

## **Public Law (PL) 101-510**

National Defense Authorization Act for 1991

Enacted 5 Nov 1990

(with Amendments thru PL 107-107)

### **TITLE XXIX--DEFENSE BASE CLOSURES AND REALIGNMENTS**

#### **Part A--Defense Base Closure and Realignment Commission**

##### **SEC. 2901. SHORT TITLE AND PURPOSE**

- (a) **SHORT TITLE-** This part may be cited as the `Defense Base Closure and Realignment Act of 1990'.
- (b) **PURPOSE-** The purpose of this part is to provide a fair process that will result in the timely closure and realignment of military installations inside the United States.

##### **SEC. 2902. THE COMMISSION**

- (a) **ESTABLISHMENT-** There is established an independent commission to be known as the `Defense Base Closure and Realignment Commission'.
- (b) **DUTIES-** The Commission shall carry out the duties specified for it in this part.
- (c) **APPOINTMENT-** (1)(A) The Commission shall be composed of eight members appointed by the President, by and with the advise and consent of the Senate.
  - (B) The President shall transmit to the Senate the nominations for appointment to the Commission--
    - (i) by no later than January 3, 1991, in the case of members of the Commission whose terms will expire at the end of the first session of the 102nd Congress;
    - (ii) by no later than January 25, 1993, in the case of members of the Commission whose terms will expire at the end of the first session of the 103rd Congress; and
    - (iii) by no later than January 3, 1995, in the case of members of the Commission whose terms will expire at the end of the first session of the 104th Congress.
  - (C) If the President does not transmit to Congress the nominations for appointment to the Commission on or before the date specified for 1993 in clause (ii) of subparagraph (B) or for 1995 in clause (iii) of such subparagraph, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated..<sup>1</sup>
- (2) In selecting individuals for nominations for appointments to the Commission, the President should consult with--
  - (A) the Speaker of the House of Representatives concerning the appointment of two members;

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<sup>1</sup> PL 102-190, 5 Dec 91

(B) the majority leader of the Senate concerning the appointment of two members;

(C) the minority leader of the House of Representatives concerning the appointment of one member;  
and

(D) the minority leader of the Senate concerning the appointment of one member.

(3) At the time the President nominates individuals for appointment to the Commission for each session of Congress referred to in paragraph (1)(B), the President shall designate one such individual who shall serve as Chairman of the Commission.

(d) TERMS- (1) Except as provided in paragraph (2), each member of the Commission shall serve until the adjournment of Congress sine die for the session during which the member was appointed to the Commission.

(2) The Chairman of the Commission shall serve until the confirmation of a successor.

(e) MEETINGS- (1) The Commission shall meet only during calendar years 1991, 1993, and 1995.

(2)(A) Each meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public.

(B) All the proceedings, information, and deliberations of the Commission shall be open, upon request, to the following:

(i) The Chairman and the ranking minority party member of the Subcommittee on Readiness, Sustainability, and Support of the Committee on Armed Services of the Senate, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

(ii) The Chairman and the ranking minority party member of the Subcommittee on Military Installations and Facilities of the Committee on Armed Services of the House of Representatives, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

(iii) The Chairmen and ranking minority party members of the Subcommittees on Military Construction of the Committees on Appropriations of the Senate and of the House of Representatives, or such other members of the Subcommittees designated by such Chairmen or ranking minority party members.

(f) VACANCIES- A vacancy in the Commission shall be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

(g) PAY AND TRAVEL EXPENSES- (1)(A) Each member, other than the Chairman, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

(B) The Chairman shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(2) Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(h) DIRECTOR OF STAFF- (1) The Commission shall, without regard to section 5311(b) of title 5, United States Code, appoint a Director who has not served on active duty in the Armed Forces or as a civilian employee of the Department of Defense during the one-year period preceding the date of such appointment.

(2) The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(i) STAFF- (1) Subject to paragraphs (2) and (3)(A), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

`(B)(i) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

`(ii) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.

`(C) A person may not be detailed from the Department of Defense to the Commission if, within 12 months before the detail is to begin, that person participated personally and substantially in any matter within the Department of Defense concerning the preparation of recommendations for closures or realignments of military installations.

`(D) No member of the Armed Forces, and no officer or employee of the Department of Defense, may--

`(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Department of Defense to that staff;

`(ii) review the preparation of such a report; or

`(iii) approve or disapprove such a report.'; and

(2) by adding at the end the following new paragraph:

`(6) The following restrictions relating to the personnel of the Commission shall apply during 1992 and 1994:

`(A) There may not be more than 15 persons on the staff at any one time.

`(B) The staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year.

`(C) No member of the Armed Forces and no employee of the Department of Defense may serve on the staff.'.

(c) PROHIBITION AGAINST RESTRICTING COMMUNICATIONS WITH THE COMMISSION- Section 2902 of such Act is amended by adding at the end the following new subsection:

`(m) PROHIBITION AGAINST RESTRICTING COMMUNICATIONS- Section 1034 of title 10, United States Code, shall apply with respect to communications with the Commission.<sup>2</sup>

(2) The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

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<sup>2</sup> PL 102-190, 5 Dec 1991

(3) Not more than one-third of the personnel employed by or detailed to the Commission may be on detail from the Department of Defense.

(4) Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

(5) The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

(j) OTHER AUTHORITY- (1) The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

(2) The Commission may lease space and acquire personal property to the extent funds are available.

(k) FUNDING- (1) There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this part. Such funds shall remain available until expended.

(2) If no funds are appropriated to the Commission by the end of the second session of the 101st Congress, the Secretary of Defense may transfer, for fiscal year 1991, to the Commission funds from the Department of Defense Base Closure Account established by section 207 of Public Law 100-526. Such funds shall remain available until expended.

(3)(A) The Secretary may transfer not more than \$300,000 from unobligated funds in the account referred to in subparagraph (B) for the purpose of assisting the Commission in carrying out its duties under this part during October, November, and December 1995. Funds transferred under the preceding sentence shall remain available until December 31, 1995.

(B) The account referred to in subparagraph (A) is the Department of Defense Base Closure Account established under section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).<sup>3</sup>

(l) TERMINATION- The Commission shall terminate on December 31, 1995.

## **SEC. 2903. PROCEDURE FOR MAKING RECOMMENDATIONS FOR BASE CLOSURES AND REALIGNMENTS**

(a) FORCE-STRUCTURE PLAN- (1) As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for each of the fiscal years 1992, 1994, and 1996, the Secretary shall include a force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the six-year period beginning with the fiscal year for which the budget request is made and of the anticipated levels of funding that will be available for national defense purposes during such period.

(2) Such plan shall include, without any reference (directly or indirectly) to military installations inside the United States that may be closed or realigned under such plan--

(A) a description of the assessment referred to in paragraph (1);

(B) a description (i) of the anticipated force structure during and at the end of each such period for each military department (with specifications of the number and type of units in the active and reserve

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<sup>3</sup> PL 104-106, 10 Feb 96, Section 2835

forces of each such department), and (ii) of the units that will need to be forward based (with a justification thereof) during and at the end of each such period; and

(C) a description of the anticipated implementation of such force-structure plan.

(3) The Secretary shall also transmit a copy of each such force-structure plan to the Commission.

(b) SELECTION CRITERIA- (1) The Secretary shall, by no later than December 31, 1990, publish in the Federal Register and transmit to the congressional defense committees the criteria proposed to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States under this part. The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under the preceding sentence.

(2)(A) The Secretary shall, by no later than February 15, 1991, publish in the Federal Register and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part. Except as provided in subparagraph (B), such criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before March 15, 1991.

(B) The Secretary may amend such criteria, but such amendments may not become effective until they have been published in the Federal Register, opened to public comment for at least 30 days, and then transmitted to the congressional defense committees in final form by no later than January 15<sup>4</sup> of the year concerned. Such amended criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before February 15<sup>5</sup> of the year concerned.

(c) DOD RECOMMENDATIONS- (1) The Secretary may, by no later than April 15, 1991, March 15, 1993, and March 15, 1995<sup>6</sup>, publish in the Federal Register and transmit to the congressional defense committees and to the Commission a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria referred to in subsection (b)(2) that are applicable to the year concerned.

(2) The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each installation, including a justification for each recommendation.

(3) (A)<sup>7</sup> In considering military installations for closure or realignment, the Secretary shall consider all military installations inside the United States equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.

(B) In considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of an installation.

(C) For purposes of subparagraph (B), in the case of a community anticipating the economic effects of a closure or realignment of a military installation, advance conversion planning--

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<sup>4</sup> PL 102-190, 5 Dec 91

<sup>5</sup> PL 102-190, 5 Dec 91

<sup>6</sup> PL 102-190, 5 Dec 91

<sup>7</sup> PL 103-337, 5 Oct 94, Section 2811(a)(1)

`(i) shall include community adjustment and economic diversification planning undertaken by the community before an anticipated selection of a military installation in or near the community for closure or realignment; and

`(ii) may include the development of contingency redevelopment plans, plans for economic development and diversification, and plans for the joint use (including civilian and military use, public and private use, civilian dual use, and civilian shared use) of the property or facilities of the installation after the anticipated closure or realignment<sup>8</sup>.

(4) The Secretary shall make available to the Commission and the Comptroller General of the United States all information used by the Department in making its recommendations to the Commission for closures and realignments. In addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.<sup>9</sup>

`(5)(A) Each person referred to in subparagraph (B), when submitting information to the Secretary of Defense or the Commission concerning the closure or realignment of a military installation, shall certify that such information is accurate and complete to the best of that person's knowledge and belief.

`(B) Subparagraph (A) applies to the following persons:

`(i) The Secretaries of the military departments.

`(ii) The heads of the Defense Agencies.

`(iii) Each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information and recommendations concerning the closure or realignment of military installations, as designated in regulations which the Secretary of Defense shall prescribe, regulations which the Secretary of each military department shall prescribe for personnel within that military department, or regulations which the head of each Defense Agency shall prescribe for personnel within that Defense Agency.

`(6) In the case of any information provided to the Commission by a person described in paragraph (5)(B), the Commission shall submit that information to the Senate and the House of Representatives to be made available to the Members of the House concerned in accordance with the rules of that House. The information shall be submitted to the Senate and the House of Representatives within 24 hours after the submission of the information to the Commission. The Secretary of Defense shall prescribe regulations to ensure the compliance of the Commission with this paragraph.<sup>10</sup>

(d) REVIEW AND RECOMMENDATIONS BY THE COMMISSION- (1) After receiving the recommendations from the Secretary pursuant to subsection (c) for any year, the Commission shall conduct public hearings on the recommendations.

(2)(A) The Commission shall, by no later than July 1 of each year in which the Secretary transmits recommendations to it pursuant to subsection (c), transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Secretary, together with the Commission's recommendations for closures and realignments of military installations inside the United States.

(B) Subject to subparagraph (C), in making<sup>11</sup> its recommendations, the Commission may make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated

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<sup>8</sup> PL 103-337, 5 Oct 94, Section 2811(2)

<sup>9</sup> PL 102-190, 5 Dec 91

<sup>10</sup> PL 102-190, 5 Dec 91

<sup>11</sup> PL 102-190, 5 Dec 91

substantially from the force-structure plan and final criteria referred to in subsection (c)(1) in making recommendations.

(C) In the case of a change described in subparagraph (D) in the recommendations made by the Secretary, the Commission may make the change only if the Commission--

`(i) makes the determination required by subparagraph (B);

`(ii) determines that the change is consistent with the force-structure plan and final criteria referred to in subsection (c)(1);

`(iii) publishes a notice of the proposed change in the Federal Register not less than 30 days before transmitting its recommendations to the President pursuant to paragraph (2); and

`(iv) conducts public hearings on the proposed change.

`(D) Subparagraph (C) shall apply to a change by the Commission in the Secretary's recommendations that would--

`(i) add a military installation to the list of military installations recommended by the Secretary for closure;

`(ii) add a military installation to the list of military installations recommended by the Secretary for realignment; or

`(iii) increase the extent of a realignment of a particular military installation recommended by the Secretary.<sup>12</sup>

`(E) In making recommendations under this paragraph, the Commission may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of a military installation.<sup>13</sup>

(3) The Commission shall explain and justify in its report submitted to the President pursuant to paragraph (2) any recommendation made by the Commission that is different from the recommendations made by the Secretary pursuant to subsection (c). The Commission shall transmit a copy of such report to the congressional defense committees on the same date on which it transmits its recommendations to the President under paragraph (2).

(4) After July 1 of each year in which the Commission transmits recommendations to the President under this subsection, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

(5) The Comptroller General of the United States shall--

(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Secretary pursuant to subsection (c); and

(B) by no later than April 15 of each year<sup>14</sup> in which the Secretary makes such recommendations, transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process.

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<sup>12</sup> PL 102-190, 5 Dec 91

<sup>13</sup> PL 103-337, 45 Oct 94

<sup>14</sup> PL 102-484, 23 Oct 92, Section 2821

(e) REVIEW BY THE PRESIDENT- (1) The President shall, by no later than July 15 of each year in which the Commission makes recommendations under subsection (d), transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of such approval.

(3) If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, by no later than August 15 of the year concerned, a revised list of recommendations for the closure and realignment of military installations.

(4) If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval.

(5) If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by September 1 of any year in which the Commission has transmitted recommendations to the President under this part, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

## **SEC. 2904. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS**

(a) IN GENERAL- Subject to subsection (b), the Secretary shall--

(1) close all military installations recommended for closure by the Commission in each report transmitted to the Congress by the President pursuant to section 2903(e);

(2) realign all military installations recommended for realignment by such Commission in each such report;

(3) carry out the privatization in place of a military installation recommended for closure or realignment by the Commission in the 2005 report only if privatization in place is a method of closure or realignment of the military installation specified in the recommendations of the Commission in such report and is determined by the Commission to be the most cost-effective method of implementation of the recommendation;<sup>15</sup>

(4) initiate all such closures and realignments no later than two years after the date on which the President transmits a report to the Congress pursuant to section 2903(e) containing the recommendations for such closures or realignments; and

(5) complete all such closures and realignments no later than the end of the six-year period beginning on the date on which the President transmits the report pursuant to section 2903(e) containing the recommendations for such closures or realignments.

(b) CONGRESSIONAL DISAPPROVAL- (1) The Secretary may not carry out any closure or realignment recommended by the Commission in a report transmitted from the President pursuant to section 2903(e) if a joint resolution is enacted, in accordance with the provisions of section 2908, disapproving such recommendations of the Commission before the earlier of--

(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

(B) the adjournment of Congress sine die for the session during which such report is transmitted.

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<sup>15</sup> PL 107-107, 28 Dec 2001, Section 3004



(2) For purposes of paragraph (1) of this subsection and subsections (a) and (c) of section 2908, the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of a period.

## **SEC. 2905. IMPLEMENTATION**

(a) IN GENERAL- (1) In closing or realigning any military installation under this part, the Secretary may--

(A) take such actions as may be necessary to close or realign any military installation, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from a military installation being closed or realigned to another military installation, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance;

(B) provide--

(i) economic adjustment assistance to any community located near a military installation being closed or realigned, and

(ii) community planning assistance to any community located near a military installation to which functions will be transferred as a result of the closure or realignment of a military installation,

if the Secretary of Defense determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for economic adjustment assistance or community planning assistance;

(C) carry out activities for the purposes of environmental restoration and mitigation at any such installation, and shall<sup>16</sup> use for such purposes funds in the Account.<sup>17</sup>

(D) provide outplacement assistance to civilian employees employed by the Department of Defense at military installations being closed or realigned, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for outplacement assistance to employees; and

(E) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense and available for such purpose.

(2) In carrying out any closure or realignment under this part, the Secretary shall ensure that environmental restoration of any property made excess to the needs of the Department of Defense as a result of such closure or realignment be carried out as soon as possible with funds available for such purpose.

(b) MANAGEMENT AND DISPOSAL OF PROPERTY- (1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property, facilities and personal property,<sup>18</sup> located at a military installation closed or realigned under this part--

(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

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<sup>16</sup> P.L. 102-190, 5 Dec 91

<sup>17</sup> Ibid

<sup>18</sup> P.L. 103-337, 5 Oct 94, Section 2813(c)(2)

(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484);

(C) the authority of the Administrator to grant approvals and make determinations under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)); and

(D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the Act of May 19, 1948 (16 U.S.C. 667b).

(2)(A) Subject to subparagraph (B)<sup>19</sup> and paragraphs (3), (4), (5) and (6)<sup>20</sup>, the Secretary of Defense shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with--

(i) all regulations<sup>21</sup> governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949; and

(ii) all regulations<sup>22</sup> governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(B) The Secretary may, with the concurrence of the Administrator of General Services--

(i) prescribe general policies and methods for utilizing excess property and disposing of surplus property pursuant to the authority delegated under paragraph (1); and

(ii) issue regulations relating to such policies and methods, which shall supersede the regulations referred to in subparagraph (A) with respect to that authority.<sup>23</sup>

(C<sup>24</sup>) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this part, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

(D<sup>25</sup>) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this part, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

(3)(A) Not later than 6 months after the date of approval of the closure of a military installation under this part, the Secretary, in consultation with the redevelopment authority with respect to the installation, shall--

(i) inventory the personal property located at the installation; and

(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

(B) The Secretary may, with the concurrence of the Administrator of General Services--

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<sup>19</sup> PL 104-106, Section 2836(1)(A)

<sup>20</sup> P.L. 103-160, 30 Nov 93

<sup>21</sup> PL 104-106, Section 2836(1)(B)

<sup>22</sup> PL 104-106, Section 2836(1)(B)

<sup>23</sup> PL 104-106, Section, 2836(2)

<sup>24</sup> PL 104-106, Section, 2836(3)

<sup>25</sup> PL 104-106, Section, 2836(3)

`(i) prescribe general policies and methods for utilizing excess property and disposing of surplus property pursuant to the authority delegated under paragraph (1); and

`(ii) issue regulations relating to such policies and methods, which shall supersede the regulations referred to in subparagraph (A) with respect to that authority.<sup>126</sup>

`(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this part as follows:

`(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

`(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

`(C<sup>27</sup>) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this part to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation.<sup>28</sup> `In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.<sup>29</sup>

`(D<sup>30</sup>) This paragraph shall not apply to any personal property located at an installation to be closed under this part if the property--

`(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

`(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

`(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

`(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

`(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

`(F)<sup>31</sup> Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.<sup>32</sup>

`(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed under this part to the redevelopment authority with respect to the installation.

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<sup>26</sup> PL 104-106, Section 2836(2)

<sup>27</sup> PL 104-106, Section 2836(3)

<sup>28</sup> P.L. 103-160, 30 Nov 93 (Section 2902)

<sup>29</sup> P.L. 103-160, 30 Nov 93 (Section 2812)

<sup>30</sup> PL 104-106, Section 2836(3)

<sup>31</sup> Should be designated "E" to be consistent with PL 104-106, Section 2836(3)

<sup>32</sup> P.L. 103-160, 30 Nov 93 (Section 2902)

`(B)(i)(I) Except as provided in clause (ii), the transfer of property under subparagraph (A) may be for consideration at or below the estimated fair market value of the property transferred or without consideration. Such consideration may include consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate. The Secretary shall determine the estimated fair market value of the property to be transferred under this subparagraph before carrying out such transfer.

`(II) The Secretary shall prescribe regulations that set forth guidelines for determining the amount, if any, of consideration required for a transfer under this paragraph. Such regulations shall include a requirement that, in the case of each transfer under this paragraph for consideration below the estimated fair market value of the property transferred, the Secretary provide an explanation why the transfer is not for the estimated fair market value of the property transferred (including an explanation why the transfer cannot be carried out in accordance with the authority provided to the Secretary pursuant to paragraph (1) or (2)).

`(ii) The transfer of property under subparagraph (A) shall be without consideration in the case of any installation located in a rural area whose closure under this part will have a substantial adverse impact (as determined by the Secretary) on the economy of the communities in the vicinity of the installation and on the prospect for the economic recovery of such communities from such closure . The Secretary shall prescribe in the regulations under clause (i)(II) the manner of determining whether communities are eligible for the transfer of property under this clause.

`(iii) In the case of a transfer under subparagraph (A) for consideration below the fair market value of the property transferred, the Secretary may recoup from the transferee of such property such portion as the Secretary determines appropriate of the amount, if any, by which the sale or lease of such property by such transferee exceeds the amount of consideration paid to the Secretary for such property by such transferee. The Secretary shall prescribe regulations for determining the amount of recoupment under this clause.

`(C)(i) The Secretary may transfer real property at an installation approved for closure or realignment under this part (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

`(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

`(iii) A lease under clause (i) may not require rental payments by the United States.

`(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.<sup>33</sup>.

*[(b) USE OF FUNDS TO IMPROVE LEASED PROPERTY- Notwithstanding any other provision of law, a department or agency of the Federal Government that enters into a lease of property under section 2905(b)(4)(C) 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), as amended by subsection (a), may improve the leased property using funds appropriated or otherwise available to the department or agency for such purpose.]<sup>34</sup>*

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<sup>33</sup> PL 104-106, Section 2837(2)

<sup>34</sup> PL 104-106, Section 2837(b)

`(D<sup>35</sup>) (i) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484) if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

`(ii) The Secretary may, in lieu of the transfer of property referred to in subparagraph (A), transfer property similar to such property (including property not located at the installation) if the Secretary determines that the transfer of such similar property is in the interest of the United States.

`(E<sup>36</sup>) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

`(F<sup>37</sup>) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.<sup>38</sup>

`(5)(A) Except as provided in `subparagraphs (B) and (C)<sup>39</sup> the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under `paragraph 1<sup>40</sup> ~~subsection (b)(1)~~ regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this part, or will accept transfer of any portion of such installation, are made not later than 6 months after the date of approval of closure of that installation.

`(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.<sup>41</sup>

`(C)(i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this part as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

`(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

`(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 and ending on July 31, 2001.<sup>42</sup>

`(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this part. `For procedures relating to the use to assist the homeless of

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<sup>35</sup> PL 104-106, Section 2837(1)

<sup>36</sup> PL 104-106, Section 2837(1)

<sup>37</sup> PL 104-106, Section 2837(1)

<sup>38</sup> P.L 103-160, 30 Nov 93 (Section 2903 (b))

<sup>39</sup> PL 105-85, 18 Nov 97, Section 2821(b)(1)

<sup>40</sup> PL 103-337, Section 2813(d)(3)

<sup>41</sup> P.L 103-160, 30 Nov 93 (Section 2904 (b))

<sup>42</sup> PL 105-85, 18 Nov 97, Section 2821(b)(2)

buildings and property at installations closed under this part after the date of the enactment of this sentence, see paragraph (7).<sup>43</sup>

`(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this part, the Secretary shall--

`(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

`(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

`(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

`(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall--

`(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

`(ii) notify the Secretary of Defense of the buildings and property that are so identified;

`(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act; and

`(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

`(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

`(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which--

`(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

`(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

`(iii) the Secretary of Health and Human Services--

`(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

`(II) approves the application under section 501(e) of such Act.

`(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which

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<sup>43</sup> PL 103-421, 25 Oct 94, Section 2(b)

have not been identified as suitable for use to assist the homeless under subparagraph (C),<sup>44</sup> or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

- `(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).
  - `(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.
  - `(III) In the case of buildings and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.
- `(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:
- `(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.
  - `(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.
  - `(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.
- `(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.
- `(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act while so available for a redevelopment authority.
- `(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.<sup>45</sup>
- `(7)(A) The disposal of buildings and property located at installations approved for closure or realignment under this part after October 25, 1994, shall be carried out in accordance with this paragraph rather than paragraph (6).<sup>46</sup>
- `(B)(i) Not later than the date on which the Secretary of Defense completes the final determinations referred to in paragraph (5) relating to the use or transferability of any portion of an installation covered by this paragraph, the Secretary shall--

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<sup>44</sup> PL 103-421, 25 Oct 94, Section 2(f)(2)

<sup>45</sup> P.L. 103-160 30 Nov 93 Section 2905 (b)

<sup>46</sup> PL 104-106, 2 )ct 96, Section 2838 (a)

`(I) identify the buildings and property at the installation for which the Department of Defense has a use, for which another department or agency of the Federal Government has identified a use, or of which another department or agency will accept a transfer;

`(II) take such actions as are necessary to identify any building or property at the installation not identified under subclause (I) that is excess property or surplus property;

`(III) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation (or the chief executive officer of the State in which the installation is located if there is no redevelopment authority for the installation at the completion of the determination described in the stem of this sentence) information on any building or property that is identified under subclause (II); and

`(IV) publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the buildings and property identified under subclause (II).

`(ii) Upon the recognition of a redevelopment authority for an installation covered by this paragraph, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the redevelopment authority.

`(C)(i) State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of an installation covered by this paragraph shall submit to the redevelopment authority for the installation a notice of the interest, if any, of such governments, representatives, and parties in the buildings or property, or any portion thereof, at the installation that are identified under subparagraph (B)(i)(II). A notice of interest under this clause shall describe the need of the government, representative, or party concerned for the buildings or property covered by the notice.

`(ii) The redevelopment authority for an installation shall assist the governments, representatives, and parties referred to in clause (i) in evaluating buildings and property at the installation for purposes of this subparagraph.

`(iii) In providing assistance under clause (ii), a redevelopment authority shall--

`(I) consult with representatives of the homeless in the communities in the vicinity of the installation concerned; and

`(II) undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.

`(iv) It is the sense of Congress that redevelopment authorities should begin to conduct outreach efforts under clause (iii)(II) with respect to an installation as soon as is practicable after the date of approval of closure of the installation.

`(D)(i) State and local governments, representatives of the homeless, and other interested parties shall submit a notice of interest to a redevelopment authority under subparagraph (C) not later than the date specified for such notice by the redevelopment authority.

`(ii) The date specified under clause (i) shall be--

`(I) in the case of an installation for which a redevelopment authority has been recognized as of the date of the completion of the determinations referred to in paragraph (5), not earlier than 3 months and not later than 6 months after that date; and

`(II) in the case of an installation for which a redevelopment authority is not recognized as of such date, not earlier than 3 months and not later than 6 months after the date of the recognition of a redevelopment authority for the installation.



`(iii) Upon specifying a date for an installation under this subparagraph, the redevelopment authority for the installation shall--

`(I) publish the date specified in a newspaper of general circulation in the communities in the vicinity of the installation concerned; and

`(II) notify the Secretary of Defense of the date.

`(E)(i) In submitting to a redevelopment authority under subparagraph (C) a notice of interest in the use of buildings or property at an installation to assist the homeless, a representative of the homeless shall submit the following:

`(I) A description of the homeless assistance program that the representative proposes to carry out at the installation.

`(II) An assessment of the need for the program.

`(III) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation.

`(IV) A description of the buildings and property at the installation that are necessary in order to carry out the program.

`(V) A description of the financial plan, the organization, and the organizational capacity of the representative to carry out the program.

`(VI) An assessment of the time required in order to commence carrying out the program.

`(ii) A redevelopment authority may not release to the public any information submitted to the redevelopment authority under clause (i)(V) without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located.

`(F)(i) The redevelopment authority for each installation covered by this paragraph shall prepare a redevelopment plan for the installation. The redevelopment authority shall, in preparing the plan, consider the interests in the use to assist the homeless of the buildings and property at the installation that are expressed in the notices submitted to the redevelopment authority under subparagraph (C).

`(ii)(I) In connection with a redevelopment plan for an installation, a redevelopment authority and representatives of the homeless shall prepare legally binding agreements that provide for the use to assist the homeless of buildings and property, resources, and assistance on or off the installation. The implementation of such agreements shall be contingent `the decision regarding the disposal of the buildings and property covered by the agreements by the Secretary of Defense under subparagraph (K) or (L)<sup>47</sup>

`(II) Agreements under this clause shall provide for the reversion to the redevelopment authority concerned, or to such other entity or entities as the agreements shall provide, of buildings and property that are made available under this paragraph for use to assist the homeless in the event that such buildings and property cease being used for that purpose.

`(iii) A redevelopment authority shall provide opportunity for public comment on a redevelopment plan before submission of the plan to the Secretary of Defense and the Secretary of Housing and Urban Development under subparagraph (G).

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<sup>47</sup> PL 104-106, 10 Feb 96, Section 2838(b)

`(iv) A redevelopment authority shall complete preparation of a redevelopment plan for an installation and submit the plan under subparagraph (G) not later than 9 months after the date specified by the redevelopment authority for the installation under subparagraph (D).

`(G)(i) Upon completion of a redevelopment plan under subparagraph (F), a redevelopment authority shall submit an application containing the plan to the Secretary of Defense and to the Secretary of Housing and Urban Development.

`(ii) A redevelopment authority shall include in an application under clause (i) the following:

`(I) A copy of the redevelopment plan, including a summary of any public comments on the plan received by the redevelopment authority under subparagraph (F)(iii).

`(II) A copy of each notice of interest of use of buildings and property to assist the homeless that was submitted to the redevelopment authority under subparagraph (C), together with a description of the manner, if any, in which the plan addresses the interest expressed in each such notice and, if the plan does not address such an interest, an explanation why the plan does not address the interest.

`(III) A summary of the outreach undertaken by the redevelopment authority under subparagraph (C)(iii)(II) in preparing the plan.

`(IV) A statement identifying the representatives of the homeless and the homeless assistance planning boards, if any, with which the redevelopment authority consulted in preparing the plan, and the results of such consultations.

`(V) An assessment of the manner in which the redevelopment plan balances the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.

`(VI) Copies of the agreements that the redevelopment authority proposes to enter into under subparagraph (F)(ii).

`(H)(i) Not later than 60 days after receiving a redevelopment plan under subparagraph (G), the Secretary of Housing and Urban Development shall complete a review of the plan. The purpose of the review is to determine whether the plan, with respect to the expressed interest and requests of representatives of the homeless--

`(I) takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the plan for the use and needs of the homeless in such communities;

`(II) takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation;

`(III) balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities;

`(IV) was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation; and

`(V) specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes.

`(ii) It is the sense of Congress that the Secretary of Housing and Urban Development shall, in completing the review of a plan under this subparagraph, take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan.

`(iii) The Secretary of Housing and Urban Development may engage in negotiations and consultations with a redevelopment authority before or during the course of a review under clause (i) with a view toward resolving any preliminary determination of the Secretary that a redevelopment plan does not meet a requirement set forth in that clause. The redevelopment authority may modify the redevelopment plan as a result of such negotiations and consultations.

`(iv) Upon completion of a review of a redevelopment plan under clause (i), the Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under that clause.

`(v) If the Secretary of Housing and Urban Development determines as a result of such a review that a redevelopment plan does not meet the requirements set forth in clause (i), a notice under clause (iv) shall include--

    `(I) an explanation of that determination; and

    `(II) a statement of the actions that the redevelopment authority must undertake in order to address that determination.

`(I)(i) Upon receipt of a notice under subparagraph (H)(iv) of a determination that a redevelopment plan does not meet a requirement set forth in subparagraph (H)(i), a redevelopment authority shall have the opportunity to--

    `(I) revise the plan in order to address the determination; and

    `(II) submit the revised plan to `the Secretary of Defense and'<sup>48</sup>the Secretary of Housing and Urban Development.

`(ii) A redevelopment authority shall submit a revised plan under this subparagraph to `such Secretaries'<sup>49</sup>, if at all, not later than 90 days after the date on which the redevelopment authority receives the notice referred to in clause (i).

`(J)(i) Not later than 30 days after receiving a revised redevelopment plan under subparagraph (I), the Secretary of Housing and Urban Development shall review the revised plan and determine if the plan meets the requirements set forth in subparagraph (H)(i).

`(ii) The Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under this subparagraph.

`(K)(i) Upon receipt of a notice under subparagraph (H)(iv) or (J)(ii) of the determination of the Secretary of Housing and Urban Development that a redevelopment plan for an installation meets the requirements set forth in subparagraph (H)(i), the Secretary of Defense shall dispose of the buildings and property at the installation.

(ii) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation.

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<sup>48</sup> PL 104-106, 10 Feb 96 Section 2838(c)(1)

<sup>49</sup> PL 104-106, 10 Feb 96 Section 2838(c)(2)

`(iii) The Secretary of Defense shall dispose of buildings and property under clause (i) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.). In preparing the record of decision or other decision document, the Secretary shall give substantial deference to the redevelopment plan concerned.

`(iv) The disposal under clause (i) of buildings and property to assist the homeless shall be without consideration.

`(v) In the case of a request for a conveyance under clause (i) of buildings and property for public benefit under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).<sup>50</sup>

`(L)(i) If the Secretary of Housing and Urban Development determines under subparagraph (J) that a revised redevelopment plan for an installation does not meet the requirements set forth in subparagraph (H)(i), or if no revised plan is so submitted, that Secretary shall--

    `(I) review the original redevelopment plan submitted to that Secretary under subparagraph (G), including the notice or notices of representatives of the homeless referred to in clause (ii)(II) of that subparagraph;

    `(II) consult with the representatives referred to in subclause (I), if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

    `(III) request that each such representative submit to that Secretary the items described in clause (ii); and

    `(IV) based on the actions of that Secretary under subclauses (I) and (II), and on any information obtained by that Secretary as a result of such actions, indicate to the Secretary of Defense the buildings and property at the installation that meet the requirements set forth in subparagraph (H)(i).

`(ii) The Secretary of Housing and Urban Development may request under clause (i)(III) that a representative of the homeless submit to that Secretary the following:

    `(I) A description of the program of such representative to assist the homeless.

    `(II) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless.

    `(III) Such information as that Secretary requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination.

    `(IV) A certification that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

`(iii) The Secretary of Housing and Urban Development shall indicate to the Secretary of Defense and to the redevelopment authority concerned the buildings and property at an installation under clause (i)(IV) to be disposed of not later than 90 days after the date of a receipt of a revised plan for the installation under subparagraph (J).

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<sup>50</sup> PL 104-106, 10 Feb 96, Section 2838(d)

(iv) The Secretary of Defense shall dispose of the buildings and property at an installation referred to in clause (iii) to entities indicated by the Secretary of Housing and Urban Development or by transfer to the redevelopment authority concerned for transfer to such entities. Such disposal shall be in accordance with the indications of the Secretary of Housing and Urban Development under clause (i)(IV). Such disposal shall be without consideration.

(M)(i) In the event of the disposal of buildings and property of an installation pursuant to subparagraph (K) or (L)<sup>51</sup>, the redevelopment authority for the installation shall be responsible for the implementation of and compliance with agreements under the redevelopment plan described in that subparagraph for the installation.

(ii) If a building or property reverts to a redevelopment authority under such an agreement, the redevelopment authority shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. A redevelopment authority may not be required to utilize the building or property to assist the homeless.

(N) The Secretary of Defense may postpone or extend any deadline provided for under this paragraph in the case of an installation covered by this paragraph for such period as the Secretary considers appropriate if the Secretary determines that such postponement is in the interests of the communities affected by the closure of the installation. The Secretary shall make such determinations in consultation with the redevelopment authority concerned and, in the case of deadlines provided for under this paragraph with respect to the Secretary of Housing and Urban Development, in consultation with the Secretary of Housing and Urban Development.

(O) For purposes of this paragraph, the term 'communities in the vicinity of the installation', in the case of an installation, means the communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.<sup>52</sup>

(P) For purposes of this paragraph, the term 'other interested parties', in the case of an installation, includes any parties eligible for the conveyance of property of the installation under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) or sections 47151 through 47153 of title 49, United States Code, whether or not the parties assist the homeless.<sup>53</sup>

(8<sup>54</sup>) (A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this part, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this part,<sup>55</sup> if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.<sup>56</sup>

(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.<sup>57</sup>

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<sup>51</sup> PL 104-106, 10 Feb 96, Section 2838(e)

<sup>52</sup> PL 103-421, 25 Oct 94, Section 2(a)(2)

<sup>53</sup> PL 104-106, 10 Feb 96, Section 2838(f)

<sup>54</sup> PL 103-421, Section 2(a)(1)

<sup>55</sup> PL 104-201, 23 Sep 96, Section 2812(b)

<sup>56</sup> PL 104-106, 10 Feb 96, Section 2839(b)

<sup>57</sup> P.L. 103-160 30 Nov 93 Section 2907 (b)

`(e) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS- (1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

`(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this part that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

`(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

`(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that--

`(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

`(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

`(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

`(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

`(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

`(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994.<sup>58</sup>

`(f) TRANSFER AUTHORITY IN CONNECTION WITH CONSTRUCTION OR PROVISION OF MILITARY FAMILY HOUSING- (1) Subject to paragraph (2), the Secretary may enter into an agreement to transfer by deed real property or facilities located at or near an installation closed or to be closed under this part with any person who agrees, in exchange for the real property or facilities, to transfer to the Secretary housing units that are constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable housing to meet the requirements of members of the Armed Forces and their dependents. The Secretary may not select real property for transfer under this paragraph if the property is identified in the redevelopment plan for the installation as property essential to the reuse or redevelopment of the installation.

`(2) A transfer of real property or facilities may be made under paragraph (1) only if--

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<sup>58</sup> P.L. 103-160 30 Nov 93 Section 2908 (b)

`(A) the fair market value of the housing units to be received by the Secretary in exchange for the property or facilities to be transferred is equal to or greater than the fair market value of such property or facilities, as determined by the Secretary; or

`(B) in the event the fair market value of the housing units is less than the fair market value of property or facilities to be transferred, the recipient of the property or facilities agrees to pay to the Secretary the amount equal to the excess of the fair market value of the property or facilities over the fair market value of the housing units.

`(3) Notwithstanding paragraph (2) of section 2906(a), the Secretary may deposit funds received under paragraph (2)(B) in the Department of Defense Family Housing Improvement Fund established under section 2873(a) of title 10, United States Code.

`(4) The Secretary shall submit to the congressional defense committees a report describing each agreement proposed to be entered into under paragraph (1), including the consideration to be received by the United States under the agreement. The Secretary may not enter into the agreement until the end of the 30-day period beginning on the date the congressional defense committees receive the report regarding the agreement.

`(5) The Secretary may require any additional terms and conditions in connection with an agreement authorized by this subsection as the Secretary considers appropriate to protect the interests of the United States.<sup>59</sup>

`(g) ACQUISITION OF MANUFACTURED HOUSING- (1) In closing or realigning any military installation under this part, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this part, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that--

`(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

`(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

`(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

`(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.<sup>60</sup>

*[(c) CONSIDERATION OF ECONOMIC NEEDS- In order to maximize the local and regional benefit from the reutilization and redevelopment of military installations that are closed, or approved for closure, pursuant to the operation of a base closure law, the Secretary of Defense shall consider locally and regionally delineated economic development needs and priorities into the process by which the Secretary disposes of real property and personal property as part of the closure of a military installation under a base closure law. In determining such needs and priorities, the Secretary shall take into account the redevelopment plan developed for the military installation involved. The Secretary shall ensure that the needs of the homeless in the communities affected by the closure of such installations are taken into consideration in the redevelopment plan with respect to such installations.*

*(d) COOPERATION- The Secretary of Defense shall cooperate with the State in which a military installation referred to in subsection (c) is located, with the redevelopment authority with respect to the installation, and*

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<sup>59</sup> PL 104-106, 10 Feb 96, Section 2840(b)

<sup>60</sup> PL 104-421, 26 Sep 96, Section 2813(b)

*with local governments and other interested persons in communities located near the installation in implementing the entire process of disposal of the real property and personal property at the installation]*<sup>61</sup>.

(c) APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969- (1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Defense in carrying out this part.

(2)(A) The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Department of Defense under this part (i) during the process of property disposal, and (ii) during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated.

(B) In applying the provisions of the National Environmental Policy Act of 1969 to the processes referred to in subparagraph (A), the Secretary of Defense and the Secretary of the military departments concerned shall not have to consider--

(i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;

(ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or

(iii) military installations alternative to those recommended or selected.

(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), of any act or failure to act by the Department of Defense during the closing, realigning, or relocating of functions referred to in clauses (i) and (ii) of paragraph (2)(A), may not be brought more than 60 days after the date of such act or failure to act.

(d) WAIVER- The Secretary of Defense may close or realign military installations under this part without regard to--

(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriations or authorization Act; and

(2) sections 2662 and 2687 of title 10, United States Code.

## **SEC. 2906. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT<sup>62</sup>**

(a) IN GENERAL- (1) There is hereby established on the books of the Treasury an account to be known as the 'Department of Defense Base Closure Account 1990' which shall be administered by the Secretary as a single account.

(2) There shall be deposited into the Account--

(A) funds authorized for and appropriated to the Account;

(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds

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<sup>61</sup> P.L. 103-160 30 Nov 93 Section 2903(c) [stand alone statements not directed for inclusion in PI 101-510]

<sup>62</sup> PL 107-107, 28 Dec 2001, Section 3005



may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees;<sup>63</sup>

(C) proceeds received from the lease, transfer, or disposal<sup>64</sup> of any property at a military installation closed or realigned under this part and,<sup>65</sup> the date of approval of closure or realignment of which is before January 1, 2005<sup>66</sup>.

(D) proceeds received after September 30, 1995, from the lease, transfer, or disposal<sup>67</sup> of any property at a military installation closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).<sup>68</sup>

(b) USE OF FUNDS (1) The Secretary may use the funds in the Account only for the purposes described in section 2905 or, after September 30, 1995, for environmental restoration and property management and disposal at installations closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).<sup>69</sup> with respect to military installations the date of approval of closure or realignment of which is before January 1, 2005,<sup>70</sup>.

(2) When a decision is made to use funds in the Account to carry out a construction project under section 2905(a) and the cost of the project will exceed the maximum amount authorized by law for a minor military construction project, the Secretary shall notify in writing the congressional defense committees of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

(c) REPORTS- (1) (A)<sup>71</sup>No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this part with respect to military installations the date of approval of closure or realignment of which is before January 1, 2005<sup>72</sup>, the Secretary shall transmit a report to the congressional defense committees of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 2905(a) during such fiscal year.

(B) The report for a fiscal year shall include the following:

(i) The obligations and expenditures from the Account during the fiscal year, identified by subaccount, for each military department and Defense Agency.

(ii) The fiscal year in which appropriations for such expenditures were made and the fiscal year in which funds were obligated for such expenditures.

(iii) Each military construction project for which such obligations and expenditures were made, identified by installation and project title.

(iv) A description and explanation of the extent, if any, to which expenditures for military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of--

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<sup>63</sup> PL 103-160, Section 2121(b)(1)(A)

<sup>64</sup> PL 104-106, Section 2831(2)(A)

<sup>65</sup> PL 103-160, Section 2121(b)(1)(B)

<sup>66</sup> PL 107-107, 28 Dec 2001, Section 3005

<sup>67</sup> PL 104-106, Section 2831(2)(B)

<sup>68</sup> PL 103-160, Section 2121(b)(1)(C)

<sup>69</sup> PL 103-160, Section 2121(b)(2)

<sup>70</sup> PL 107-107, 28 Dec 2001, Section 3005

<sup>71</sup> PL 103-160, Section 2923(1)

<sup>72</sup> PL 107-107, 28 Dec 2001, Section 3005

(I) any failure to carry out military construction projects that were so proposed; and

(II) any expenditures for military construction projects that were not so proposed.<sup>73</sup>

(2) Unobligated funds which remain in the Account after the termination of the authority of the Secretary to carry out a closure or realignment under this part<sup>74</sup> shall be held in the Account until transferred by law after the congressional defense committees receive the report transmitted under paragraph (3).

(3) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part<sup>75</sup>, the Secretary shall transmit to the congressional defense committees a report containing an accounting of--

(A) all the funds deposited into and expended from the Account or otherwise expended under this part with respect to such installations after under this part<sup>76</sup>; and

(B) any amount remaining in the Account.

(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS- (1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part inserting the date of approval of closure or realignment of which is before January 1, 2005<sup>77</sup>, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(4)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

(3) The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving--

(A) commissary stores; and

(B) real property and facilities for nonappropriated fund instrumentalities.

(4) As used in this subsection:

(A) The term 'commissary store funds' means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

(B) The term 'nonappropriated funds' means funds received from a nonappropriated fund instrumentality.

(C) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for

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<sup>73</sup> PL 103-160, Section 2923(2)

<sup>74</sup> PL 103-160, Section 2121(c)

<sup>75</sup> PL 103-160, Section 2121(c)

<sup>76</sup> PL 107-107, 28 Dec 2001, Section 3005

<sup>77</sup> PL 107-107, 28 Dec 2001, Section 3005

the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.<sup>78</sup>

`(e) ACCOUNT EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS- Except as provided in section 2906A(e) with respect to funds in the Department of Defense Base Closure Account 2005 under section 2906A and except for<sup>79</sup> funds deposited into the Account under subsection (a), funds appropriated to the Department of Defense may not be used for purposes described in section 2905(a)(1)(C). The prohibition in this subsection shall expire upon the termination of the authority of the Secretary to carry out a closure or realignment under this part<sup>80</sup>.

## [Section 2906 Authority to Lease Certain Property at Installations to be Closed (PL 103-160, 30 Nov 93 Section 2906

(a) LEASE AUTHORITY- Subsection (f) of section 2667 of title 10, United States Code, is amended to read as follows:

`(f)(1) Notwithstanding subsection (a)(3), 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.'

(b) DEFINITION- Such section is further amended by adding at the end the following new subsection:

`(g) In this section, the term `base closure law' means each of the following:

`(1) 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).

`(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

`(3) Section 2687 of this title.]<sup>81</sup>

## **SEC. 2906A. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 2005.**

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<sup>78</sup> PL 102-484, 23 Oct 93, Section 2821

<sup>79</sup> PL 107-107, 28 Dec 2001, Section 3005

<sup>80</sup> PL 102-190, 5 Dec 91, Section 2827

<sup>81</sup> PL 103-160, 30 Nov 93 Section 2906 (incorporated in Title 10, Section 2687 – included here for ease of reference)

`(a) IN GENERAL- (1) If the Secretary makes the certifications required under section 2912(b), there shall be established on the books of the Treasury an account to be known as the `Department of Defense Base Closure Account 2005' (in this section referred to as the `Account'). The Account shall be administered by the Secretary as a single account.

`(2) There shall be deposited into the Account--

`(A) funds authorized for and appropriated to the Account;

`(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees; and

`(C) except as provided in subsection (d), proceeds received from the lease, transfer, or disposal of any property at a military installation that is closed or realigned under this part pursuant to a closure or realignment the date of approval of which is after January 1, 2005.

`(3) The Account shall be closed at the time and in the manner provided for appropriation accounts under section 1555 of title 31, United States Code. Unobligated funds which remain in the Account upon closure shall be held by the Secretary of the Treasury until transferred by law after the congressional defense committees receive the final report transmitted under subsection (c)(2).

`(b) USE OF FUNDS- (1) The Secretary may use the funds in the Account only for the purposes described in section 2905 with respect to military installations the date of approval of closure or realignment of which is after January 1, 2005.

`(2) When a decision is made to use funds in the Account to carry out a construction project under section 2905(a) and the cost of the project will exceed the maximum amount authorized by law for a minor military construction project, the Secretary shall notify in writing the congressional defense committees of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

`(c) REPORTS- (1)(A) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this part using amounts in the Account, the Secretary shall transmit a report to the congressional defense committees of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 2905(a) during such fiscal year.

`(B) The report for a fiscal year shall include the following:

`(i) The obligations and expenditures from the Account during the fiscal year, identified by subaccount, for each military department and Defense Agency.

`(ii) The fiscal year in which appropriations for such expenditures were made and the fiscal year in which funds were obligated for such expenditures.

`(iii) Each military construction project for which such obligations and expenditures were made, identified by installation and project title.

`(iv) A description and explanation of the extent, if any, to which expenditures for military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of--

`(I) any failure to carry out military construction projects that were so proposed; and

(II) any expenditures for military construction projects that were not so proposed.

(2) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part with respect to military installations the date of approval of closure or realignment of which is after January 1, 2005, and no later than 60 days after the closure of the Account under subsection (a)(3), the Secretary shall transmit to the congressional defense committees a report containing an accounting of--

(A) all the funds deposited into and expended from the Account or otherwise expended under this part with respect to such installations; and

(B) any amount remaining in the Account.

(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS- (1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part the date of approval of closure or realignment of which is after January 1, 2005, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary.

(3) The Secretary may use amounts in the reserve account, without further appropriation, for the purpose of acquiring, constructing, and improving--

(A) commissary stores; and

(B) real property and facilities for nonappropriated fund instrumentalities.

(4) In this subsection, the terms 'commissary store funds', 'nonappropriated funds', and 'nonappropriated fund instrumentality' shall have the meaning given those terms in section 2906(d)(4).

(e) ACCOUNT EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS- Except as provided in section 2906(e) with respect to funds in the Department of Defense Base Closure Account 1990 under section 2906 and except for funds deposited into the Account under subsection (a), funds appropriated to the Department of Defense may not be used for purposes described in section 2905(a)(1)(C). The prohibition in this subsection shall expire upon the closure of the Account under subsection (a)(3).<sup>82</sup>

## SEC. 2907. REPORTS

As part of the budget request for fiscal year 1993 and for each fiscal year thereafter for the Department of Defense, the Secretary shall transmit to the congressional defense committees of Congress--

(1) a schedule of the closure and realignment actions to be carried out under this part in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

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<sup>82</sup> PL 107-107, Section 3005

2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

## **SEC. 2908. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT**

(a) **TERMS OF THE RESOLUTION-** For purposes of section 2904(b), the term `joint resolution' means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), and--

(1) which does not have a preamble;

(2) the matter after the resolving clause of which is as follows: `That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on -----', the blank space being filled in with the appropriate date; and

(3) the title of which is as follows: `Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission.'.

(b) **REFERRAL-** A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

(c) **DISCHARGE-** If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) **CONSIDERATION-** (1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred.<sup>83</sup> All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

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<sup>83</sup> PL 102-190, 5 Dec 91

(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION BY OTHER HOUSE- (1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a resolution described in subsection (a) of the House receiving the resolution--

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(f) RULES OF THE SENATE AND HOUSE- This section is enacted by Congress--

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

## **SEC. 2909. RESTRICTION ON OTHER BASE CLOSURE AUTHORITY**

(a) IN GENERAL- Except as provided in subsection (c), during the period beginning on the date of the enactment of this Act and ending on December 31, 1995, this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

(b) RESTRICTION- Except as provided in subsection (c), none of the funds available to the Department of Defense may be used, other than under this part, during the period specified in subsection (a)--

(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure or realignment; or

(2) to carry out any closure or realignment of a military installation inside the United States.

(c) EXCEPTION- Nothing in this part affects the authority of the Secretary to carry out--

(1) closures and realignments under title II of Public Law 100-526; and

(2) closures and realignments to which section 2687 of title 10, United States Code, is not applicable, including closures and realignments carried out for reasons of national security or a military emergency referred to in subsection (c) of such section.

## SEC. 2910. DEFINITIONS

As used in this part:

(1) The term `Account' means the Department of Defense Base Closure Account 1990 established by section 2906(a)(1).

(2) The term `congressional defense committees' means the Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives.

(3) The term `Commission' means the Commission established by section 2902.

(4) The term `military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.<sup>84</sup>

(5) The term `realignment' includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

(6) The term `Secretary' means the Secretary of Defense.

(7) The term `United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

(8) The term `date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires.

(9) The term `redevelopment authority', in the case of an installation to be closed under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for<sup>85</sup> ~~and for~~ directing the implementation of such plan.

(10) The term `redevelopment plan' in the case of an installation to be closed under this part, means a plan that--

(A) is agreed to by the local redevelopment authority with respect to the installation; and

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<sup>84</sup> PL 102-190, 5 Dec 91 and adds that this “[The] amendment [made by paragraph (1)] shall take effect as of November 5, 1990, and shall apply as if it had been included in section 2910(4) of the Defense Base Closure and Realignment Act of 1990 on that date.”

<sup>85</sup> PL 104-160, Section 2813(d)(2)



(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.<sup>86</sup>

(10) The term 'representative of the homeless' has the meaning given such term in section 501(h)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(h)(4)).<sup>87</sup>

## SEC. 2911. CLARIFYING AMENDMENT

Section 2687(e)(1) of title 10, United States Code, is amended--

(1) by inserting 'homeport facility for any ship,' after 'center,'; and

(2) by striking out 'under the jurisdiction of the Secretary of a military department' and inserting in lieu thereof 'under the jurisdiction of the Department of Defense, including any leased facility,'.

## SEC. 2912. 2005 ROUND OF REALIGNMENTS AND CLOSURES OF MILITARY INSTALLATIONS<sup>88</sup>.

(a) FORCE-STRUCTURE PLAN AND INFRASTRUCTURE INVENTORY-

(1) PREPARATION AND SUBMISSION- As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for fiscal year 2005, the Secretary shall include the following:

(A) A force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the 20-year period beginning with fiscal year 2005, the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet these threats, and the anticipated levels of funding that will be available for national defense purposes during such period.

(B) A comprehensive inventory of military installations world-wide for each military department, with specifications of the number and type of facilities in the active and reserve forces of each military department.

(2) RELATIONSHIP OF PLAN AND INVENTORY- Using the force-structure plan and infrastructure inventory prepared under paragraph (1), the Secretary shall prepare (and include as part of the submission of such plan and inventory) the following:

(A) A description of the infrastructure necessary to support the force structure described in the force-structure plan.

(B) A discussion of categories of excess infrastructure and infrastructure capacity.

(C) An economic analysis of the effect of the closure or realignment of military installations to reduce excess infrastructure.

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<sup>86</sup> PL 103-160, Section 2918 (c)

<sup>87</sup> PL 103-421, 25 Oct 94, Section (2)(b)

<sup>88</sup> PL 107-107, 28 Dec 2001, Section 3001

`(3) SPECIAL CONSIDERATIONS- In determining the level of necessary versus excess infrastructure under paragraph (2), the Secretary shall consider the following:

`(A) The anticipated continuing need for and availability of military installations outside the United States, taking into account current restrictions on the use of military installations outside the United States and the potential for future prohibitions or restrictions on the use of such military installations.

`(B) Any efficiencies that may be gained from joint tenancy by more than one branch of the Armed Forces at a military installation.

`(4) REVISION- The Secretary may revise the force-structure plan and infrastructure inventory. If the Secretary makes such a revision, the Secretary shall submit the revised plan or inventory to Congress as part of the budget justification documents submitted to Congress for fiscal year 2006.

`(b) CERTIFICATION OF NEED FOR FURTHER CLOSURES AND REALIGNMENTS-

`(1) CERTIFICATION REQUIRED- On the basis of the force-structure plan and infrastructure inventory prepared under subsection (a) and the descriptions and economic analysis prepared under such subsection, the Secretary shall include as part of the submission of the plan and inventory--

`(A) a certification regarding whether the need exists for the closure or realignment of additional military installations; and

`(B) if such need exists, a certification that the additional round of closures and realignments would result in annual net savings for each of the military departments beginning not later than fiscal year 2011.

`(2) EFFECT OF FAILURE TO CERTIFY- If the Secretary does not include the certifications referred to in paragraph (1), the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

`(c) COMPTROLLER GENERAL EVALUATION-

`(1) EVALUATION REQUIRED- If the certification is provided under subsection (b), the Comptroller General shall prepare an evaluation of the following:

`(A) The force-structure plan and infrastructure inventory prepared under subsection (a) and the final selection criteria prepared under section 2913, including an evaluation of the accuracy and analytical sufficiency of such plan, inventory, and criteria.

`(B) The need for the closure or realignment of additional military installations.

`(2) SUBMISSION- The Comptroller General shall submit the evaluation to Congress not later than 60 days after the date on which the force-structure plan and infrastructure inventory are submitted to Congress.

`(d) AUTHORIZATION OF ADDITIONAL ROUND; COMMISSION-

`(1) APPOINTMENT OF COMMISSION- Subject to the certifications required under subsection (b), the President may commence an additional round for the selection of military installations for closure and realignment under this part in 2005 by transmitting to the Senate, not later than March 15, 2005, nominations pursuant to section 2902(c) for the appointment of new members to the Defense Base Closure and Realignment Commission.

`(2) EFFECT OF FAILURE TO NOMINATE- If the President does not transmit to the Senate the nominations for the Commission by March 15, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

(3) MEMBERS- Notwithstanding section 2902(c)(1), the Commission appointed under the authority of this subsection shall consist of nine members.

`(4) TERMS; MEETINGS; TERMINATION- Notwithstanding subsections (d), (e)(1), and (l) of section 2902, the Commission appointed under the authority of this subsection shall meet during calendar year 2005 and shall terminate on April 15, 2006.

`(5) FUNDING- If no funds are appropriated to the Commission by the end of the second session of the 108th Congress for the activities of the Commission in 2005, the Secretary may transfer to the Commission for purposes of its activities under this part in that year such funds as the Commission may require to carry out such activities. The Secretary may transfer funds under the preceding sentence from any funds available to the Secretary. Funds so transferred shall remain available to the Commission for such purposes until expended.

## **SEC. 2913. SELECTION CRITERIA FOR 2005 ROUND.<sup>89</sup>**

### `(a) PREPARATION OF PROPOSED SELECTION CRITERIA-

`(1) IN GENERAL- Not later than December 31, 2003, the Secretary shall publish in the Federal Register and transmit to the congressional defense committees the criteria proposed to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005.

`(2) PUBLIC COMMENT- The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under this subsection.

`(b) MILITARY VALUE AS PRIMARY CONSIDERATION- The selection criteria prepared by the Secretary shall ensure that military value is the primary consideration in the making of recommendations for the closure or realignment of military installations under this part in 2005. Military value shall include at a minimum the following:

`(1) Preservation of training areas suitable for maneuver by ground, naval, or air forces to guarantee future availability of such areas to ensure the readiness of the Armed Forces.

`(2) Preservation of military installations in the United States as staging areas for the use of the Armed Forces in homeland defense missions.

`(3) Preservation of military installations throughout a diversity of climate and terrain areas in the United States for training purposes.

`(4) The impact on joint warfighting, training, and readiness.

`(5) Contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations and training.

`(c) SPECIAL CONSIDERATIONS- The selection criteria for military installations shall also address at a minimum the following:

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<sup>89</sup> PL 107-107, 28 Dec 2001, Section 3002

`(1) The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

`(2) The economic impact on existing communities in the vicinity of military installations.

`(3) The ability of both existing and potential receiving communities' infrastructure to support forces, missions, and personnel.

`(4) The impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

`(d) EFFECT ON DEPARTMENT AND OTHER AGENCY COSTS- Any selection criteria proposed by the Secretary relating to the cost savings or return on investment from the proposed closure or realignment of military installations shall take into account the effect of the proposed closure or realignment on the costs of any other activity of the Department of Defense or any other Federal agency that may be required to assume responsibility for activities at the military installations.

`(e) FINAL SELECTION CRITERIA- Not later than February 16, 2004, the Secretary shall publish in the Federal Register and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005. Such criteria shall be the final criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making such recommendations unless disapproved by an Act of Congress enacted on or before March 15, 2004.

`(f) RELATION TO CRITERIA FOR EARLIER ROUNDS- Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations in 2005.!

## **SEC. 2914. SPECIAL PROCEDURES FOR MAKING RECOMMENDATIONS FOR REALIGNMENTS AND CLOSURES FOR 2005 ROUND; COMMISSION CONSIDERATION OF RECOMMENDATIONS.<sup>90</sup>**

`(a) RECOMMENDATIONS REGARDING CLOSURE OR REALIGNMENT OF MILITARY INSTALLATIONS- If the Secretary makes the certifications required under section 2912(b), the Secretary shall publish in the Federal Register and transmit to the congressional defense committees and the Commission, not later than May 16, 2005, a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and infrastructure inventory prepared by the Secretary under section 2912 and the final selection criteria prepared by the Secretary under section 2913.

`(b) PREPARATION OF RECOMMENDATIONS-

`(1) IN GENERAL- The Secretary shall comply with paragraphs (2) through (6) of section 2903(c) in preparing and transmitting the recommendations under this section. However, paragraph (6) of section 2903(c) relating to submission of information to Congress shall be deemed to require such submission within 48 hours.

`(2) CONSIDERATION OF LOCAL GOVERNMENT VIEWS- (A) In making recommendations to the Commission in 2005, the Secretary shall consider any notice received from a local government in the vicinity of a military installation that the government would approve of the closure or realignment of the installation.

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<sup>90</sup> PL 107-107, Section 3003

`(B) Notwithstanding the requirement in subparagraph (A), the Secretary shall make the recommendations referred to in that subparagraph based on the force-structure plan, infrastructure inventory, and final selection criteria otherwise applicable to such recommendations.

`(C) The recommendations shall include a statement of the result of the consideration of any notice described in subparagraph (A) that is received with respect to a military installation covered by such recommendations. The statement shall set forth the reasons for the result.

`(c) RECOMMENDATIONS TO RETAIN BASES IN INACTIVE STATUS- In making recommendations for the closure or realignment of military installations, the Secretary may recommend that an installation be placed in an inactive status if the Secretary determines that--

`(1) the installation may be needed in the future for national security purposes; or

`(2) retention of the installation is otherwise in the interest of the United States.

`(d) COMMISSION REVIEW AND RECOMMENDATIONS-

`(1) IN GENERAL- Except as provided in this subsection, section 2903(d) shall apply to the consideration by the Commission of the recommendations transmitted by the Secretary in 2005. The Commission's report containing its findings and conclusions, based on a review and analysis of the Secretary's recommendations, shall be transmitted to the President not later than September 8, 2005.

`(2) AVAILABILITY OF RECOMMENDATIONS TO CONGRESS- After September 8, 2005, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

`(3) LIMITATIONS ON AUTHORITY TO ADD TO CLOSURE OR REALIGNMENT LISTS- The Commission may not consider making a change in the recommendations of the Secretary that would add a military installation to the Secretary's list of installations recommended for closure or realignment unless, in addition to the requirements of section 2903(d)(2)(C)--

`(A) the Commission provides the Secretary with at least a 15-day period, before making the change, in which to submit an explanation of the reasons why the installation was not included on the closure or realignment list by the Secretary; and

`(B) the decision to add the installation for Commission consideration is supported by at least seven members of the Commission.

`(4) TESTIMONY BY SECRETARY- The Commission shall invite the Secretary to testify at a public hearing, or a closed hearing if classified information is involved, on any proposed change by the Commission to the Secretary's recommendations.

`(5) COMPTROLLER GENERAL REPORT- The Comptroller General report required by section 2903(d)(5)(B) analyzing the recommendations of the Secretary and the selection process in 2005 shall be transmitted to the congressional defense committees not later than July 1, 2005.

`(e) REVIEW BY THE PRESIDENT-

`(1) IN GENERAL- Except as provided in this subsection, section 2903(e) shall apply to the review by the President of the recommendations of the Commission under this section, and the actions, if any, of the Commission in response to such review, in 2005. The President shall review the recommendations of the Secretary and the recommendations contained in the report of the Commission under subsection (d) and prepare a report, not later than September 23, 2005, containing the President's approval or disapproval of the Commission's recommendations.

`(2) COMMISSION RECONSIDERATION- If the Commission prepares a revised list of recommendations under section 2903(e)(3) in 2005 in response to the review of the President in that year under paragraph (1), the Commission shall transmit the revised list to the President not later than October 20, 2005.

`(3) EFFECT OF FAILURE TO TRANSMIT- If the President does not transmit to Congress an approval and certification described in paragraph (2) or (4) of section 2903(e) by November 7, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

`(4) EFFECT OF TRANSMITTAL- A report of the President under this subsection containing the President's approval of the Commission's recommendations is deemed to be a report under section 2903(e) for purposes of sections 2904 and 2908.

## ***Part B--Other Provisions Relating to Defense Base Closures and Realignments***

### **SEC. 2921. CLOSURE OF FOREIGN MILITARY INSTALLATIONS**

(a) SENSE OF CONGRESS- It is the sense of the Congress that--

(1) the termination of military operations by the United States at military installations outside the United States should be accomplished at the discretion of the Secretary of Defense at the earliest opportunity;

(2) in providing for such termination, the Secretary of Defense should take steps to ensure that the United States receives, through direct payment or otherwise, consideration equal to the fair market value of the improvements made by the United States at facilities that will be released to host countries;

(3) the Secretary of Defense, acting through the military component commands or the sub-unified commands to the combatant commands, should be the lead official in negotiations relating to determining and receiving such consideration; and

(4) the determination of the fair market value of such improvements released to host countries in whole or in part by the United States should be handled on a facility-by-facility basis.

(b) RESIDUAL VALUE- (1) For each installation outside the United States at which military operations were being carried out by the United States on October 1, 1990, the Secretary of Defense shall transmit, by no later than June 1, 1991, an estimate of the fair market value, as of January 1, 1991, of the improvements made by the United States at facilities at each such installation.

(2) For purposes of this section:

(A) The term `fair market value of the improvements' means the value of improvements determined by the Secretary on the basis of their highest use.

(B) The term `improvements' includes new construction of facilities and all additions, improvements, modifications, or renovations made to existing facilities or to real property, without regard to whether they were carried out with appropriated or nonappropriated funds.

(c) ESTABLISHMENT OF SPECIAL ACCOUNT- (1) There is established on the books of the Treasury a special account to be known as the `Department of Defense Overseas Military Facility Investment Recovery

Account'. Except as provided in subsection (d)<sup>91</sup>, amounts paid to the United States, pursuant to any treaty, status of forces agreement, or other international agreement to which the United States is a party, for the residual value of real property or improvements to real property used by civilian or military personnel of the Department of Defense shall be deposited into such account.

(2) Money deposited in the Department of Defense Overseas Military Facility Investment Recovery Account shall be available to the Secretary of Defense for payment, as provided in appropriation Acts, of costs incurred by the Department of Defense in connection with facility maintenance and repair and environmental restoration at military installations in the United States. Funds in the Account shall remain available until expended.

(d) AMOUNTS CORRESPONDING TO THE VALUE OF PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS- (1) In the case of a payment referred to in subsection (c)(1) for the residual value of real property or improvements at an overseas military facility, the portion of the payment that is equal to the value of the improvements carried out with nonappropriated funds shall be deposited in the reserve account established under section 204(b)(4)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act. The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance by appropriation Acts) for the purpose of acquiring, constructing, or improving commissary stores and nonappropriated fund instrumentalities.

(2) As used in this subsection:

(A) The term 'nonappropriated funds' means funds received from--

(i) the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code; or

(ii) a nonappropriated fund instrumentality.

(B) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.<sup>92</sup>

## **SEC. 2922. MODIFICATION OF THE CONTENT OF BIENNIAL REPORT OF THE COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES**

(a) USES OF FACILITIES- Section 2819(b) of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456; 102 Stat. 2119; 10 U.S.C. 2391 note) is amended--

(1) in paragraph (2), by striking out 'minimum security facilities for nonviolent prisoners' and inserting in lieu thereof 'Federal confinement or correctional facilities including shock incarceration facilities';

(2) by striking out 'and' at the end of paragraph (3);

(3) by redesignating paragraph (4) as paragraph (5); and

(4) by inserting after paragraph (3) the following new paragraph (4):

(4) identify those facilities, or parts of facilities, that could be effectively utilized or renovated to meet the needs of States and local jurisdictions for confinement or correctional facilities; and'

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<sup>91</sup> P.L. 102-190, 5 Dec 91

<sup>92</sup> P.L. 102-190, 5 Dec 91

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall take effect with respect to the first report required to be submitted under section 2819 the National Defense Authorization Act, Fiscal Year 1989, after September 30, 1990.

## **SEC. 2923. FUNDING FOR ENVIRONMENTAL RESTORATION AT MILITARY INSTALLATIONS SCHEDULED FOR CLOSURE INSIDE THE UNITED STATES**

(a) AUTHORIZATION OF APPROPRIATIONS- There is hereby authorized to be appropriated to the Department of Defense Base Closure Account for fiscal year 1991, in addition to any other funds authorized to be appropriated to that account for that fiscal year, the sum of \$100,000,000. Amounts appropriated to that account pursuant to the preceding sentence shall be available only for activities for the purpose of environmental restoration at military installations closed or realigned under title II of Public Law 100-526, as authorized under section 204(a)(3) of that title.

(b) EXCLUSIVE SOURCE OF FUNDING- (1) Section 207 of Public Law 100-526 is amended by adding at the end the following:

“(b) BASE CLOSURE ACCOUNT TO BE EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS- No funds appropriated to the Department of Defense may be used for purposes described in section 204(a)(3) except funds that have been authorized for and appropriated to the Account. The prohibition in the preceding sentence expires upon the termination of the authority of the Secretary to carry out a closure or realignment under this title.”.

(2) The amendment made by paragraph (1) does not apply with respect to the availability of funds appropriated before the date of the enactment of this Act.

(c) TASK FORCE REPORT- (1) Not later than 12 months after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report containing the findings and recommendations of the task force established under paragraph (2) concerning--

(A) ways to improve interagency coordination, within existing laws, regulations, and administrative policies, of environmental response actions at military installations (or portions of installations) that are being closed, or are scheduled to be closed, pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526); and

(B) ways to consolidate and streamline, within existing laws and regulations, the practices, policies, and administrative procedures of relevant Federal and State agencies with respect to such environmental response actions so as to enable those actions to be carried out more expeditiously.

(2) There is hereby established an environmental response task force to make the findings and recommendations, and to prepare the report, required by paragraph (1). The task force shall consist of the following (or their designees):

(A) The Secretary of Defense, who shall be chairman of the task force.

(B) The Attorney General.

(C) The Administrator of the General Services Administration.

(D) The Administrator of the Environmental Protection Agency.

(E) The Chief of Engineers, Department of the Army.



(F) A representative of a State environmental protection agency, appointed by the head of the National Governors Association.

(G) A representative of a State attorney general's office, appointed by the head of the National Association of Attorney Generals.

(H) A representative of a public-interest environmental organization, appointed by the Speaker of the House of Representatives.

## **SEC. 2924. COMMUNITY PREFERENCE CONSIDERATION IN CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS**

In any process of selecting any military installation inside the United States for closure or realignment, the Secretary of Defense shall take such steps as are necessary to assure that special consideration and emphasis is given to any official statement from a unit of general local government adjacent to or within a military installation requesting the closure or realignment of such installation.

## **SEC. 2925. RECOMMENDATIONS OF THE BASE CLOSURE COMMISSION**

(a) NORTON AIR FORCE BASE- (1) Consistent with the recommendations of the Commission on Base Realignment and Closure, the Secretary of the Air Force may not relocate, until after September 30, 1995, any of the functions that were being carried out at the ballistics missile office at Norton Air Force Base, California, on the date on which the Secretary of Defense transmitted a report to the Committees on Armed Services of the Senate and House of Representatives as described in section 202(a)(1) of Public Law 100-526.

(2) This subsection shall take effect as of the date on which the report referred to in subsection (a) was transmitted to such Committees.

(b) GENERAL DIRECTIVE- Consistent with the requirements of section 201 of Public Law 100-526, the Secretary of Defense shall direct each of the Secretaries of the military departments to take all actions necessary to carry out the recommendations of the Commission on Base Realignment and Closure and to take no action that is inconsistent with such recommendations.

## **SEC. 2926. CONTRACTS FOR CERTAIN ENVIRONMENTAL RESTORATION ACTIVITIES**

(a) ESTABLISHMENT OF MODEL PROGRAM- Not later than 90 days after the date of enactment of this Act, the Secretary of Defense shall establish a model program to improve the efficiency and effectiveness of the base closure environmental restoration program.

(b) ADMINISTRATOR OF PROGRAM- The Secretary shall designate the Deputy Assistant Secretary of Defense for Environment as the Administrator of the model program referred to in subsection (a). The Deputy Assistant Secretary shall report to the Secretary of Defense through the Under Secretary of Defense for Acquisition.

(c) APPLICABILITY- This section shall apply to environmental restoration activities at installations selected by the Secretary pursuant to the provisions of subsection (d)(1).

(d) PROGRAM REQUIREMENTS- In carrying out the model program, the Secretary of Defense shall:

(1) Designate for the model program two installations under his jurisdiction that have been designated for closure pursuant to the Defense Authorization Amendments and Base Closure and Realignment

Act (Public Law 100-526) and for which preliminary assessments, site inspections, and Environmental Impact Statements required by law or regulation have been completed. The Secretary shall designate only those installations which have satisfied the requirements of section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526).

(2) Compile a prequalification list of prospective contractors for solicitation and negotiation in accordance with the procedures set forth in title IX of the Federal Property and Administrative Services Act (Public Law 92-582; 40 U.S.C. 541 et seq., as amended). Such contractors shall satisfy all applicable statutory and regulatory requirements. In addition, the contractor selected for one of the two installations under this program shall indemnify the Federal Government against all liabilities, claims, penalties, costs, and damages caused by (A) the contractor's breach of any term or provision of the contract; and (B) any negligent or willful act or omission of the contractor, its employees, or its subcontractors in the performance of the contract.

(3) Within 180 days after the date of enactment of this Act, solicit proposals from qualified contractors for response action (as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)) at the installations designated under paragraph (1). Such solicitations and proposals shall include the following:

(A) Proposals to perform response action. Such proposals shall include provisions for receiving the necessary authorizations or approvals of the response action by appropriate Federal, State, or local agencies.

(B) To the maximum extent possible, provisions offered by single prime contractors to perform all phases of the response action, using performance specifications supplied by the Secretary of Defense and including any safeguards the Secretary deems essential to avoid conflict of interest.

(4) Evaluate bids on the basis of price and other evaluation criteria.

(5) Subject to the availability of authorized and appropriated funds to the Department of Defense, make contract awards for response action within 120 days after the solicitation of proposals pursuant to paragraph (3) for the response action, or within 120 days after receipt of the necessary authorizations or approvals of the response action by appropriate Federal, State, or local agencies, whichever is later.

(e) APPLICATION OF SECTION 120 OF CERCLA- Activities of the model program shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620).

(f) EXPEDITED AGREEMENTS- The Secretary shall, with the concurrence of the Administrator of the Environmental Protection Agency, assure compliance with all applicable Federal statutes and regulations and, in addition, take all reasonable and appropriate measures to expedite all necessary administrative decisions, agreements, and concurrences.

(g) REPORT- The Secretary of Defense shall include a description of the progress made during the preceding fiscal year in implementing and accomplishing the goals of this section within the annual report to Congress required by section 2706 of title 10, United States Code.

(h) APPLICABILITY OF EXISTING LAW- Nothing in this section affects or modifies, in any way, the obligations or liability of any person under other Federal or State law, including common law, with respect to the disposal or release of hazardous substances or pollutants or contaminants as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).