

# DOE Lease Authorities

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# Today's topics:



Primer on Federal Property Law




DOE Real Property Lease Authority

# Federal Property Law Primer



- The Property Clause, Article IV, § 3, Clause 2
  - The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States
- Federal government originally acquired 1.8 billion acres
  - Sold or transferred majority of the land
  - 1934 Taylor Grazing Act and in 1976 Federal Land Policy and Management Act federal government retaining and taking control back over land
  - Ongoing shift for disposing land; currently own 640 million acres ~28 % (Interior (BLM, NPS, FWS), Agriculture, Dept Defense own s 95%))



Section 161g. of the Atomic Energy Act (AEA), as amended (42 U.S.C. 2201(g))

Section 646 of the DOE Organization Act, as amended (42 U.S.C. 7256(c))

**Unique DOE  
authority for  
Leases**



## Lease authority under Section 161g of the AEA:

(42 U.S.C. 2201(g)) authorizes the Secretary of Energy to “sell, lease, grant, and dispose of real and personal property as provided in this Act.”



## Lease authority under Section 161g of the AEA:

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(1) limited to properties with a nexus to the purposes of the AEA;

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(2) No Fair Market Rental Value requirement;

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(3) No authority to retain rental proceeds, and

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(4) No lease term limit.

## Criteria for 161g. Lease

- “as provided in this Act” requires that any transactions be covered by one of two criteria:
  - (1) *Property DOE has acquired in connection with carrying out the objectives under the AEA or*
  - (2) *Property that will be used/disposed to carry out such functions/objectives.*

# Purposes of AEA

- Section 1:
  - common defense and security
  - promote world peace
- Section 2: Military purposes
- Section 3:
  - Assisting and fostering research and development
  - Development and utilization of atomic energy for peaceful purposes
  - International cooperation to promote common defense & security





# FAIR MARKET VALUE & LEASE TERM

- No FMV requirement when using 161g. authority
- If less than FMV - sale of “real” property
  - Notify Committee of Appropriations 60 days in advance of any proposed sale of land
    - Notification does not apply to leases of real property or to personal property
    - A no-cost transfer or exchange is considered a “sale” at less than FMV
- Flexible lease term





# NO AUTHORITY TO RETAIN PROCEEDS

Section 161g. does not expressly  
authorize the retention of proceeds



## Lease authority under DOE Act Section 646:

(c) The Secretary may lease, upon terms and conditions the Secretary considers appropriate to promote national security or the public interest, acquired real property and related personal property that –

- (1) is located at a facility of [DOE] to be closed or reconfigured;
- (2) at the time the lease is entered into, is not needed by [DOE]; and
- (3) is under the control of [DOE]

42 U.S.C. 7256 (a)-(c))



## Criteria for DOE Act Section 646

- (1) site must be closing or being reconfigured;
- (2) need Federal or State concurrence on environmental matters;
- (3) have authority to accept payment in cash or in kind, and retain proceeds to use for limited purposes, and
- (4) lease term limit of 10 years with the option to renew for more than 10 years.



## Other Considerations when using DOE Lease Authority

Withdrawn Land & Indemnification



## Other Considerations when using DOE Lease Authority

- Withdrawn Land
  - The proposed lease should have terms consistent with the withdraw
  - Consult with Interior

# Other Considerations when using DOE Lease Authority

## Indemnification

- Secretary has discretionary authority to hold harmless an entity to whom real property is transferred, against any claim for injury to person or property that results from the release of a contaminant released as a result of DOE activities (50 U.S.C. 2811)
- Regulations define “real property” as all interest in land, together with the improvements (10 CFR 770.4)



# What is Indemnification?

- Reimbursement for monetary damages
- Not an environmental clean up statute, like CERCLA
  - Indemnification statute does not modify CERCLA requirements
- Provides transferee protection against personal injury & property claims
  - Also applies to future transferees





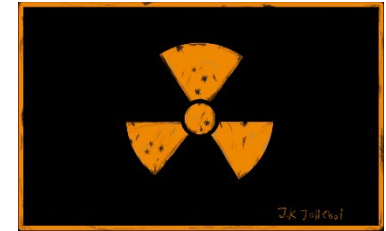
# What is scope of indemnification authority?

- Applies to sales and leases of real property
- Economic Development
- Can transfer property at less than FMV



# Requirements when using this authority?

- Only applies to “defense nuclear facilities”
- Need to notify Congress 30 days in advance
- Need Office of the General Counsel review
- Agreement to indemnify must be in deed or in lease
- Authority may only be redelegated to officials who have been appointed by the President with the advice and consent of the Senate.
  - Under Secretary for Science (and Innovation), Under Secretary for Nuclear Energy, Assistant Secretary for Environmental Management, Director, Office of Science have been delegated authority.



# Any questions?

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