

1 **SEC. ____ . AMENDMENT TO CAPTURE ENERGY COST SAVINGS.**

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

3 (1) in subsection (a)—

4 (A) by inserting “, which could be calculated as the value of reduced
5 consumption resulting from one or more interventions to increase installation or
6 operational energy efficiency” after “amount of energy cost savings realized by
7 the Department”; and

8 (B) by adding at the end the following: “Beginning in fiscal year 2024,
9 such amount may remain available for obligation in any appropriation of the
10 Department of Defense, regardless of whether such appropriation was provided
11 for the budgetary account used to fund energy consumption or interventions
12 undertaken to increase energy efficiency.”;

13 (2) in subsection (c)—

14 (A) by inserting “or interventions” after “cost savings realized by the
15 Department”; and

16 (B) by striking the period at the end and inserting the following: “or
17 adopted the interventions leading to reduced consumption.”; and

18 (3) by adding at the end the following new subsection:

19 “(f) DEFINITIONS.—In this section:

20 “(1) The term ‘intervention’ means an improvement, process, or investment that
21 intentionally reduces energy consumption.

22 “(2) The term ‘value of reduced consumption’ means the cost of energy use
23 avoided due to reduced consumption attributed to an intervention.”.

[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

Section 2912 of title 10 is a revenue neutral method of reinvesting savings earned by the Military Departments (MilDeps) through energy conservation. Initially enacted with a primary focus relating to facility energy, the impact of section 2912 has been expanded by allowing the reinvestment of operational energy savings on operational energy needs. However, the ongoing efforts of the Military Departments to expand the value of their energy savings has revealed a limitation in the language of the statute that this legislative proposal aims to resolve.

This proposal would resolve an issue with 10 USC § 2912 that reduces the ability of a MilDep to transfer energy cost savings to an account for uses pursuant to subsections (b) and (c) of section 2912. The current language, in combination with fiscal law and policy such as the DoD Financial Management Regulation, requires that energy cost savings be recoverable from the specific appropriation in which it was realized. However, in cases where one MilDep takes steps that result in savings across multiple MilDeps, the acting MilDep is precluded from benefiting from any savings not accruing to its own appropriation even though that MilDep bore the cost of the effort that resulted in the savings. Strategic airlift provides an example. Although the Department of the Air Force has invested in technology and processes that reduce consumption and generate savings to all MilDeps using airlift, Air Force cannot currently recover the full amount of those savings. It can only recover savings to the extent of its own use of strategic airlift even though it owns the assets that generate the savings for all MilDeps. Savings attributable to other MilDeps' use of strategic airlift are not recovered despite 2912's clear intention to make them available for other energy savings investments.

Fundamentally, this issue arises because the “energy cost savings” remain available only in the particular appropriation that funds energy consumption. This does not permit energy cost savings to “remain available” in the case of inter-service payments and working capital funds; the connection is tenuous, difficult, or impossible to establish, as in the case of strategic airlift noted above. To resolve the issue, the legislation allows energy cost savings, which may be calculated as the value of energy *consumption* savings, to remain available in any appropriation, regardless of whether it funds energy consumption or interventions.

The new language added to subsections (a) and (c), and the new subsection (f), implement these changes. The “energy cost savings...realized...” concept is retained, and the “value of reduced consumption resulting from one or more interventions to increase installation or operational energy efficiency,” is added as an example of how energy cost savings might be calculated. Further language “Such amount may remain available for obligation in any appropriation of the Department of Defense, regardless of whether such appropriation was provided for the budgetary account used to fund energy consumption or interventions undertaken to increase energy efficiency,” decouples the cost savings recovered from the appropriation used

to fund energy consumption. This clarifies that the Service that bore the costs of an energy-saving intervention may realize the benefit of that investment under the statute from any appropriation with unobligated balances. The terms are defined in more detail in the new subsection (f).

The actual implementation of this new authority will be accomplished by working with USD(C) on amending Vol. 12, Chapter 12 of the DoD Financial Management Regulation, “Identification, Retention and Use of Energy and Water Conservation Savings.” The amendment process takes time and each MilDep is typically provided an opportunity to coordinate on FMR changes. More specific language concerning implementation is not usually written into legislation itself because it is undesirable to do so. This is true for any legislation, not just legislation affecting DoD. Because the Executive branch is responsible for executing the laws enacted by Congress, agencies have discretion to implement new statutory authority in the means best suited to fit their circumstances. Prescriptive language in legislation as to implementation narrows the scope of that discretion and eliminates agency flexibility to adapt to future changed circumstances.

Resource Information: This proposal has no impact on the use of resources.

This proposal should continue to be cost-neutral. The authority to recover these savings writ large currently exists so there is no new budget authority being created. The proposal simply clarifies that the savings can be realized from multiple sources. The proposal preserves the existing structure of the Department’s 2912 programs, while resolving this issue for the MilDepes.

Changes to Existing Law: The 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, which could be calculated as the value of reduced consumption resulting from one or more interventions to increase installation or operational energy efficiency, 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, for that fiscal year and the succeeding fiscal year without additional authorization or appropriation. Beginning in fiscal year 2024, such amount may remain available for obligation in any appropriation of the Department of Defense, regardless of whether such appropriation was provided for the budgetary account used to fund energy consumption or interventions undertaken to increase energy efficiency.

(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 or interventions 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 or adopted the interventions leading to reduced consumption.

(d) 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.

(e) TRANSFER OF AMOUNTS.—(1) The Secretary of Defense may transfer amounts described in subsection (a) that remain available for obligation to other funding accounts of the Department of Defense if the purpose for which such amounts will be used is a purpose specified in subsection (b) or (c).

(2) Amounts transferred to a funding account of the Department under paragraph (1) shall be available for obligation for the same period as amounts in that account.

(3) At the end of each fiscal year, the Secretary of Defense shall submit to Congress a report detailing any funds transferred pursuant to paragraph (1) during that fiscal year, including a detailed description of the purpose for which such amounts have been used.

(f) DEFINITIONS.—In this section:

(1) The term “intervention” means an improvement, process, or investment that intentionally reduces energy consumption.

(2) The term “value of reduced consumption” means the cost of energy use avoided due to reduced consumption attributed to an intervention.

1 **SEC. __. MILITARY INTELLIGENCE COLLECTION AND ANALYSIS**

2 **PARTNERSHIPS.**

3 (a) USE OF APPROPRIATED FUNDS.—The Director of the Defense Intelligence Agency
4 may use not more than \$10,000,000 of appropriated funds available to the Defense Intelligence
5 Agency for each fiscal year to pay for the expenses of partnerships with foreign countries,
6 regional organizations with defense, intelligence, or security components, and security alliances
7 of which the United States is a member for military intelligence collection and analysis activities.

8 (b) USE OF FUNDS OTHER THAN APPROPRIATED FUNDS.—Notwithstanding any other
9 provision of law, the Director may use funds other than appropriated funds to pay for the
10 expenses of partnerships with foreign countries, regional organizations with defense or security
11 components, and security alliances of which the United States is a member for military
12 intelligence collection and analysis activities, except that—

13 (1) no such funds may be expended, in whole or in part, by or for the benefit of the
14 Defense Intelligence Agency for a purpose for which Congress had previously denied
15 funds;

16 (2) proceeds from the sale of military intelligence collection and analysis items
17 may be used only to purchase replacement items similar to the items that are sold; and

18 (3) the authority provided by this subsection may not be used to acquire items or
19 services for the principal benefit of the United States.

20 (c) LOGISTIC SUPPORT, SUPPLIES, AND SERVICES.—Notwithstanding any other provision
21 of law, the Director may exercise the authority under this section to pay for, or otherwise
22 facilitate, the logistic support, supplies, and services associated with partnerships with foreign

1 countries, regional organizations with defense or security components, and security alliances of
2 which the United States is a member.

3 (d) COORDINATION WITH SECRETARY OF STATE.—The Director of the Defense
4 Intelligence Agency shall coordinate the military intelligence collection and analysis activities
5 funded pursuant to this section with the Secretary of State.

6 (e) COORDINATION WITH DIRECTOR OF NATIONAL INTELLIGENCE.— The Director of the
7 Defense Intelligence Agency shall coordinate the military intelligence collection and analysis
8 activities funded pursuant to this section with the Director of National Intelligence.

9 (f) MILITARY INTELLIGENCE COLLECTION AND ANALYSIS ACTIVITY DEFINED.—In this
10 section, the term “military intelligence collection and analysis activity” means—

11 (1) the conduct of a combined human intelligence and counterintelligence
12 activity;

13 (2) the collection, processing, exploitation, analysis, and dissemination of all-
14 source intelligence;

15 (3) the conduct of a foreign defense intelligence liaison relationship or defense
16 intelligence exchange program; or

17 (4) the research, development, acquisition, and sustainment of an information
18 technology system or telecommunication capability in support of an activity described in
19 paragraph (1), (2), or (3).

20 (g) SUNSET.—

21 (1) IN GENERAL.—Subject to paragraph (2), the authority to carry out this section
22 shall terminate on the date that is five years after the date of the enactment of this Act.

1 (2) EXCEPTION.— A military intelligence collection and analysis activity for
2 which funds have been obligated under this section before the date on which the authority
3 to carry out this section terminates under paragraph (1) may continue until the completion
4 of the activity.

Section-by-Section Analysis

This proposal would provide the Director of the Defense Intelligence Agency (DIA) with authority that is similar to the statutory authority of the National Geospatial-Intelligence Agency (NGA) (10 U.S.C. 443) and the National Security Agency (NSA) (10 U.S.C. 421) to use funds for foreign partner partnerships.

The proposed authority will enable DIA to satisfy certain mission requirements by authorizing: (1) the use of appropriated funds to pay for expenses associated with combined military intelligence collection and analysis activities; (2) the acceptance and use of other than appropriated funds (*i.e.*, foreign partner funds) to pay for expenses associated with combined military intelligence collection and analysis activities, and; (3) the use of this authority to pay for the logistic support, supplies, and services associated with partnerships with foreign countries, regional organizations with defense or security components, and security alliances of which the United States is a member. The proposed authority will offer DIA flexibility and agility when working with its foreign partners on time-sensitive DIA mission requirements.

The proposed authority serves as an initial step in furtherance of DIA’s ability to work more closely with its foreign partners to gain intelligence advantage. The dollar limitation in subsection (a) and the sunset in subsection (g) limit the scope of the proposed initial authority to allow the DIA and Congress to determine whether a permanent authority is warranted. DIA will report to the Secretary of Defense, the Office of the Director of National Intelligence (ODNI), the Department of State, and Congress on implementation of this authority and its effect on DIA’s intelligence mission capabilities prior to expiration of this authority.

This proposal advances the Department of Defense’s priority of enhancing intelligence and security integration with American allies, including the Commonwealth Allies. This proposal enables DIA to fully implement the priority of the Department by enabling DIA to draw upon foreign partner capabilities and share common practices and technologies to the ultimate benefit of DIA’s mission.

DIA would use this authority to integrate analysis and collection to meet the shared operational needs and priorities of the Defense Intelligence Enterprise and its foreign partners. For example, DIA’s Machine-assisted Analytic Rapid-repository System (MARS) is a multi-year program to transform current foundational military intelligence databases into an environment with the capacity to use machine learning and artificial intelligence to automate database processes and rapidly synthesize big data. The Five Eyes partners, including the United States, intend to socialize common requirements and pursue interoperability between each partner’s

respective information technology (IT) systems and the data exchanged between those IT systems. The proposal would expand DIA’s ability to analyze and implement shared interoperability and integration goals, enabling MARS to deliver foundational military intelligence at machine speed to the United States and its allies.

DIA’s annual funding will be based upon amounts appropriated to cover such activities. The number of resources needed (up to \$10M) will be driven annually on an as-needed basis by mission requirements that require assistance from our foreign partners.

Resource Information: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2023 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation From	Budget Activity	BLI/SAG	Program Element
Funds for Military Intelligence and Analysis Partnerships	\$4M	\$6M	\$8M	\$10M	\$10M	Operation and Maintenance, Defense-Wide	Will depend upon DIA Office exercising authority.	Will depend upon DIA Office exercising authority.	Will depend upon DIA Office exercising authority.
Total	\$4M	\$6M	\$8M	\$10M	\$10M	--	--	--	--

Changes to Existing Law: None