

SIKES ACT COOPERATIVE AGREEMENTS

DECEMBER 8, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4309]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4309) to amend the Sikes Act to make certain improvements to the administration of cooperative agreements for land management related to Department of Defense readiness activities, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. COOPERATIVE AGREEMENTS UNDER SIKES ACT FOR LAND MANAGEMENT RELATED TO DEPARTMENT OF DEFENSE READINESS ACTIVITIES.

(a) MULTIYEAR AGREEMENTS TO FUND LONG-TERM MANAGEMENT.—Subsection (b) of section 103A of the Sikes Act (16 U.S.C. 670c-1) is amended—

(1) by inserting “(1)” before “Funds”; and

(2) by adding at the end the following new paragraph:

“(2) In the case of a cooperative agreement under subsection (a)(2), funds referred to in paragraph (1)—

“(A) may be paid in a lump sum and include an amount intended to cover the future costs of the natural resource maintenance and improvement activities provided for under the agreement;

“(B) may be invested by the recipient in accordance with the recipient’s own guidelines for the management and investment of financial assets, and any interest or income derived from such investment may be applied for the same purposes as the principal; and

“(C) may be used only for payment of—

“(i) direct costs of maintenance and improvement of natural resources on the lands within the scope of the agreement and only pursuant to an approved Department of Defense Integrated Natural Resource Management Plan; and

“(ii) indirect and administrative costs, as determined in accordance with official guidance issued by the Office of Management and Budget, but not to exceed 10 percent of the total cost of the project.”.

(b) AVAILABILITY OF FUNDS AND RELATION TO OTHER LAWS.—Subsection (c) of such section is amended to read as follows:

“(c) AVAILABILITY OF FUNDS AND RELATION TO OTHER LAWS.—(1) Cooperative agreements and interagency agreements entered into under this section shall be subject to the availability of funds.

“(2) Notwithstanding chapter 63 of title 31, United States Code, a cooperative agreement under this section may be used to acquire property or services for the direct benefit or use of the United States Government.

“(3) Amounts available to the Department of Defense may not be used under this Act to acquire fee title interest in real property for natural resources projects that are not on a military installation.”.

(c) AUDIT.—The Inspector General of the Department of Defense shall conduct an audit of the natural resources projects funded with amounts available to the Department of Defense under the Sikes Act, as amended by this section, that is not on a military installation. Not later than October 1, 2018, the Inspector General shall submit to Congress a report on the audit conducted under this subsection.

(d) SUNSET.—This section and the provisions of law enacted by the amendments made by this section shall expire on October 1, 2019, except that any cooperative agreement referred to in such provisions that is entered into on or before September 30, 2019, shall continue according to its terms and conditions as if this section has not expired.

PURPOSE OF THE BILL

The purpose of H.R. 4309 is to amend the Sikes Act to make certain improvements to the administration of cooperative agreements for land management related to Department of Defense readiness activities.

BACKGROUND AND NEED FOR LEGISLATION

The Department of Defense (DOD) controls over 28 million acres of valuable fish and wildlife habitat at approximately 511 military installations nationwide. These lands contain a wealth of plant and animal life, wetlands for migratory birds and 420 federally listed species. Enacted in 1960, the Sikes Act (16 U.S.C. 670, et. seq.) has been extended a number of times with the most recent effort in the National Defense Authorization Act for Fiscal Year 2014. Under Public Law 113–66, Title I of the Sikes Act was extended until September 30, 2019, and the existing annual funding levels of \$1.5 million for DOD and \$3 million for the Department of the Interior through the Fish and Wildlife Service (FWS) were retained. However, neither DOD nor FWS receives a direct appropriation for this program. Instead, the nearly \$60 million that has been spent during the past ten fiscal years in support of Sikes Act activities has been consistently funded through general administrative funds.

As a result of changes made by Section 312 of Public Law 113–66, DOD now has the authority to perform natural resource conservation projects on off-installation lands, where it does not have a real property interest, and to make long-term financial obligations. The primary purpose of these projects is to obtain “credit” from FWS for these efforts and corresponding relief from some of its Endangered Species Act obligations on military installations throughout this country. DOD has been concerned that over the next four years, FWS will make a final listing decision on 251 can-

didate species. Based on its analysis, 110 of these species will affect military bases. In fact, eight species would cause significant impacts to military readiness and 29 species would cause a moderate amount of problems.

DOD will be able to utilize this new authority until October 1, 2019. However, the law stipulates that the sunset provision shall not affect any agreement “entered into on or before September 30, 2019, shall continue according to its terms and conditions as if this section has not expired.”

H.R. 4309 will amend the new statutory language adopted in 2013 to limit the amount of indirect and administrative costs to less than 10 percent of the total cost of a natural resource conservation project, to prohibit DOD from acquiring fee title interest in real property for natural resources projects and to require the Inspector General of DOD to conduct an audit of the natural resource projects funded with amounts available to DOD under the Sikes Act for those projects on non-military lands. This audit is required to be submitted to the Congress no later than October 1, 2018.

During the Natural Resources Committee markup of the bill, Congressman Paul Gosar (R-AZ) successfully offered an amendment that would require that for DOD to spend money on an off-installation conservation project, it must be done pursuant to an approved Natural Resources Management Plan. These plans are routinely updated and they should include both projects that undertaken on military lands and those off-installation lands involving DOD taxpayer money.

COMMITTEE ACTION

H.R. 4309 was introduced on March 26, 2014, by Delegate Madeline Z. Bordallo (D-GU). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs. The bill was also referred to the Committee on Armed Services. On April 9, 2014, the Natural Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs was discharged by unanimous consent. Congressman Paul Gosar (R-AZ) offered an amendment designated .059 to the bill; the amendment was adopted by a roll call vote of 21 to 14, as follows:

Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: April 9, 2014

Recorded Vote #: 2

Meeting on / Amendment on: **H.R. 4309 - GOSAR.059**, AGREED TO by a roll call vote of 21 yeas and 14 nays.

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Hastings, WA, Chairman	X			Mr. Duncan of SC	X		
<i>Mr. DeFazio, OR, Ranking</i>		X		<i>Mr. Cardenas, CA</i>			
Mr. Young, AK				Mr. Tipton, CO	X		
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Huffman, CA</i>		X	
Mr. Gohmert, TX	X			Mr. Gosar, AZ	X		
<i>Mr. Pallone, NJ</i>		X		<i>Mr. Ruiz, CA</i>		X	
Mr. Bishop, UT	X			Mr. Labrador, ID	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Ms. Shea-Porter, NH</i>		X	
Mr. Lamborn, CO				Mr. Southerland, FL	X		
<i>Mr. Holt, NJ</i>		X		<i>Mr. Lowenthal, CA</i>		X	
Mr. Wittman, VA	X			Mr. Flores, TX			
<i>Mr. Grijalva, AZ</i>				<i>Mr. Garcia, FL</i>		X	
Mr. Broun, GA	X			Mr. Runyan, NJ			
<i>Ms. Bordallo, GU</i>		X		<i>Mr. Cartwright, PA</i>		X	
Mr. Fleming, LA	X			Mr. Mullin, OK	X		
<i>Mr. Costa, CA</i>		X		<i>Ms. Clark, MA</i>		X	
Mr. McClintock, CA	X			Mr. Daines, MT	X		
<i>Mr. Sablan, CNMI</i>				Mr. Cramer, ND	X		
Mr. Thompson, PA	X			Mr. LaMalfa, CA	X		
<i>Ms. Tsongas, MA</i>				Mr. Smith, MO	X		
Mrs. Lummis, WY	X			Mr. McAllister, LA			
<i>Mr. Pierluisi, PR</i>		X		Mr. Byrne, AL	X		
Mr. Benishek, MI	X			<i>Vacancy</i>			
<i>Ms. Hanabusa, HI</i>							
				TOTALS	21	14	

The bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4309—A bill to amend the Sikes Act to make certain improvements to the administration of cooperative agreements for land management related to Department of Defense readiness activities, and for other purposes

H.R. 4309 would amend the Sikes Act to allow the Department of Defense (DoD) to provide lump-sum payments to nonfederal entities that enter into cooperative agreements to maintain and improve natural resources at certain military sites. The bill also would allow those entities to invest funds provided to carry out those activities. Finally, the bill would require DoD to conduct annual audits of each project carried out under the Sikes Act.

CBO estimates that changing the method of payment to nonfederal entities would have no significant effect on the federal budget. Based on information regarding the number of projects carried out under the Sikes Act each year, CBO also estimates that performing the annual audits of those projects would cost less than \$500,000 a year. Enacting H.R. 4309 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 4309 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On June 7, 2013, CBO transmitted a cost estimate for H.R. 1080, a bill to amend the Sikes Act to promote the use of cooperative agreements under such act for land management related to Department of Defense Readiness activities and to amend title 10, United States Code, to facilitate interagency cooperation in conservation programs to avoid or reduce adverse impacts on military readiness activities, as ordered reported by the House Committee on Natural Resources on May 15, 2013. The two bills are similar, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that implementing the legislation would cost less than \$500,000 a year.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Sikes Act to make certain improvements to the administration of cooperative agreements for land management related to Department of Defense readiness activities.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does reauthorize a program of the federal government known to be duplicative of another federal program. Such program was included in a report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs. The related programs are Fish and Wildlife Service Sport Fish Restoration Program, Partners for Fish and Wildlife, Fish and Wildlife Management Assistance, Coastal Program, and Pollution Prevention Grants Program.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

SIKES ACT

* * * * *

TITLE I—CONSERVATION PROGRAMS ON MILITARY
INSTALLATIONS

* * * * *

SEC. 103A. COOPERATIVE AND INTERAGENCY AGREEMENTS FOR
LAND MANAGEMENT ON INSTALLATIONS.

(a) * * *

(b) MULTIYEAR AGREEMENTS.—(1) Funds appropriated to the Department of Defense for a fiscal year may be obligated to cover the cost of goods and services provided under a cooperative agreement or interagency agreement entered into under subsection (a) or through an agency agreement under section 1535 of title 31, United States Code, during any 18-month period beginning in that fiscal year, without regard to whether the agreement crosses fiscal years.

(2) *In the case of a cooperative agreement under subsection (a)(2), funds referred to in paragraph (1)—*

(A) may be paid in a lump sum and include an amount intended to cover the future costs of the natural resource maintenance and improvement activities provided for under the agreement;

(B) may be invested by the recipient in accordance with the recipient's own guidelines for the management and investment of financial assets, and any interest or income derived from such investment may be applied for the same purposes as the principal; and

(C) may be used only for payment of—

(i) direct costs of maintenance and improvement of natural resources on the lands within the scope of the agreement and only pursuant to an approved Department of Defense Integrated Natural Resource Management Plan; and

(ii) indirect and administrative costs, as determined in accordance with official guidance issued by the Office of Management and Budget, but not to exceed 10 percent of the total cost of the project.

[(c) AVAILABILITY OF FUNDS; AGREEMENTS UNDER OTHER LAWS.—Cooperative agreements and interagency agreements entered into under this section shall be subject to the availability of funds and shall not be considered, nor be treated as, cooperative agreements to which chapter 63 of title 31, United States Code, applies.]

(c) AVAILABILITY OF FUNDS AND RELATION TO OTHER LAWS.—(1) *Cooperative agreements and interagency agreements entered into under this section shall be subject to the availability of funds.*

(2) *Notwithstanding chapter 63 of title 31, United States Code, a cooperative agreement under this section may be used to acquire property or services for the direct benefit or use of the United States Government.*

(3) Amounts available to the Department of Defense may not be used under this Act to acquire fee title interest in real property for natural resources projects that are not on a military installation.

* * * * *

ADDITIONAL VIEWS

H.R. 4309 would authorize the Department of Defense (DOD) to provide funds for the long-term maintenance and improvement of natural resources on non-DOD lands without first requiring the acquisition of easements on the land. For example, DOD would be able to enter into a cooperative agreement with a state, local agency, or private landowner to conserve habitat for an endangered species. By protecting endangered species on non-DOD lands, the need to restrict training and testing activities on DOD lands can be avoided. The bill would authorize the cooperative conservation program through FY 2019.

We support the underlying bill, but we do not support an amendment offered by the Majority at markup—and adopted on a party line vote—which would disallow such conservation projects unless they were already included in the Integrated Natural Resources Management Plan (INRMP) for the military installation in question. INRMPS are designed for on-base conservation planning, and therefore are not the appropriate framework for consideration of off-base projects. There are other mechanisms including Memorandums of Understanding, Records of Decision and other documents that require cooperation for off-base projects. Further, this requirement would place a significant and unnecessary burden on the military by requiring an INRMP update in order to take advantage of any off-base conservation opportunity. INRMPS are broad guidance documents that are only updated once every five years; the services should not be required to make a formal change to an INRMP in order to work with local stakeholders to conserve land around a base.

The language of H.R. 4309 was supported by DOD and incorporated into the FY15 National Defense Authorization Act without this amendment. For these reasons we do not support the addition of the amendment by Committee Republicans.

PETER A. DEFazio.
MADELEINE BORDALLO.
GREGORIO KILILI CAMACHO
SABLAN.

