

§ 2694b. Participation in wetland mitigation banks

(a) **AUTHORITY TO PARTICIPATE.**—The Secretary of a military department, and the Secretary of Defense with respect to matters concerning a Defense Agency, when engaged in an authorized activity that may or will result in the destruction of, or an adverse impact to, a wetland, may make payments to a wetland mitigation banking program or “in-lieu-fee” mitigation sponsor approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605; November 28, 1995) or the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 Fed. Reg. 66913; November 7, 2000), or any successor administrative guidance or regulation.

(b) **ALTERNATIVE TO CREATION OF WETLAND.**—Participation in a wetland mitigation banking program or consolidated user site under subsection (a) shall be in lieu of mitigating wetland impacts through the creation of a wetland on Federal property.

(c) **TREATMENT OF PAYMENTS.**—Payments made under subsection (a) to a wetland mitigation banking program or consolidated user site may be treated as eligible project costs for military construction.

(Added Pub. L. 108-136, div. A, title III, § 314(a)(1), Nov. 24, 2003, 117 Stat. 1430.)

§ 2694c. Participation in conservation banking programs

(a) **AUTHORITY TO PARTICIPATE.**—Subject to the availability of appropriated funds, the Secretary concerned, when engaged or proposing to engage in an activity described in subsection (b) that may or will result in an adverse impact to one or more species protected (or pending protection) under any applicable provision of law, or habitat for such species, may make payments to a conservation banking program or “in-lieu-fee” mitigation sponsor approved in accordance with—

(1) the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605; November 28, 1995);

(2) the Guidance for the Establishment, Use, and Operation of Conservation Banks (68 Fed. Reg. 24753; May 2, 2003);

(3) the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 Fed. Reg. 66915; November 7, 2000); or

(4) any successor or related administrative guidance or regulation.

(b) **COVERED ACTIVITIES.**—Payments to a conservation banking program or “in-lieu-fee” mitigation sponsor under subsection (a) may be made only for the purpose of facilitating one or more of the following activities:

(1) Military testing, operations, training, or other military activity.

(2) Military construction.

(c) **TREATMENT OF AMOUNTS FOR CONSERVATION BANKING.**—Payments made under subsection (a)

to a conservation banking program or “in-lieu-fee” mitigation sponsor for the purpose of facilitating military construction may be treated as eligible costs of the military construction project.

(d) **SOURCE OF FUNDS.**—Amounts available from any of the following shall be available for activities under this section:

(1) Operation and maintenance.

(2) Military construction.

(3) Research, development, test, and evaluation.

(4) The Support for United States Relocation to Guam Account established under section 2824 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110-417; 122 Stat. 4730; 10 U.S.C. 2687 note).

(e) **SECRETARY CONCERNED DEFINED.**—In this section, the term “Secretary concerned” means—

(1) the Secretary of a military department; and

(2) the Secretary of Defense with respect to a Defense Agency.

(Added Pub. L. 110-417, [div. A], title III, § 311(a), Oct. 14, 2008, 122 Stat. 4408; amended Pub. L. 111-84, div. A, title III, § 311, Oct. 28, 2009, 123 Stat. 2247; Pub. L. 111-383, div. A, title X, § 1075(b)(45), Jan. 7, 2011, 124 Stat. 4371.)

AMENDMENTS

2011—Subsec. (d)(4). Pub. L. 111-383 inserted “Authorization” after “Military Construction”.

2009—Subsec. (a). Pub. L. 111-84, § 311(1), struck out “to carry out this section” after “appropriated funds” in introductory provisions.

Subsecs. (d), (e). Pub. L. 111-84, § 311(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE

Pub. L. 110-417, [div. A], title III, § 311(c), Oct. 14, 2008, 122 Stat. 4409, provided that: “Section 2694c of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2008, and only funds appropriated for fiscal years beginning after September 30, 2008, may be used to carry out such section.”

§ 2695. Acceptance of funds to cover administrative expenses relating to certain real property transactions

(a) **AUTHORITY TO ACCEPT.**—In connection with a real property transaction referred to in subsection (b) with a non-Federal person or entity, the Secretary of a military department may accept amounts provided by the person or entity to cover administrative expenses incurred by the Secretary in entering into the transaction.

(b) **COVERED TRANSACTIONS.**—Subsection (a) applies to the following transactions involving real property under the control of the Secretary of a military department:

(1) The exchange of real property.

(2) The grant of an easement over, in, or upon real property of the United States.

(3) The lease or license of real property of the United States.

(4) The disposal of real property of the United States for which the Secretary will be the disposal agent.

(5) The conveyance of real property under section 2694a of this title.

(c) USE OF AMOUNTS COLLECTED.—(1) Amounts collected by the Secretary of a military department under subsection (a) for administrative expenses shall be credited, at the option of the Secretary—

(A) to the appropriation, fund, or account from which the expenses were paid; or

(B) to an appropriate appropriation, fund, or account currently available to the Secretary for the purposes for which the expenses were paid.

(2) Amounts credited under paragraph (1) shall be merged with funds in such appropriation, fund, or account and shall be available for the same purposes and subject to the same limitations as the funds with which merged.

(Added Pub. L. 105–85, div. B, title XXVIII, §2813(a), Nov. 18, 1997, 111 Stat. 1993; amended Pub. L. 106–65, div. B, title XXVIII, §2813, Oct. 5, 1999, 113 Stat. 851; Pub. L. 107–314, div. B, title XXVIII, §2812(b), Dec. 2, 2002, 116 Stat. 2709; Pub. L. 113–291, div. B, title XXVIII, §2812(a), Dec. 19, 2014, 128 Stat. 3700.)

AMENDMENTS

2014—Subsec. (c)(1). Pub. L. 113–291, §2812(a)(1), substituted “(1) Amounts collected by the Secretary of a military department under subsection (a) for administrative expenses shall be credited, at the option of the Secretary—” and subpars. (A) and (B) for “Amounts collected under subsection (a) for administrative expenses shall be credited to the appropriation, fund, or account from which the expenses were paid.”

Subsec. (c)(2). Pub. L. 113–291, §2812(a)(2), substituted “(2) Amounts credited under paragraph (1)” for “Amounts so credited”.

2002—Subsec. (b)(5). Pub. L. 107–314 added par. (5).

1999—Subsec. (b). Pub. L. 106–65 inserted “involving real property under the control of the Secretary of a military department” after “transactions” in introductory provisions and added par. (4).

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. B, title XXVIII, §2812(b), Dec. 19, 2014, 128 Stat. 3700, provided that: “The amendments made by subsection (a) [amending this section] shall not apply to administrative expenses related to a real property transaction referred to in section 2695(b) of title 10, United States Code, that were covered by the Secretary of a military department using amounts appropriated to the Secretary before the date of the enactment of this Act [Dec. 19, 2014].”

ADMINISTRATIVE COSTS OF LAND CONVEYANCES

Pub. L. 106–541, title II, §226, Dec. 11, 2000, 114 Stat. 2598, provided that: “Notwithstanding any other provision of law, the administrative costs associated with the conveyance of property by the Secretary to a non-Federal governmental or nonprofit entity shall be limited to the extent that the Secretary determines that such limitation is necessary to complete the conveyance based on the entity’s ability to pay.”

§ 2696. Real property: transfer between armed forces and screening requirements for other Federal use

(a) TRANSFERS BETWEEN ARMED FORCES.—If either of the Secretaries concerned requests it and the other approves, real property may be transferred, without compensation, from one armed force to another. Section 2571(d) of this title shall apply to the transfer of real property under this subsection.

(b) SCREENING REQUIREMENTS FOR ADDITIONAL FEDERAL USE.—The Secretary concerned may not convey real property that is authorized or required to be conveyed, whether for or without consideration, by any provision of law enacted after December 31, 1997, unless the Administrator of General Services has screened the property for further Federal use in accordance with subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(c) TIME FOR SCREENING.—(1) Before the end of the 30-day period beginning on the date of the enactment of a provision of law authorizing or requiring the conveyance of a parcel of real property by the Secretary concerned, the Administrator of General Services shall complete the screening referred to in subsection (b) with regard to the real property and notify the Secretary concerned and Congress of the results of the screening. The notice shall include—

(A) the name of the Federal agency requesting transfer of the property;

(B) the proposed use to be made of the property by the Federal agency; and

(C) the fair market value of the property, including any improvements thereon, as estimated by the Administrator.

(2) If the Administrator fails to complete the screening and notify the Secretary concerned and Congress within such period, the Secretary concerned shall proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance.

(d) EFFECT OF SUBMISSION OF NOTICE.—If the Administrator of General Services submits notice under subsection (c)(1) that further Federal use of a parcel of real property is requested by a Federal agency, the Secretary concerned may not proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance until the end of the 180-day period beginning on the date on which the notice is submitted to Congress.

(e) EXCEPTED CONVEYANCE AUTHORITIES.—The screening requirements of subsection (b) shall not apply to real property authorized or required to be conveyed under any of the following provisions of law:

(1) A base closure law.

(2) Chapter 5 of title 40.

(3) Any specific provision of law authorizing or requiring the transfer of administrative jurisdiction over a parcel of real property between Federal agencies.

(f) SCREENING AND CONVEYANCE OF PROPERTY FOR CORRECTIONAL FACILITIES PURPOSES.—(1) Except as provided in paragraph (2), before any real property or facility of the United States that is under the jurisdiction of any department, agency, or instrumentality of the Department of Defense is determined to be excess to the needs of such department, agency, or instrumentality, the Secretary of Defense shall—

(A) provide adequate notification of the availability of such real property or facility within the Department of Defense;

(B) if the real property or facility remains available after such notification, notify the Attorney General of its availability; and