

1 **SEC. ___. EXPANSION OF ALLOWABLE USES OF ENERGY COST SAVINGS.**

2 Section 2912 of title 10, United States Code, is amended—

3 (1) by redesignating subsection (d) as subsection (e); and

4 (2) by inserting after subsection (c) the following new subsection (d):

5 “(d) TRANSFERS.—Amounts that remain available under subsection (a) may be
6 transferred as necessary to other appropriations of the Department of Defense for purposes
7 provided for in subsection (b) or (c) and shall be merged with and be available for the same
8 period of time as the appropriation to which the funds are transferred.”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend section 2912 of title 10, United States Code, to authorize transfer amounts representing energy cost savings that remain available until expended within appropriations for the Department of Defense under subsection (a) of such section. Energy cost savings accrue primarily in appropriations made for operation and maintenance. Obligation of other appropriations may be necessary to properly execute certain requirements using authority conferred by subsections (b) and (c) of section 2912.

Authority to transfer funds for proper execution will enable more effective and expeditious accomplishment of activities provided for in subsections (b) and (c) of section 2912. Without the proposed transfer authority, energy cost savings captured under subsection (a) may be used for the purposes listed in subsections (b) and (c) only when the requirement to be funded is properly chargeable to the appropriation in which the savings accrued. Appropriations for procurement must be used to purchase most items having an investment item unit cost of more than \$250,000. For example, if most of a military department’s captured energy cost savings remain available in appropriations for operation and maintenance, the military department cannot use those energy cost savings for “additional operational energy resilience” efforts that require procurement of equipment. If a military department needs to implement a project authorized by subsection (c) that requires procurement funds, the military department must wait until it has enough procurement energy cost savings to implement that project, which may be many years or not at all, depending upon whether the military department’s energy cost savings are realized from past execution of procurement-funded requirements.

As an additional example, although subsection 2912(b) expressly provides that amounts that remain available under subsection (a) may be used for unspecified minor military construction, operation and maintenance are not available for such projects in excess of

\$2,000,000. Because of this limit, the types of projects listed in subsections (b) and (c) that may be implemented are restricted by the appropriations source of the energy cost savings, unrelated to the need of the military department. This proposal would amend 10 U.S.C. 2912 to authorize moving energy cost savings from one type of appropriation to another in order to allow military departments the flexibility needed to fully implement subsections (b) and (c) of section 2912.

Without the enactment of the proposed transfer authority in the FY22 legislative cycle, military departments will lack the authority necessary to maximize efforts to reduce climate pollution, to increase the use of clean energy (Executive Order 14008), and to enhance the energy resilience of forces and installations, as required by 10 USC 2911 and 10 USC 2926. Specifically, a delay in amending section 2912—and the continuation of the military departments’ limitations in applying O&M savings to procurement, construction, and research—will defer the military departments’ execution of critical and time-sensitive energy resilience and climate mitigation projects, even where they have a sufficient quantity of funds available to execute those projects.

Even a one-year delay in providing the proposed transfer authority will have adverse consequences. For instance, a one-year delay in enacting this transfer authority would constrain the military departments’ ability to achieve near-term reductions in greenhouse gas emissions and to adopt climate mitigation measures by limiting their flexibility to apply O&M energy savings to the procurement and construction spaces. This delay would have financial consequences, as taking necessary measures to reduce emissions and to adapt to climate change will become more expensive over time.

Similarly, a delay in enacting this authority will reduce the military departments’ flexibility to use O&M savings for RDT&E projects, thus limiting early investment in new efficient and/or clean energy technologies that the Department needs to reduce both greenhouse gas emissions and warfighter vulnerabilities over the mid- to long-term. Because early investments in research and development lay the foundation for the future breakthroughs, the sooner the Department is able to make those investments, the earlier those potentially exponential benefits can accrue. This strategy of early investment is in line with the Administration’s vision to advance U.S. leadership in critical technologies and to invest now in the future.

Budget Implications: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget request. However, the funds made available by 10 U.S.C. § 2912 do not represent new "requirements." These are energy cost savings achieved in prior FYs.

RESOURCE REQUIREMENTS (\$ MILLIONS)									
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From	Budget Activity	BLI/SAG	Program Element
Energy Savings	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0	Operation and Maintenance, Army	01	131	N/A

Energy Savings	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0	Operation and Maintenance, Navy	01	BSS1 1B1B 1A1A	N/A
Energy Savings	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0	Operation and Maintenance, Marine Corps	01	BSS1 1A1A	N/A
Energy Savings	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0	Operation and Maintenance, Air Force	01	11Z	N/A
Total	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	O&M	N/A	N/A	N/A

Changes to Existing Law: This proposal would amend section 2912 of title 10, United States Code, as follows:

§ 2912. Availability and use of energy cost savings

(a) AVAILABILITY.—An amount of the funds appropriated to the Department of Defense for a fiscal year that is equal to the amount of energy cost savings realized by the Department, including financial benefits resulting from shared energy savings contracts entered into under section 2913 of this title, and, in the case of operational energy, from both training and operational missions, shall remain available for obligation under subsection (b) or (c), as the case may be, until expended, without additional authorization or appropriation.

(b) USE.—Except as provided in subsection (c) with respect to operational energy cost savings, the Secretary of Defense shall provide that the amount that remains available for obligation under subsection (a) and the funds made available under section 2916(b)(2) of this title shall be used as follows:

(1) One-half of the amount shall be used for the implementation of additional energy resilience, mission assurance, weather damage repair and prevention, energy conservation, and energy security measures, including energy resilience and energy conservation construction projects, at buildings, facilities, or installations of the Department of Defense or related to vehicles and equipment of the Department, which are designated, in accordance with regulations prescribed by the Secretary of Defense, by the head of the department, agency, or instrumentality that realized the savings referred to in subsection (a).

(2) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for—

- (A) improvements to existing military family housing units;
- (B) any unspecified minor construction project that will enhance the quality of life of personnel; or
- (C) any morale, welfare, or recreation facility or service.

(c) USE OF OPERATIONAL ENERGY COST SAVINGS.—The amount that remains available for obligation under subsection (a) that relates to operational energy cost savings realized by the Department shall be used for the implementation of additional operational energy resilience,

efficiencies, mission assurance, energy conservation, or energy security within the department, agency, or instrumentality that realized that savings.

(d) TRANSFERS.—Amounts that remain available under subsection (a) may be transferred as necessary to other appropriations of the Department of Defense for purposes provided for in subsection (b) or (c) and shall be merged with and be available for the same period of time as the appropriation to which the funds are transferred.

~~(d)~~ (e) TREATMENT OF CERTAIN FINANCIAL INCENTIVES.—Financial incentives received from gas or electric utilities under section 2913 of this title shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.