: *Provided further,* That of the funds appropriated for "Military Construction, Defense Agencies" under Public Law 100-447, $11,800,000 is hereby rescinded: *Provided further,* That, effective February 1, 1990, none of the unobligated funds appropriated in this Act for Defense Medical Facilities Office planning and design may be obligated until the Defense Medical Facilities Office initiates design of the aerospace medicine facility as required by the conference report accompanying Public Law 100-447.

NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

For the United States share of the cost of North Atlantic Treaty Organization Infrastructure programs for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area as authorized in military construction Acts and section 2806 of title 10, United States Code, $424,714,000, to remain available until expended.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the

Army National Guard, and contributions therefor, as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, $223,490,000, to remain available until September 30, 1994.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air National Guard, and contributions therefor, as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, $238,330,000, to remain available until September 30, 1994.

MILITARY CONSTRUCTION, ARMY RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army Reserve as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, $97,460,000, to remain available until September 30, 1994.

MILITARY CONSTRUCTION, NAVAL RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the reserve components of the Navy and Marine Corps as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, $56,600,000, to remain available until September 30, 1994.

MILITARY CONSTRUCTION, AIR FORCE RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air Force Reserve as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, $46,200,000, to remain available until September 30, 1994.

FAMILY HOUSING, ARMY

For expenses of family housing for the Army for construction, including acquisition, replacement, addition, expansion, extension and alteration and for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, as follows: for Construction, $78,982,000; for Operation and maintenance, and for debt payment, $1,375,000,000; in all $1,453,982,000: *Provided*, That the amount provided for construction shall remain available until September 30, 1994.

FAMILY HOUSING, NAVY AND MARINE CORPS

For expenses of family housing for the Navy and Marine Corps for construction, including acquisition, replacement, addition, expansion, extension and alteration and for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, as

follows: for Construction, $174,621,000; for Operation and maintenance, and for debt payment, $623,700,000; in all $798,321,000: *Provided,* That the amount provided for construction shall remain available until September 30, 1994.

FAMILY HOUSING, AIR FORCE

For expenses of family housing for the Air Force for construction, including acquisition, replacement, addition, expansion, extension and alteration and for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, as follows: for Construction, $200,071,000; for Operation and maintenance, and for debt payment, $741,808,000; in all $941,879,000: *Provided,* That the amount provided for construction shall remain available until September 30, 1994.

FAMILY HOUSING, DEFENSE AGENCIES

For expenses of family housing for the activities and agencies of the Department of Defense (other than the military departments) for construction, including acquisition, replacement, addition, expansion, extension and alteration and for operation and maintenance, leasing, and minor construction, as authorized by law, as follows: for Construction, $600,000; for Operation and maintenance, $20,700,000; in all $21,300,000: *Provided,* That the amount provided for construction shall remain available until September 30, 1994.

HOMEOWNERS ASSISTANCE FUND, DEFENSE

For use in the Homeowners Assistance Fund established pursuant to section 1013(d) of the Demonstration Cities and Metropolitan Development Act of 1966 (Public Law 89-754, as amended), $5,100,000, to remain available until expended.

BASE REALIGNMENT AND CLOSURE ACCOUNT

For deposit into the Department of Defense Base Closure Account established by section 207(a)(1) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), $500,000,000, to remain available for obligation until September 30, 1995: *Provided,* That none of these funds may be obligated for base realignment and closure activities under Public Law 100-526 which would cause the Department's $2,400,000,000 cost estimate for military construction and family housing related to the Base Realignment and Closure Program to be exceeded.

GENERAL PROVISIONS

SEC. 101. None of the funds appropriated in this Act shall be expended for payments under a cost-plus-a-fixed-fee contract for work, where cost estimates exceed $25,000, to be performed within the United States, except Alaska, without the specific approval in writing of the Secretary of Defense setting forth the reasons therefor.

SEC. 102. Funds herein appropriated to the Department of Defense for construction shall be available for hire of passenger motor vehicles.

SEC. 103. Funds appropriated to the Department of Defense for construction may be used for advances to the Federal Highway Administration, Department of Transportation, for the construction of access roads as authorized by section 210 of title 23, United States Code, when projects authorized therein are certified as important to the national defense by the Secretary of Defense.

SEC. 104. None of the funds appropriated in this Act may be used to begin construction of new bases inside the continental United States for which specific appropriations have not been made.

SEC. 105. No part of the funds provided in this Act shall be used for purchase of land or land easements in excess of 100 per centum of the value as determined by the Corps of Engineers or the Naval Facilities Engineering Command, except (a) where there is a determination of value by a Federal court, or (b) purchases negotiated by the Attorney General or his designee, or (c) where the estimated value is less than $25,000, or (d) as otherwise determined by the Secretary of Defense to be in the public interest.

SEC. 106. None of the funds appropriated in this Act shall be used to (1) acquire land, (2) provide for site preparation, or (3) install utilities for any family housing, except housing for which funds have been made available in annual military construction appropriation Acts.

SEC. 107. None of the funds appropriated in this Act for minor construction may be used to transfer or relocate any activity from one base or installation to another, without prior notification to the Committees on Appropriations.

SEC. 108. No part of the funds appropriated in this Act may be used for the procurement of steel for any construction project or activity for which American steel producers, fabricators, and manufacturers have been denied the opportunity to compete for such steel procurement.

SEC. 109. No part of the funds appropriated in this Act for dredging in the Indian Ocean may be used for the performance of the work by foreign contractors: *Provided,* That the low responsive and responsible bid of a United States contractor does not exceed the lowest responsive and responsible bid of a foreign contractor by greater than 20 per centum.

SEC. 110. None of the funds available to the Department of Defense for military construction or family housing during the current fiscal year may be used to pay real property taxes in any foreign nation.

SEC. 111. None of the funds appropriated in this Act may be used to initiate a new installation overseas without prior notification to the Committees on Appropriations.

SEC. 112. None of the funds appropriated in this Act may be obligated for architect and engineer contracts estimated by the Government to exceed $500,000 for projects to be accomplished in Japan or in any NATO member country, unless such contracts are awarded to United States firms or United States firms in joint venture with host nation firms.

SEC. 113. None of the funds appropriated in this Act for military construction in the United States territories and possessions in the Pacific and on Kwajalein Island may be used to award any contract estimated by the Government to exceed $1,000,000 to a foreign contractor: *Provided,* That this section shall not be applicable to contract awards for which the lowest responsive and responsible bid of a United States contractor exeeds the lowest responsive and

responsible bid of a foreign contractor by greater than 20 per centum.

SEC. 114. The Secretary of Defense is to inform the Committees on Appropriations and the Committees on Armed Services of the plans and scope of any proposed military exercise involving United States personnel 30 days prior to its occurring, if amounts expended for construction, either temporary or permanent, are anticipated to exceed $100,000.

(TRANSFER OF FUNDS)

SEC. 115. Unexpended balances in the Military Family Housing Management Account established pursuant to section 2831 of title 10, United States Code, as well as any additional amounts which would otherwise be transferred to the Military Family Housing Management Account during fiscal year 1990, shall be transferred to the appropriations for Family Housing provided in this Act, as determined by the Secretary of Defense, based on the sources from which the funds were derived, and shall be available for the same purposes, and for the same time period, as the appropriation to which they have been transferred.

SEC. 116. Not more than 20 per centum of the appropriations in this Act which are limited for obligation during the current fiscal year shall be obligated during the last two months of the fiscal year.

(TRANSFER OF FUNDS)

SEC. 117. Funds appropriated to the Department of Defense for construction in prior years are hereby made available for construction authorized for each such military department by the authorizations enacted into law during the first session of the One Hundred First Congress.

SEC. 118. The Secretary of Defense is to provide the Committees on Appropriations of the Senate and the House of Representatives with a report by February 15, 1990, containing details of the specific actions proposed to be taken by the Department of Defense during fiscal year 1990 to encourage other member nations of the North Atlantic Treaty Organization and Japan to assume a greater share of the common defense burden of such nations and the United States. Reports.

SEC. 119. For military construction or family housing projects that are being completed with funds otherwise expired or lapsed for obligation, expired or lapsed funds may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any.

SEC. 120. None of the funds appropriated in this Act, except for North Atlantic Treaty Organization Infrastructure funds, may be used for planning, design, or construction of military facilities or family housing to support the relocation of the 401st Tactical Fighter Wing from Spain to another country.

SEC. 121. Notwithstanding any other provision of law, 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 10 USC 2860 note.

amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.

SEC. 122. Of the funds appropriated in this Act for Operations and maintenance of Family Housing, no more than $25,000,000 may be obligated for contract cleaning of family housing units.

SEC. 123. None of the funds appropriated in this Act may be used for the design, construction, operation or maintenance of new family housing units in the Republic of Korea in connection with any increase in accompanied tours after June 6, 1988.

SEC. 124. None of the funds appropriated in this Act for planning and design activities may be used to initiate design of the Pentagon Annex.

Wages. Government organization and employees.

SEC. 125. Such sums as may be necessary for fiscal year 1990 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

SEC. 126. None of the funds appropriated in this Act, except those necessary to exercise construction management provisions under section 2807 of title 10, United States Code, may be used for study, planning, design, or architect and engineer services related to the relocation of Yongsan Garrison, Korea.

Hawaii.

SEC. 127. (a) SALE OF LANDS.—Notwithstanding any other provision of law, and subject to subsections (b) through (h), the Secretary of the Navy (hereinafter the "Secretary") may sell the following real property together with improvements thereon:

(1) Approximately 108 acres in Pearl City, Oahu, Hawaii, known as the Manana Storage Area; and

(2) Approximately 14 acres in Pearl City, Oahu, Hawaii, known as Pearl City Junction.

(b) CONDITIONS OF SALE.—

(1) MANANA STORAGE AREA.—The State of Hawaii shall have the right to acquire and the Secretary shall have the authority to sell to the State of Hawaii this property by meeting the terms and conditions set forth in subsection (c).

(2) PEARL CITY JUNCTION.—The State of Hawaii shall have the first right to acquire and the Secretary shall have the authority to sell to the State of Hawaii this property by meeting the terms and conditions set forth in subsection (d). Should the State and the Secretary fail to consummate an agreement, the Secretary shall have authority to sell this property through competitive procedures.

(3) Consideration for each sale shall not be less than the fair market value of the property, as determined by the Secretary.

(4) Payment may be by cash or as specified in subsections (c) and (d), as determined by the Secretary.

(c) SALE OF MANANA STORAGE AREA.—

(1) As consideration for any transfer to the State of Hawaii of the Manana Storage Area, the Secretary shall receive—

(A) at a site or sites to be determined by the Secretary, design and construction to reasonable specifications to the Secretary's satisfaction: (i) an openable causeway from mainside Pearl Harbor Naval Base to Ford Island; and (ii) replacement facilities for those Navy facilities presently on Manana Storage Area; and actually relocate on Oahu, to the satisfaction of the Secretary, the functions presently on Manana Storage Area; or

(B) funds to allow the Secretary to perform the design, construction and relocation specified in subsection (c)(1)(A); or

(C) any combination of the consideration enumerated in subsections (c)(1)(A) and (c)(1)(B) above that accomplishes the design, construction, and relocation, at the discretion of, and to the satisfaction of, the Secretary.

(2) If the State of Hawaii constructs the causeway or replacement facilities or any portion thereof, upon the acceptance by the Secretary, the State shall transfer complete title to those facilities to the Secretary free of any liens or encumbrances.

(d) SALE OF PEARL CITY JUNCTION.—As consideration for the sale of Pearl City Junction, the Navy shall receive either funds, or actual design and construction of facilities plus relocation, or a combination thereof, as determined by the Secretary, to accommodate consolidation and relocation of the functions on the sale property to other Navy and Marine Corps property. This may include—

(1) relocation and consolidation of functions at Manana Storage Area and Pearl City Junction to common replacement facilities; and

(2) relocation of Marine Corps functions that would be displaced by such consolidation to replacement facilities to be designed and constructed at Marine Corps Air Station, Kaneohe Bay.

(e) USE OF FUNDS.—

(1) The Secretary may use the funds derived from any sale of land under this section to accomplish any of the purposes described in subsections (c) and (d) including any related expenses.

(2) Funds received from the sales of lands under this section may be placed in an interest bearing account by the Secretary until expended and the accrued interest therefrom may be used in the same manner as the sale proceeds.

(3) Any funds which are unexpended after all the actions described in subsections (c) and (d) have been accomplished, shall be available for design and construction of additional support facilities for Naval Supply Center, Pearl Harbor.

(f) LEGAL DESCRIPTIONS OF LANDS.—The exact acreages and legal descriptions of the properties to be transferred to the State of Hawaii or sold under this section shall be in accordance with surveys that are satisfactory to the Secretary.

(g) NOTIFICATION.—The Secretary may not enter into any contract under this section to—

(1) convey title to real property;

(2) provide for design or construction of a causeway to Ford Island, replacement facilities or other support facilities; and

(3) provide for relocation of functions from the properties to be sold until—

(A) the Secretary has transmitted to the appropriate Committees of Congress a report of the details of the proposed transaction; and

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(B) a period of twenty-one days has expired from the date such report has been received by the Committees.

(h) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions in agreements entered into under this

section as the Secretary considers appropriate to protect the interests of the United States.

Approved November 10, 1989.

LEGISLATIVE HISTORY—H.R. 3012:

HOUSE REPORTS: No. 101-176 (Comm. on Appropriations) No. 101-307 (Comm. of Conference).
SENATE REPORTS: No. 101-130 (Comm. on Appropriations).
CONGRESSIONAL RECORD, Vol. 135 (1989):
July. 31, considered and passed House.
Sept. 15, considered and passed Senate, amended.
Oct. 26, House agreed to conference report; receded and concurred in certain Senate amendments, in others with amendments.
Oct. 27, Senate agreed to conference report; concurred in House amendments.