

Full set of final proposed amendments to 10 USC 2815 proposed for the FY 2025 NDAA. Language to be deleted enclosed in brackets [xxx], language to be added shown in red

10 USC §2815. Military installation resilience projects

(a) Projects Required.—The Secretary of Defense shall carry out [military construction] projects for military installation resilience, to include:

- (1) Military construction projects in accordance with section 2802 of this title (except as provided in subsections (d)(3) and (e)[.];
- (2) projects involving the use and management of natural and nature-based features (hereinafter NNBF); and
- (3) projects involving a combination of military construction and the use and management of NNBF.

(b) CONGRESSIONAL NOTIFICATION.—(1) When a decision is made to carry out a project under this section, the Secretary of Defense shall notify the congressional defense committees of that decision.

(2) The Secretary of Defense shall include in each notification submitted under paragraph (1) the rationale for how the project would—

- (A) enhance military installation resilience;
- (B) enhance mission assurance;
- (C) support mission critical functions; and
- (D) address known vulnerabilities.

(c) Timing of Projects.—Except as provided in subsection (e)(2), a project may be carried out under this section only after the end of the 14-day period beginning on the date that notification with respect to that project under subsection (b) is received by the congressional defense committees in an electronic medium pursuant to section 480 of this title.

(d) Location of: Projects.—Projects carried out pursuant to this section may be carried out—

- (1) on a military installation;
- (2) on a facility used by the Department of Defense that is owned and operated by a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, even if the facility is not under the jurisdiction of the Department of Defense, if the Secretary of Defense determines that the facility is subject to significant use by the armed forces for testing or training; or

(3) outside of a military installation or facility described in paragraph (2) at a location or facility not under the jurisdiction or operational control of the Department of Defense if the Secretary concerned determines that the project would preserve or enhance the resilience of—

- (A) a military installation;
- (B) a facility described in paragraph (2); or
- (C) community infrastructure determined by the Secretary concerned to be necessary to maintain, improve, or rapidly reestablish installation mission assurance and mission-essential functions.

(e) Alternative Funding Source For Military Construction Projects.— .—(1) In carrying out a military construction project under [this section] subsections (a)(1) or (a)(3), the Secretary concerned may use amounts available for operation and maintenance for the military department concerned to carry out a project under this section not authorized by law if the Secretary concerned submits a notification to the congressional defense committees of the decision to carry out the project using such amounts for such projects and includes in the notification—

- (A) the current estimate of the cost of the project;
- (B) the source of funds for the project; and

Commented [BB1]: I note that given the proposed definition of a "military installation" for the purposes of section 2815, an "(a)(1)" MILCON project includes MILCON projects at an "access granted" foreign installation or facility, so, under this subsection, O&M funds in lieu of MILCON funds could be used at such "access granted" foreign installations and facilities.

(C) a certification that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(2) A project carried out under this section using amounts under paragraph (1) may be carried out only after the end of the 7-day period beginning on the date on which a copy of the notification described in paragraph (1) is provided in an electronic medium pursuant to section 480 of this title.

(3) The maximum aggregate amount that the Secretary concerned may obligate from amounts available to the military department concerned for operation and maintenance in any fiscal year for projects under the authority of this subsection is \$125,000,000.

(f) Use of Operations and Maintenance Funds for Certain Projects.-- In carrying out a project under subsection (a)(2), the NMBF aspects of a project under subsection (a)(3), or a project under subsection (d)(3), the Secretary concerned may:

(1) except as provided in paragraph (2), use funds authorized to be appropriated for operation and maintenance of the Army, Navy, Marine Corps, Air Force, Space Force, or Defense-wide activities; or

(2) In the case of a project related to an installation operated primarily with funds authorized to be appropriated for research, development, test, and evaluation, funds authorized to be appropriated for the Army, Navy, Marine Corps, Air Force, Space Force, or Defense-wide activities for research, development, test, and evaluation.

(g) Provision of Funds for Certain Projects.--- In the case of a project under subsection (d)(3):

(1) the Secretary concerned may provide funds to a state, tribal, or local government for planning, design, and implementation of the project pursuant to an agreement with the Secretary concerned.

(2) An agreement with the Secretary concerned under this subsection may provide for the sharing by the United States and a state, tribal or local government of the costs of the project. The contribution of a state, tribal or local government to the costs of the project may include, with the approval of the Secretary concerned, the following or any combination of the following:

(i) The provision of funds, including funds from a Federal agency outside the Department of Defense or from a State, tribal or local government in connection with a Federal, State, or local government resilience program.

(ii) The provision of in-kind services related to the planning, design, or implementation of the project.

(iii) Any costs incurred by the state, tribal or local government in connection with the acquisition of real property or interests in real property required for the project.

(3) the recipient of funds provided by the Department of Defense pursuant to an agreement under this subsection may, with regard to the project within the scope of an agreement under paragraph 1, use such funds to satisfy any matching funds or cost-sharing requirement of any resilience program of any Federal agency notwithstanding any limitation of such program on the source of matching or cost-sharing funds.

(4) The Secretary concerned may require such additional terms and conditions in an agreement under this section as the Secretary considers appropriate to protect the interests of the United States.

(5) Notwithstanding chapter 63 of title 31, an agreement under this subsection that is a cooperative agreement or a grant may be used to acquire services for the direct benefit or use of the United States Government.

(h) Definitions.--- For the purposes of this section:

(1) the term “natural or nature-based features” (NNBF) has the meaning of that term provided for in section 2289a(a) of title 33, United States Code.

(2) the term "military Installation" includes a base, camp, post, station, yard, center, or other activity in a foreign country not under the jurisdiction or operational control of the Department of Defense to which the armed forces of the United States have been granted access, without regard to the duration of access.

(3) The term "military installation resilience" has the meaning specified in section 101(e)(8) of this title.

(4) The term “Secretary concerned” means the Secretary of Defense or the Secretary of a military department.

(5) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

[(f)](i) Annual Report.—Not later than 90 days after the end of each fiscal year until December 31, 2025, the Secretary of Defense shall submit to the congressional defense committees a report on the status of the planned and active projects carried out under this section (including completed projects), and shall include in the report with respect to each such project the following information:

(1) The title, location, a brief description of the scope of work, the original project cost estimate, and the current working cost estimate.

(2) The information provided under subsection (b)(2).

(3) The type or types of funds used for the project, including funds provided by state, tribal, or local governments pursuant to subsection (g).

[(3)](4) Such other information as the Secretary considers appropriate.