SEC. 2805. AUTHORITY FOR ACCEPTANCE OF FUNDS TO COVER ADMINISTRATIVE EXPENSES ASSOCIATED WITH REAL PROPERTY LEASES AND EASEMENTS.

Section 2667(e)(1)(C) of title 10, United States Code, is amended by adding at the end the following new clause:

"(vi) Amounts as the Secretary considers necessary to cover program expenses incurred by the Secretary under this section and for easements under section 2668 of this title.".

Section-by-Section Analysis

This proposal would amend 10 U.S.C. 2667 to allow use of cash consideration deposited into the special account in the Treasury established by 10 U.S.C. 2667(e) to offset administrative costs incurred by the military departments in entering into and managing leases under this section and easements under 10 U.S.C. 2668.

Leasing of and granting easements on non-excess military real property provides substantial return of property value to the military departments for support of mission needs. However, the military departments provide upfront and long-term funding for transaction-related costs to realize the return of property asset value. Neither section 2667 nor section 2668 provides authority for the military departments to use the special Treasury account for such costs.

10 U.S.C. 2695 allows for the recovery of administrative expenses from the proceeds of the certain real estate transactions, but the language is vague and could be construed to limit the reimbursement only to costs incurred prior to closing the transaction. The military departments incur expenses related to appraisals, surveys, marketing, solicitation, feasibility studies, environmental planning and due diligence, regardless of whether a transaction closes, and post-execution expenses, such as monitoring and compliance. The military departments should be able to recoup such expenses from cash consideration received under sections 2667 and 2668.

Budget Implications: This proposal does not seek additional appropriations nor result in additional costs to the military departments. Pursuant to section 8034 of the Department of Defense Appropriations Act, 2005, Pub. L. No. 108-287, amounts deposited in the special Treasury account established under 10 U.S.C. 2667(e) in FY 2005 and thereafter are appropriated and remain available until transferred by the Secretary of Defense under the terms specified in 10 U.S.C. 2667(e)(1)(C) to be merged with and to be available for the same time

period and the same purposes as the appropriation to which transferred. Such funds are discretionary therefore already scored.

The table below reflects the estimated annual revenues that will be deposited in the special Treasury account and transferred to the appropriations of the military departments for the uses specified in 10 U.S.C. 2667(e)(1)(C). The portion of these funds would be used for the additional purpose set forth in this proposal will be determined by each military department.

RESOURCE TRANSFERS ($MILLIONS)								
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**To Appropriation**	**Budget Activity**	**Dash-1 Line Item**
Air Force	$2	$2	$2	$2	$3	97X5189. 5700		
Navy						97X5189.1700		
Army						97X5189.2100		

Changes to Existing Law: This proposal would make the following changes to section 2667 of title 10, United States Code:

§ 2667. Leases: non-excess property of military departments and Defense Agencies

(a) LEASE AUTHORITY.— * * *

(b) CONDITIONS ON LEASES.— * * *

(c) TYPES OF IN-KIND CONSIDERATION.— * * *

(d) COMMUNITY SUPPORT FACILITIES AND COMMUNITY SUPPORT SERVICES UNDER LEASE; WAIVER.— * * *

(e) DEPOSIT AND USE OF PROCEEDS.—(1)(A) The Secretary concerned shall deposit in a special account in the Treasury established for that Secretary the following:

(i) All money rentals received pursuant to leases entered into by that Secretary under this section.

(ii) All proceeds received pursuant to the granting of easements by that Secretary under section 2668 of this title.

(iii) All proceeds received by that Secretary from authorizing the temporary use of other property under the control of that Secretary.

(B) Subparagraph (A) does not apply to the following proceeds:

(i) Amounts paid for utilities and services furnished lessees by the Secretary concerned pursuant to leases entered into under this section.

(ii) Money rentals referred to in paragraph (3), (4), or (5).

(C) Subject to subparagraphs (D) and (E), the proceeds deposited in the special account established for the Secretary concerned shall be available to the Secretary, in such amounts as provided in appropriation Acts, for the following:

(i) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.

(ii) Construction or acquisition of new facilities.

(iii) Lease of facilities.

(iv) Payment of utility services.

(v) Real property maintenance services.

(vi) Amounts as the Secretary considers necessary to cover program expenses incurred by the Secretary under this section and for easements under section 2668 of this title.

(D) At least 50 percent of the proceeds deposited in the special account established for the Secretary concerned shall be available for activities described in subparagraph (C) only at the military installation or Defense Agency location where the proceeds were derived.

(E) If the proceeds deposited in the special account established for the Secretary concerned are derived from activities associated with a military museum described in section 489(a) of this title, the proceeds shall be available for activities described in subparagraph (C) only at that museum.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

(3) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary concerned (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(4) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law before January 1, 2005, shall be deposited into the account established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(5) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law on or after January 1, 2005, shall be deposited into the account established under section 2906A(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(6) [Redesignated]

(f) TREATMENT OF LESSEE INTEREST IN PROPERTY.— * * *

(g) SPECIAL RULES FOR BASE CLOSURE AND REALIGNMENT PROPERTY. — * * *

(h) COMPETITIVE PROCEDURES FOR SELECTION OF CERTAIN LESSEES; EXCEPTION. — * * *

(i) DEFINITIONS. — * * *

(j) EXCLUSION OF CERTAIN LANDS. — * * *