

Enhanced-Use Leasing

- Section 2814 of the National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, required the Secretary of Defense to submit a report to the Committees on Armed Services of the Senate and the House of Representatives regarding the authority of the military departments and defense agencies to lease to the private sector, non-excess real and personal property under the control of the military departments and defense agencies. The report was submitted to the Congress in June 1999.
- The principal legal authority for the military departments to lease both their real and personal property is Section 2667 of title 10, United States Code.
 - Nonexcess property
 - Term is no longer than 5 years (unless justified to be longer)
 - Consideration in the form of cash or in-kind services at fair market value
 - Use of proceeds are limited
 - Cash: Maintenance and repair or environmental restoration (50% at installation and 50% Department-wide)
 - In-kind: Improvements, maintenance, protection, repair, and environmental restoration (generally limited to the leased property)
- The authority to lease non-excess property under Section 2667 has permitted the Department to put a modest amount of its non-excess, but otherwise not fully utilized property to productive use by allowing non-federal entities (state and local governments and private sector firms) to use it.
- Proceeds from those leases have been used to supplement chronically underfunded accounts for maintenance and repair services and for environmental restoration. However, Section 2667 has some limitations. If the limitations which impact the benefits to be derived from this authority were remedied, the Department could use its non-excess, but not fully utilized property more effectively and, thus, could further reduce its installation support costs while improving the condition of facilities and preserving historically significant buildings.
- The four changes recommended would authorize:
 - The Department to indemnify lessees of real property against liability if contamination is discovered on leased property that was a result of military activities prior to the lease period.
 - The application of in-kind consideration at any military installation and clarify types of authorized in-kind consideration to include maintenance, protection, alteration, repair, improvement, or restoration of any property; construction of new facilities; provision of facilities for use by the military departments; base operating support services; and other services related to the activity that will occur on the leased property.
 - Lease revenues to be applied to facility-related requirements without further appropriation.
 - The military departments to use cash proceeds from leases for construction or renovation of its infrastructure and facilities, subject to Congressional review and approval.

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