



Kutak Rock Infrastructure Insights - June 2019

At Least 200 Defense Infrastructure Projects Could Be Funded Through New Pilot Program

Last year, Congress authorized the Defense Community Infrastructure Program (DCIP) as part of the National Defense Authorization Act for Fiscal Year 2019. DCIP is designed to provide assistance from the Department of Defense (DOD) to state and local governments to improve community infrastructure that supports a military installation, such as enhancing readiness, resilience, or military family quality of life.

The legislative language outlines specific community infrastructure projects that would qualify for DOD assistance within DCIP. They include “any transportation project; school, hospital, police, fire, emergency response, or other community support facility; or water, waste-water, telecommunications, electric, gas, or other utility infrastructure project that is located off of a military installation and owned by a State or local government.” (Continued on page 2.)

Outlook On The Future Of Privatized Military Housing

In the 1990s, Department of Defense-owned (DOD) military housing faced poor conditions and deferred maintenance, which drew growing concerns from Congress. In response to the worsening situation Congress enacted the Military Housing Privatization Initiative (MHPI) in 1996 to “attract private sector financing, expertise and innovation to provide necessary housing faster and more efficiently than traditional Military Construction processes would allow.” The MHPI marked a major change for federal infrastructure by establishing a new process for DOD and the private sector to enter into long-term military housing agreements.

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Growing Concerns about the MHPI

Over 20 years later, the MHPI is now the subject of increasing scrutiny as servicemembers and their families have reported poor conditions in private military housing. A Military Family Advisory Network (MFAN) survey of military families found that 55 percent indicated negative experiences with their landlords, citing issues including mold, maintenance delays, and poor water quality. (Continued on Page 3.)



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House, Senate Consider Expanding Intergovernmental Support Agreements

At the inception of intergovernmental support agreements (IGSAs) in 2013, military departments were authorized to enter into agreements with state and local governments to “receive, provide, or share installation support services” for a term of five years. The term limit for an IGSA was increased to 10 years in 2017.

IGSAs, which have been awarded to infrastructure projects such as road maintenance and water treatment, were shown to have reduced costs and enhanced mission effectiveness, according to a recent Government Accountability Office (GAO) study.

Now, the House and Senate are considering an expansion of IGSAs to increase the term limits to 20 years to allow more stability and certainty in long-term agreements with host communities.

The incremental expansion of the IGSA authority opens the door to further potential amendments that may be beneficial to local governments and installations. For example, Congress could also extend IGSA authority to agencies such as the Department of Homeland Security (DHS) or the Department of Energy (DOE), whose sites could similarly benefit from the cost reductions and mission enhancements found by GAO.

At Least 200 Defense Infrastructure

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The Association of Defense Communities (ADC) recently identified more than 200 infrastructure projects in defense communities in 28 states that could support military installations. Notable projects include improvements to energy infrastructure, environmental infrastructure, transportation, and roads and bridges.

For example, at Mountain Home Air Force Base in Idaho, the ADC report identified a project that would “provide an alternative water source for the base, which is confronting decreasing groundwater levels.” In Beaver Creek, Ohio, a highway interchange project would improve access to Wright-Patterson Air Force Base and “open opportunity for joint military-community development of unused installation-adjacent land.”

At Joint Base Andrews in Maryland, the construction of an alternate substation and feeder line could “increase the installation’s energy resilience, particularly during inclement weather and substation maintenance periods.”

DCIP presents an opportunity for the federal government to partner with local governments to achieve infrastructure improvements that benefit both the installation and the residents who reside

in surrounding communities. Is Congress doing enough to take advantage of this innovative program?

In FY 2019 after authorizing DCIP, Congress ultimately did not appropriate any funding to carry out DCIP assistance.

The FY 2020 House defense appropriations bill, however, includes \$30.4 million for “Community Activities” to be administered through the Office of Economic Adjustment (OEA). While the report language does not specify that the funds are appropriated for the Defense Community Infrastructure Program, the committee appears to suggest that DCIP would be an appropriate use of the funds: “these additional funds...will enhance [OEA’s] ability to support both community and military missions.”

As the Senate develops its defense appropriations bill, there is an opportunity for the chamber to appropriate funds specifically for DCIP and subsequently reach an agreement with the House in a conference committee to provide at least \$30 million for the program. The growing interest on Capitol Hill to provide funding for DCIP indicates progress toward advancing infrastructure in the nation’s defense communities.

Sen. Elizabeth Warren (D-MA), a member of the Senate Armed Services Committee, recently led an investigation of the MHPI and provided four conclusions to the Secretaries of the Army, Navy, and Air Force in April. The findings, which address issues with contracting and maintenance, are as follows:

- The private military housing providers have set up a complicated web of subcontractors and subsidiaries that undermines accountability for substandard conditions in military housing and makes it difficult to track revenues, profits, and the flow of funds.
- The private military housing providers have failed to create accessible or centralized records and protocols to address complaints and reports of problems with military housing, which makes comprehensive assessment and oversight of their performance difficult and complicates efforts to improve housing quality.
- Private housing providers are making large profits while taking minimal investment risks.
- The companies and their subsidiaries are receiving sizeable incentive fees even when they face substantial quality control challenges.

The Government Accountability Office (GAO) conducted its own study and issued recommendations for the program in March 2018. GAO's recommendations included measures to "improve the consistency and timeliness of the information reported on the financial condition of its privatized housing projects, fully assess the effects of the reductions in basic allowance for housing on the projects,

clarify when project changes require notice, and define tolerances for project risks."

To End or to Continue Privatized Military Housing?

Given the challenges the MHPI faces, questions are being raised about the future of private military housing and whether DOD-owned housing may make a comeback.

Reverting back to federally owned military housing would have significant implications for the nation's infrastructure. It would require increased military construction appropriations during a time when sequestration and



budget caps remain a lingering concern on Capitol Hill. Before the MHPI, the Pentagon estimated that it would need at least \$20 billion to address military housing conditions. Additionally, the several current 50-year contracts with private housing companies may complicate the transition back to a fully DOD-owned system.

Congress and DOD Propose New Action

The most likely outcome for the MHPI is for Congress and DOD to make further improvements regarding health standards and oversight for the program. Already in the first session of the 116th Congress, several legislative proposals have been introduced. The military construction appropriations bill

approved by the House Appropriations Committee would provide \$1.5 billion "to address family housing issues such as mold, vermin, and lead in military family housing." Following her investigation into the MHPI, Sen. Warren introduced the Military Housing Oversight and Service Member Protection Act, which would require the Secretary of Defense to "establish formal written requirements and guidance for entering into and renewing contracts" and rescind those contracts from companies in violation of their agreements. A companion bill was introduced in the House by freshman Rep. Deb Haaland (D-NM).

In May, Rep. Jimmy Panetta (D-CA) introduced a bipartisan bill called the Better Military Housing Act, which would require DOD to develop an action plan to "improve personnel training and contract oversight, protect against any reprisal, and better regulate health metrics and lease provisions." Sen. Catherine Cortez Masto (D-NV) introduced a companion bill in the Senate.

In March, DOD introduced a draft of the Tenant Bill of Rights, which aims to "increase the accountability of privatized housing companies by putting more oversight authority in the hands of local military leaders." The initiative would implement new health standards, property management services, and rent and fee policies. The Senate's version of

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OUTLOOK ON THE FUTURE

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the FY 2020 National Defense Authorization Act embraced the proposal by including it in the bill, in addition to other accountability measures.

The future of military housing does not appear to be headed back into full DOD ownership. However, new models for leasing and contracting have been embraced by both Congress and military department leadership, signaling further action on oversight should be expected in the near future.

Legislative Radar

Kutak Rock stays on top of all the action on Capitol Hill. Our Legislative Radar tracks the most critical infrastructure-related bills moving through the legislative process. The following list includes legislation ordered reported in committee, or passed the House or Senate.



- [H.R. _____](#): Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2020 – Ordered reported on May 23, 2019
- [H.R. 2960](#): Energy and Water Development and Related Agencies Appropriations Act, 2020 – Ordered reported on May 23, 2019
- [H.R. 2968](#): Department of Defense Appropriations Act, 2020 – Ordered reported May 23, 2019
- [H.R. 2745](#): Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2020 – Ordered reported May 15, 2019
- [S. 1434](#): Construction Consensus Procurement Improvement Act of 2019 – Ordered reported May 15, 2019
- [H.R. 2502](#): Transparency in Federal Buildings Projects Act of 2019 – Ordered reported May 8, 2019
- [H.R. 2440](#): Full Utilization of the Harbor Maintenance Trust Fund Act – Ordered reported May 8, 2019
- [H.R. 66](#): Route 66 Centennial Commission Act – Passed House February 6, 2019

Important Infrastructure Hearings This Quarter:

- [April 9](#) - “Every Life Counts: Improving the Safety of our Nation’s Roadways”
- [April 9](#) - “Building Prosperity: EDA’s Role in Economic Development and Recovery”
- [April 10](#) - “The Cost of Doing Nothing: Why Full Utilization of the Harbor Maintenance Trust Fund and Investment in our Nation’s Waterways Matter”
- [May 1](#) - “Committee on Transportation and Infrastructure Members’ Day Hearing”
- [May 16](#) - “The Impacts of State-Owned Enterprises on Public Transit and Freight Rail Sectors”
- [May 22](#) - “LIFT America: Modernizing Our Infrastructure for the Future”

[Priority Open Recommendations: U.S. Department of Transportation](#)

Government Accountability Office

In April 2019, GAO identified 6 additional priority recommendations for OPM, bringing the total number to 16. These recommendations involve the following areas: funding surface transportation; addressing safety risks; cybersecurity risks; improving management of information technology (IT) workforce planning; improving federal grant management; improving transportation readiness.

[Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects](#)

Government Accountability Office

Based on interviews with officials from 57 tribes and 21 federal agencies, as well as comments submitted by 100 tribes in 2016 on tribal consultation for infrastructure projects, GAO identified key factors that tribes and agencies believe hinder effective consultation on infrastructure projects.

[State by State Infrastructure Report Cards](#)

American Society of Civil Engineers (ASCE)

ASCE published the 2019 report cards for each state's infrastructure. Report cards include assessments of areas such as bridges, roads, aviation, and energy.

[Deliver 21st Century Infrastructure](#)

The White House

Submitted as part of President Donald Trump's Fiscal Year 2020 budget, the Administration published a fact sheet outlining the administration's infrastructure plan. The plan includes a long-term surface transportation reauthorization; \$200 billion for other infrastructure priorities; and several targeted discretionary investments for projects such as the INFRA and BUILD grant programs.

[A Vision for Green Infrastructure in Congress](#)

Senator Ed Markey (D-MA)

Major principles in Sen. Markey's white paper include: Clean up the energy grid and cut down on energy use; factor climate and health into transportation spending; make electric and high-efficiency vehicles affordable and available; electrify and expand mass transit; and more.

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