

ATTACHMENT J45

Legislative Authority (10 USC, Sec 2688)

**UTILITY PRIVATIZATION LEGISLATION TEXT
TITLE 10, CHAPTER 159, USC SECTION 2688**

United States Code TITLE 10 – ARMED FORCES
Subtitle A – General Military Law
PART IV – SERVICE, SUPPLY AND PROCUREMENT
CHAPTER 159 – REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF
NON-EXCESS PROPERTY
Section 2688: Utility systems: conveyance authority

(a) Conveyance authority.

(1) The Secretary of a military department may convey a utility system, or part of a utility system, under the jurisdiction of the Secretary to a municipal, private, regional, district, or cooperative utility company or other entity. The conveyance may consist of all right, title, and interest of the United States in the utility system or such lesser estate as the Secretary considers appropriate to serve the interests of the United States.

(2) The Secretary concerned may not enter into a contract to convey a utility system, or part of a utility system, under this subsection until--

(A) the Secretary submits to the congressional defense committees an economic analysis, based upon accepted life-cycle costing procedures approved by the Secretary of Defense, that demonstrates that--

(i) the long-term economic benefit to the United States of the conveyance of the utility system, or part thereof, exceeds the long-term economic cost to the United States of the conveyance;

(ii) the conveyance of the utility system, or part thereof, will reduce the long-term cost to the United States of utility services provided by the utility system; and

(iii) the economic benefit analysis under clause (i) and the cost reduction analysis under clause (ii) incorporate margins of error in the estimates, based upon guidance approved by the Secretary of Defense that minimize any underestimation of the costs resulting from privatization of the utility system, or part thereof, or any overestimation of the costs resulting from continued Government ownership and management of the utility system, or part thereof; and

(B) the end of the 21-day period beginning on the date on which the economic analysis prepared under subparagraph (A) with respect to the conveyance of the utility system, or part thereof, is received by the congressional defense committees or, if over earlier, the end of the 14-day period beginning on the date on which a copy of the economic analysis is provided in an electronic medium pursuant to section 480 of this title.

(b) Selection of conveyee.

(1) If more than one utility or entity referred to in subsection (a) notifies the Secretary concerned of an interest in a conveyance under such subsection, the Secretary shall carry out the conveyance through the use of competitive procedures.

(2) Notwithstanding paragraph (1), the Secretary concerned may use procedures other than competitive procedures, but only in accordance with subsections (c) through (f) of section 2304 of this title, to select the conveyee of a utility system (or part of a utility system) under subsection (a).

(3) With respect to the solicitation process used in connection with the conveyance of a utility system (or part of a utility system) under subsection (a), the Secretary concerned shall ensure that the process is conducted in a manner consistent with the laws and regulations of the State in which the utility system is located to the extent necessary to ensure that all interested regulated and unregulated utility companies and other interested entities receive an opportunity to acquire and operate the utility system to be conveyed.

(c) Consideration.

(1) The Secretary concerned may require as consideration for a conveyance under subsection (a) an amount equal to the fair market value (as determined by the Secretary) of the right, title, or interest of the United States conveyed. The consideration may take the form of--

(A) a lump sum payment; or

(B) a reduction in charges for utility services provided by the utility or entity concerned to the military installation at which the utility system is located.

(2) If the utility services proposed to be provided as consideration under paragraph (1) are subject to regulation by a Federal or State agency, any reduction in the rate charged for the utility services shall be subject to establishment or approval by that agency.

(d) Contracts for utility services.

(1) Except as provided in paragraph (2), a contract for the receipt of utility services as consideration under subsection (c), or any other contract for utility services entered into by the Secretary concerned in connection with the conveyance of a utility system under this section, may be for a period not to exceed 10 years.

(2) The Secretary of Defense, or the designee of the Secretary, may authorize a contract for utility services described in paragraph (1) to have a term in excess of 10 years, but not to exceed 50 years, if the Secretary determines that a contract for a longer term will be cost effective. The economic analysis submitted to the congressional defense committees under subsection (a)(2) for the conveyance of the utility system, or part thereof, with regard to which the utility services contract will be entered into by the Secretary concerned shall include the determination required by this paragraph, an explanation of the need for the longer term contract, and a comparison of costs between a 10-year contract and the longer-term contract.

(e) Treatment of payments.

(1) A lump sum payment received under subsection (c) shall be credited, at the election of the Secretary concerned--

(A) to an appropriation of the military department concerned available for the procurement of the same utility services as are provided by the utility system conveyed under this section;

(B) to an appropriation of the military department available for carrying out energy savings projects or water conservation projects; or

(C) to an appropriation of the military department available for improvements to other utility systems.

(2) Amounts so credited shall be merged with funds in the appropriation to which credited and shall be available for the same purposes, and subject to the same conditions and limitations, as the appropriation with which merged.

(f) Quarterly report.--Not later than 30 days after the end of each quarter of a fiscal year, the Secretary shall submit to the congressional defense committees a report on the conveyances made under subsection (a) during such fiscal quarter.

(g) Additional terms and conditions.

(1) The Secretary concerned may require such additional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(2) The Secretary concerned shall require in any contract for the conveyance of a utility system (or part of a utility system) under subsection (a) that the conveyee manage and operate the utility system in a manner consistent with applicable Federal and State regulations pertaining to health, safety, fire, and environmental requirements.

(h) Assistance for construction, repair, or replacement of utility systems.--In lieu of carrying out a military construction project to construct, repair, or replace a utility system, the Secretary concerned may use funds authorized and appropriated for the project to facilitate the conveyance of the utility system under this section by making a contribution toward the cost of construction, repair, or replacement of the utility system by the entity to which the utility system is being conveyed. The Secretary concerned shall consider any such contribution in the economic analysis required under subsection (a)(2).

(i) Utility system defined.

(1) In this section, the term "utility system" means any of the following:

(A) A system for the generation and supply of electric power.

(B) A system for the treatment or supply of water.

(C) A system for the collection or treatment of wastewater.

(D) A system for the generation or supply of steam, hot water, and chilled water.

(E) A system for the supply of natural gas.

(F) A system for the transmission of telecommunications.

(2) The term "utility system" includes the following:

(A) Equipment, fixtures, structures, and other improvements utilized in connection with a system referred to in paragraph (1).

(B) Real property, easements, and rights-of-way associated with a system referred to in that paragraph.

(j) Construction of utility infrastructure after conveyance of a utility system.

(1) Upon conveyance of a utility system, the Secretary of a military department may convey additional utility infrastructure under the jurisdiction of the Secretary on a military installation to a utility or entity to which a utility system for the installation has been conveyed under subsection (a) if the Secretary determines that--

(A) the additional utility infrastructure was constructed or installed after the date of the conveyance of the utility system;

(B) the additional utility infrastructure cannot operate without being a part of the conveyed utility system;

(C) the additional utility infrastructure was planned and coordinated with the entity operating the conveyed utility system; and

(D) the military department receives as consideration an amount equal to the fair market value of the utility infrastructure determined in the same manner as the consideration the Secretary could require under subsection (c) for a conveyance under subsection (a).

(2) The conveyance under this paragraph may consist of all right, title, and interest of the United States or such lesser estate as the Secretary considers appropriate to serve the interests of the United States.

(k) Limitation.--This section shall not apply to projects constructed or operated by the Army Corps of Engineers under its civil works authorities.