

TITLE 38. VETERANS' BENEFITS
PART VI. ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81. ACQUISITION AND OPERATION OF HOSPITAL AND
DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER V. ENHANCED-USE LEASES OF REAL PROPERTY

38 USCS § 8161 (2005)

§ 8161. Definitions

For the purposes of this subchapter [38 USCS §§ 8161 et seq.]:

(1) The term "enhanced-use lease" means a written lease entered into by the Secretary under this subchapter [38 USCS §§ 8161 et seq.].

(2) The term "congressional veterans' affairs committees" means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

§ 8162. Enhanced-use leases

(a) (1) The Secretary may in accordance with this subchapter [38 USCS §§ 8161 et seq.] enter into leases with respect to real property that is under the jurisdiction or control of the Secretary. Any such lease under this subchapter [38 USCS §§ 8161 et seq.] may be referred to as an "enhanced-use lease". The Secretary may dispose of any such property that is leased to another party under this subchapter [38 USCS §§ 8161 et seq.] in accordance with section 8164 of this title [38 USCS § 8164]. The Secretary may exercise the authority provided by this subchapter [38 USCS §§ 8161 et seq.] notwithstanding section 8122 of this title [38 USCS § 8122], subchapter II of chapter 5 of title 40 [40 USCS §§ 521 et seq.], sections 541-555 and 1302 of title 40 [40 USCS §§ 541-555 and 1302], or any other provision of law (other than Federal laws relating to environmental and historic preservation) inconsistent with this section. The applicability of this subchapter [38 USCS §§ 8161 et seq.] to section 421(b) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) [unclassified] is covered by subsection (c).

(2) The Secretary may enter into an enhanced-use lease only if--

(A) the Secretary determines that--

(i) at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department;

(ii) the lease will not be inconsistent with and will not adversely affect the mission of the Department; and

(iii) the lease will enhance the use of the property; or

(B) the Secretary determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(3) The provisions of sections 3141-3144, 3146, and 3147 of title 40 [40 USCS §§ 3141-

3144, 3146, and 3147] shall not, by reason of this section, become inapplicable to property that is leased to another party under an enhanced-use lease.

(4) A property that is leased to another party under an enhanced-use lease may not be considered to be unutilized or underutilized for purposes of section 501 of the Stewart B. McKinney Homeless Assistance Act [McKinney-Vento Homeless Assistance Act] (42 U.S.C. 11411).

(b) (1) (A) If the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall select the party with whom the lease will be entered into using selection procedures determined by the Secretary that ensure the integrity of the selection process.

(B) In the case of a property that the Secretary determines is appropriate for use as a facility to furnish services to homeless veterans under chapter 20 of this title [38 USCS §§ 2001 et seq.], the Secretary may enter into an enhanced-use lease with a provider of homeless services without regard to the selection procedures required under subparagraph (A).

(2) The term of an enhanced-use lease may not exceed 75 years.

(3)

(A) Each enhanced-use lease shall be for fair consideration, as determined by the Secretary. Consideration under such a lease may be provided in whole or in part through consideration in-kind.

(B) Consideration in-kind may include provision of goods or services of benefit to the Department, including construction, repair, remodeling, or other physical improvements of Department facilities, maintenance of Department facilities, or the provision of office, storage, or other usable space.

(4) The terms of an enhanced-use lease may provide for the Secretary to--

(A) obtain facilities, space, or services on the leased property; and

(B) use minor construction funds for capital contribution payments.

(c)

(1) Subject to paragraph (2), the entering into an enhanced-use lease covering any land or improvement described in section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) [unclassified] shall be considered to be prohibited by that section unless specifically authorized by law.

(2) The entering into an enhanced-use lease by the Secretary covering any land or improvement described in such section 421(b)(2) [unclassified] shall not be considered to be prohibited under that section if under the lease--

(A) the designated property is to be used only for child-care services;

(B) those services are to be provided only for the benefit of--

(i) employees of the Department;

(ii) individuals employed on the premises of such property; and

(iii) employees of a health-personnel educational institution that is affiliated with a Department facility;

(C) over one-half of the employees benefited by the child-care services provided are required to be employees of the Department; and

(D) over one-half of the children to whom child-care services are provided are required to

be children of employees of the Department.

§ 8163. Hearing and notice requirements regarding proposed leases

(a) If the Secretary proposes to enter into an enhanced-use lease with respect to certain property, the Secretary shall conduct a public hearing before entering into the lease. The hearing shall be conducted in the community in which the property is located. At the hearing, the Secretary shall receive the views of veterans service organizations and other interested parties regarding the proposed lease of the property and the possible effects of the uses to be made of the property under a lease of the general character then contemplated. The possible effects to be addressed at the hearing shall include effects on--

- (1) local commerce and other aspects of the local community;
- (2) programs administered by the Department; and
- (3) services to veterans in the community.

(b) Before conducting such a hearing, the Secretary shall provide reasonable notice to the congressional veterans' affairs committees and to the public of the proposed lease and of the hearing. The notice shall include the following:

- (1) The time and place of the hearing.
- (2) Identification of the property proposed to be leased.
- (3) A description of the proposed uses of the property under the lease.
- (4) A description of how the uses to be made of the property under a lease of the general character then contemplated--
 - (A) would--
 - (i) contribute in a cost-effective manner to the mission of the Department;
 - (ii) not be inconsistent with the mission of the Department;
 - (iii) not adversely affect the mission of the Department; and
 - (iv) affect services to veterans; or
 - (B) would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.
- (5) A description of how those uses would affect services to veterans.

(c) (1) If after a hearing under subsection (a) the Secretary intends to enter into an enhanced-use lease of the property involved, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intention to enter into such lease and shall publish a notice of such intention in the Federal Register.

(2) The Secretary may not enter into an enhanced use lease until the end of the 45-day period beginning on the date of the submission of notice under paragraph (1).

(3) Each notice under paragraph (1) shall include the following:

(A) An identification of the property involved.

(B) An explanation of the background of, rationale for, and economic factors in support of, the proposed lease.

(C) A summary of the views expressed by interested parties at the public hearing conducted in connection with the proposed designation, together with a summary of the Secretary's evaluation of those views.

(D) A description of the provisions of the proposed lease.

(E) A description of how the proposed lease--

(i) would--

(I) contribute in a cost-effective manner to the mission of the Department;

(II) not be inconsistent with the mission of the Department;

(III) not adversely affect the mission of the Department; and

(IV) affect services to veterans; or

(ii) would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(F) A description of how the proposed lease would affect services to veterans.

(G) A summary of a cost-benefit analysis of the proposed lease.

(4) [Deleted]

§ 8164. Authority for disposition of leased property

(a) If, during the term of an enhanced-use lease or within 30 days after the end of the term of the lease, the Secretary determines that the leased property is no longer needed by the Department, the Secretary may initiate action for the transfer to the lessee of all right, title, and interest of the United States in the property. A disposition of property may not be made under this section unless the Secretary determines that the disposition under this section rather than under section 8118 or 8122 of this title [38 USCS § 8118 or 8122] is in the best interests of the Department.

(b) A disposition under this section may be made for such consideration as the Secretary determines is in the best interest of the United States and upon such other terms and conditions as the Secretary considers appropriate.

(c) Not less than 45 days before a disposition of property is made under this section, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intent to dispose of the property and shall publish notice of the proposed disposition in the Federal Register. The notice shall describe the background of, rationale for, and economic factors in support of, the proposed disposition (including a cost-benefit analysis summary) and the method, terms, and conditions of the proposed disposition.

§ 8165. Use of proceeds

(a) (1) Funds received by the Department under an enhanced-use lease and remaining after any deduction from those funds under subsection (b) shall be deposited in the Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of this title [38 USCS § 1729A].

(2) Funds received by the Department from a disposal of leased property under section 8164 of this title [38 USCS § 8164] shall be deposited in the Department of Veterans Affairs Capital Asset Fund established under section 8118 of this title [38 USCS § 8118].

(b) An amount sufficient to pay for any expenses incurred by the Secretary in any fiscal year in connection with an enhanced-use lease shall be deducted from the proceeds of the lease for that fiscal year and may be used by the Secretary to reimburse the account from which the funds were used to pay such expenses. The Secretary may use the proceeds from any enhanced-use lease to reimburse applicable appropriations of the Department for any expenses incurred in the development of additional enhanced-use leases.

(c) [Deleted]

§ 8166. Construction standards

(a) Unless the Secretary provides otherwise, the construction, alteration, repair, remodeling, or improvement of the property that is the subject of the lease shall be carried out so as to comply with all standards applicable to construction of Federal buildings. Any such construction, alteration, repair, remodeling, or improvement shall not be subject to any State or local law

relating to land use, building codes, permits, or inspections unless the Secretary provides otherwise.

(b) Unless the Secretary has provided that Federal construction standards are not applicable to a property, the Secretary shall conduct periodic inspections of any such construction, alteration, repair, remodeling, or improvement for the purpose of ensuring that the standards are met.

§ 8167. Exemption from State and local taxes

The interest of the United States in any property subject to an enhanced-use lease and any use by the United States of such property during such lease shall not be subject, directly or indirectly, to any State or local law relative to taxation, fees, assessments, or special assessments, except sales taxes charged in connection with any construction, alteration, repair, remodeling, or improvement project carried out under the lease.

[8168. Repealed]

§ 8169. Expiration

The authority of the Secretary to enter into enhanced-use leases under this subchapter [38 USCS §§ 8161 et seq.] expires on December 31, 2011.