

## TRANSFERS FROM SPECIAL ACCOUNTS

Pub. L. 108-287, title VIII, §8034, Aug. 5, 2004, 118 Stat. 978, provided that: “Amounts deposited during the current fiscal year and hereafter to the special account established under 40 U.S.C. 572(b)(5)(A) and to the special account established under 10 U.S.C. 2667(d)(1) [now 2667(e)(1)] are appropriated and shall be available until transferred by the Secretary of Defense to current applicable appropriations or funds of the Department of Defense under the terms and conditions specified by 40 U.S.C. 572(b)(5)(B) and 10 U.S.C. 2667(d)(1)(B) [now 2667(e)(1)(B)], to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108-87, title VIII, §8035, Sept. 30, 2003, 117 Stat. 1080.

Pub. L. 107-248, title VIII, §8035, Oct. 23, 2002, 116 Stat. 1544.

Pub. L. 107-117, div. A, title VIII, §8038, Jan. 10, 2002, 115 Stat. 2255.

Pub. L. 106-259, title VIII, §8038, Aug. 9, 2000, 114 Stat. 682.

Pub. L. 106-79, title VIII, §8040, Oct. 25, 1999, 113 Stat. 1239.

Pub. L. 105-262, title VIII, §8040, Oct. 17, 1998, 112 Stat. 2306.

Pub. L. 105-56, title VIII, §8044, Oct. 8, 1997, 111 Stat. 1230.

Pub. L. 104-61, title VIII, §8056, Dec. 1, 1995, 109 Stat. 663.

Pub. L. 103-335, title VIII, §8063, Sept. 30, 1994, 108 Stat. 2634.

Pub. L. 103-139, title VIII, §8074, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102-396, title IX, §9107, Oct. 6, 1992, 106 Stat. 1927.

## LEASING OF DEFENSE PROPERTY; NOTIFICATION OF CONGRESS; WAIVER; REPORT TO CONGRESS; DEFINITION

Pub. L. 96-533, title I, §109(a)-(e), Dec. 16, 1980, 94 Stat. 3137, provided that before the Secretary of a military department exercised his authority under section 2667 of title 10, United States Code, in order to lease defense property to a foreign government for a period of more than six months, the President had to transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, a written notification of the particulars of the proposed lease, prior to repeal by Pub. L. 97-113, title I, §109(d)(1), Dec. 29, 1981, 95 Stat. 1526. See section 2795 et seq. of Title 22, Foreign Relations and Intercourse.

**[§ 2667a. Repealed. Pub. L. 110-417, div. B, title XXVIII, §2812(e)(1), Oct. 14, 2008, 122 Stat. 4727]**

Section, added Pub. L. 105-85, div. A, title X, §1062(a), Nov. 18, 1997, 111 Stat. 1891; amended Pub. L. 107-217, §3(b)(13), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 108-136, div. A, title X, §1031(a)(28), Nov. 24, 2003, 117 Stat. 1599, related to leases of non-excess property of Defense agencies.

## PRIOR PROVISIONS

A prior section 2667a, added Pub. L. 98-115, title VIII, §807(a)(1), Oct. 11, 1983, 97 Stat. 786, provided for sale and replacement of nonexcess real property, prior to repeal by Pub. L. 98-115, title VIII, §807(c), Oct. 11, 1983, 97 Stat. 789, as amended by Pub. L. 99-167, title VIII, §806(a), Dec. 3, 1985, 99 Stat. 988, effective Oct. 1, 1986.

## SAVINGS PROVISION

Pub. L. 110-417, div. B, title XXVIII, §2812(e)(2), (3), Oct. 14, 2008, 122 Stat. 4727, provided that:

“(2) EFFECT ON EXISTING CONTRACTS.—The repeal of section 2667a of title 10, United States Code, shall not affect the validity or terms of any lease with respect to

property of a Defense Agency entered into by the Secretary of Defense under such section before the date of the enactment of this Act [Oct. 14, 2008].

“(3) TREATMENT OF MONEY RENTS.—Amounts in any special account established for a Defense Agency pursuant to subsection (d) of section 2667a of title 10, United States Code, before repeal of such section by paragraph (1), and amounts that would be deposited in such an account in connection with a lease referred to in paragraph (2), shall—

“(A) remain available until expended for the purposes specified in such subsection, notwithstanding the repeal of such section by paragraph (1); or

“(B) to the extent provided in appropriations Acts, be transferred to the special account required for the Secretary of Defense by subsection (e) of section 2667 of such title, as amended by subsection (d)(2) of this section.”

## § 2668. Easements for rights-of-way

(a) AUTHORIZED TYPES OF EASEMENTS.—If the Secretary of a military department finds that it will not be against the public interest, the Secretary may grant, upon such terms as the Secretary considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under the Secretary's control for—

- (1) railroad tracks;
- (2) gas, water, sewer, and oil pipe lines;
- (3) substations for electric power transmission lines and pumping stations for gas, water, sewer, and oil pipe lines;
- (4) canals;
- (5) ditches;
- (6) flumes;
- (7) tunnels;
- (8) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture;
- (9) roads and streets;
- (10) poles and lines for the transmission or distribution of electric power;
- (11) poles and lines for the transmission or distribution of communications signals (including telephone and telegraph signals);
- (12) structures and facilities for the transmission, reception, and relay of such signals; and
- (13) any other purpose that the Secretary considers advisable.

(b) LIMITATION ON SIZE OF EASEMENT.—No easement granted under this section may include more land than is necessary for the easement.

(c) TERMINATION.—The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

- (1) failure to comply with the terms of the grant;
- (2) nonuse for a two-year period; or
- (3) abandonment.

(d) NOTICE TO DEPARTMENT OF THE INTERIOR.—Copies of instruments granting easements over public lands under this section shall be furnished to the Secretary of the Interior.

(e) DISPOSITION OF CONSIDERATION.—Subsections (c) and (e) of section 2667 of this title shall apply with respect to in-kind consideration and proceeds received by the Secretary of a mili-

tary department in connection with an easement granted under this section in the same manner as such subsections apply to in-kind consideration and money rentals received pursuant to leases entered into by that Secretary under such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Pub. L. 98-525, title XIV, §1405(38), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 104-201, div. B, title XXVIII, §2861, Sept. 23, 1996, 110 Stat. 2804; Pub. L. 106-398, §1 [div. B, title XXVIII, §2812(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-418; Pub. L. 108-136, div. B, title XXVIII, §2813(a), Nov. 24, 2003, 117 Stat. 1725; Pub. L. 109-163, div. A, title X, §1057(a)(3), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109-364, div. B, title XXVIII, §2822(a), (b), Oct. 17, 2006, 120 Stat. 2474, 2475; Pub. L. 110-181, div. A, title X, §1063(a)(14), Jan. 28, 2008, 122 Stat. 322.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2668(a) .....	43:931b (less 2d and 3d provisos of 1st sentence, and less last sentence).	July 24, 1946, ch. 596, §7, 60 Stat. 643; Oct. 25, 1951, ch. 563, §101 (31st through 43d words), 65 Stat. 641.
2668(b) .....	43:931b (2d proviso of 1st sentence).	
2668(c) .....	43:931b (3d proviso of 1st sentence).	
2668(d) .....	43:931b (last sentence) [43:931b is made applicable to the Navy by 50:171-1 (16th through 21st words)].	

In subsection (a), the word “conditions” is omitted as covered by the word “terms”. The description of the persons covered in the opening paragraph and the lands covered in clauses (1)–(10) is restated to reflect an opinion of the Judge Advocate General of the Army (JAGR 1952/3179, 27 Mar. 1952). The exceptions to clause (10) make express the fact that the revised section does not cover certain easements authorized by earlier law. The word “over” includes the word “across”. The words “of the United States”, “and empowered”, “acquired lands”, “jurisdiction and”, and “municipality” are omitted as surplusage. The word “Commonwealth” is inserted to reflect the present status of Puerto Rico.

In subsection (b), the words “for the easement” are substituted for the words “for the purpose for which granted”.

In subsections (b) and (c), the word “easement” is substituted for the word “rights-of-way”.

In subsection (c), the word “terminate” is substituted for the words “annulled and forfeited”. The words “and conditions” are omitted as covered by the word “terms”. The words “two-year period” are substituted for the words “a period of two consecutive years”. The words “of rights granted under authority hereof” are omitted as surplusage.

#### AMENDMENTS

2008—Subsec. (e). Pub. L. 110-181 substituted “and (e)” for “and (d)”.

2006—Subsec. (a). Pub. L. 109-364, §2822(a)(1), (b)(1), inserted heading and, in introductory provisions, substituted “the Secretary may” for “he may”, “the Secretary considers” for “he considers”, and “the Secretary’s control” for “his control, to a State, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Commonwealth, or possession.”.

Pub. L. 109-163 struck out “Territory,” after “a State,” in two places in introductory provisions.

Subsec. (a)(2). Pub. L. 109-364, §2822(a)(2), substituted “gas, water, sewer, and oil pipe lines” for “oil pipe lines”.

Subsec. (a)(13). Pub. L. 109-364, §2822(a)(3), substituted “the Secretary considers advisable” for “he considers

advisable, except a purpose covered by section 2669 of this title”.

Subsecs. (b) to (e). Pub. L. 109-364, §2822(b)(2)–(5), inserted subsec. headings.

2003—Subsec. (e). Pub. L. 108-136 substituted “Subsections (c) and (d)” for “Subsection (d)” and “subsections apply to in-kind consideration and” for “subsection applies to” and inserted “in-kind consideration and” before “proceeds”.

2000—Subsec. (e). Pub. L. 106-398 added subsec. (e).

1996—Subsec. (a)(3). Pub. L. 104-201, §2861(b)(1), struck out “, telephone lines, and telegraph lines,” after “transmission lines”.

Subsec. (a)(9). Pub. L. 104-201, §2861(a)(1), struck out “and” at end.

Subsec. (a)(10) to (12). Pub. L. 104-201, §2861(a)(3), added pars. (10) to (12). Former par. (10) redesignated (13).

Subsec. (a)(13). Pub. L. 104-201, §2861(a)(2), (b)(2), redesignated par. (10) as (13) and struck out “or by the Act of March 4, 1911 (43 U.S.C. 961)” after “2669 of this title”.

1984—Subsec. (a)(10). Pub. L. 98-525 substituted “the Act of March 4, 1911 (43 U.S.C. 961)” for “section 961 of title 43”.

#### § 2668a. Easements: granting restrictive easements in connection with land conveyances

(a) **AUTHORITY TO INCLUDE RESTRICTIVE EASEMENT.**—In connection with the conveyance of real property by the Secretary concerned under any provision of law, the Secretary concerned may grant an easement to an entity specified in subsection (b) restricting future uses of the conveyed real property for a conservation purpose consistent with section 170(h)(4)(A)(iv) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(4)(A)(iv)).

(b) **AUTHORIZED RECIPIENTS.**—An easement under subsection (a) may be granted only to—

- (1) a State or local government; or
- (2) a qualified organization, as that term is defined in section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)).

(c) **LIMITATIONS ON USE OF EASEMENT AUTHORITY.**—An easement under subsection (a) may not be granted unless—

- (1) the proposed recipient of the easement consents to the receipt of the easement;
- (2) the Secretary concerned determines that the easement is in the public interest and the conservation purpose to be promoted by the easement cannot be effectively achieved through the application of State law by the State or a local government without the grant of restrictive easements;
- (3) the jurisdiction that encompasses the property to be subject to the easement authorizes the grant of restrictive easements; and
- (4) the Secretary can give or assign to a third party the responsibility for monitoring and enforcing easements granted under this section.

(d) **CONSIDERATION.**—Easements granted under this section shall be without consideration from the recipient.

(e) **ACREAGE LIMITATION.**—No easement granted under this section may include more land than is necessary for the easement.

(f) **TERMS AND CONDITIONS.**—The grant of an easement under this section shall be subject to such additional terms and conditions as the Secretary concerned considers appropriate to protect the interests of the United States.