SEC. 2804. EXTENSION OF TEMPORARY, LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS OUTSIDE THE UNITED STATES.

(a) ONE-YEAR EXTENSION OF AUTHORITY.—Section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723), as most recently amended by section 2804 of the Military Construction Authorization Act for Fiscal Year 2011 (division B of Public Law 111-383; 124 Stat. 4459), is amended—

(1) in subsection (c)(2), by striking "fiscal year 2011" and inserting "fiscal year 2012"; and

(2) in subsection (h)—

(A) in paragraph (1), by striking "September 30, 2011" and inserting "September 30, 2012"; and

(B) in paragraph (2), by striking "fiscal year 2012" and inserting "fiscal year 2013".

(b) MODIFICATION OF QUARTERLY REPORTING REQUIREMENT.—Subsection (g) of such section is amended—

(1) by striking "QUARTERLY REPORTS OR" in the subsection heading;

(2) by striking "the report for a fiscal-year quarter under subsection (d) or"; and

(3) by striking "report or".

(c) TECHNICAL AMENDMENT.—Subsections (a) and (i) of such section are amended by striking "Combined Task Force-Horn of Africa" each place it appears and inserting "Combined Joint Task Force-Horn of Africa".

Section-by-Section Analysis

This proposal would provide continued authority for the Secretary of Defense to use funds appropriated for operation and maintenance for military construction to meet temporary operational requirements during a time of declared war, national emergency, or contingency operation through September 2012.

Extension of this authority would enable the Department of Defense to provide basic facilities and infrastructure critical to military operations months and years ahead of the regular annual authorization and appropriation process for construction projects. It also would provide continuous, needed support to our commanders and troops during all ongoing and future contingency operations.

The proposal would retain the current requirement to provide quarterly reports; however, it would remove the ramifications of not providing a quarterly report to the Congress by the required date. Specifically, the Department of Defense would not lose the ability to obligate or expend appropriated funds under this section if a report is not submitted by the required date. The penalty of stopping work on all contingency construction projects authorized under this section would negatively impact the Department's ability to provide the appropriate infrastructure to support our commanders and troops in a timely manner.

This proposal would retain the current requirement to provide notice to Congress prior to the use of funds appropriated for operation and maintenance under the conditions set forth in subsection (a) of section 2808 of the Military Construction Authorization Act for Fiscal Year 2004. In addition, the Department of Defense still would not be able to proceed with execution of these projects until after a waiting period following the delivery of the pre-notification to the Congress. (The waiting period is 10 days, unless notification is by electronic means, in which case it is seven days.)

This proposal would continue to allow the Secretary to waive the long-term base restriction in Afghanistan, as Contingency Construction Authority is not authorized at installations where the United States is reasonably expected to have a long-term presence. However, from an operational standpoint, whether the United States intends to have a long-term presence at key locations does not preclude the emergence of critical, urgent operational capability requirements at these locations; thus, the Department needs the proposed waiver authority.

Budget Implications: This proposal would authorize the Secretary of Defense to use funds already appropriated for operation and maintenance for construction to meet temporary operational requirements.

Changes to Existing Law: This proposal would make the following changes to section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1723), as previously amended by section 2810 of the Military Construction Authorization Act for Fiscal Year 2005 (division B of Public Law 108–375; 118 Stat. 2128), section 2809 of the Military Construction Authorization Act for Fiscal Year 2006 (division B of Public Law 109–163; 119 Stat. 3508), section 2802 of the Military Construction Authorization

Act for Fiscal Year 2007 (division B of Public Law 109–364; 120 Stat. 2466), section 2801 of the Military Construction Authorization Act for Fiscal Year 2008 (division B of Public Law 110-181; 122 Stat. 538), section 2806 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110-417; 122 Stat. 4724), section 2806 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111-84; 123 Stat. 2660), and section 2804 of the Military Construction Authorization Act for Fiscal Year 2011 (division B of Public Law 111-383; 124 Stat. 4459):

SEC. 2808. TEMPORARY, LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS OUTSIDE THE UNITED STATES.

(a) TEMPORARY AUTHORITY.—The Secretary of Defense may obligate appropriated funds available for operation and maintenance to carry out a construction project inside the area of responsibility of the United States Central Command or the area of responsibility and area of interest of Combined Joint Task Force-Horn of Africa that the Secretary determines meets each of the following conditions:

(1) The construction is necessary to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of a declaration of war, the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621), or a contingency operation.

(2) The construction is not carried out at a military installation where the United States is reasonably expected to have a long-term presence, unless the military installation is located in Afghanistan, for which projects using this authority may be carried out at installations deemed as supporting a long-term presence.

(3) The United States has no intention of using the construction after the operational requirements have been satisfied.

(4) The level of construction is the minimum necessary to meet the temporary operational requirements.

(b) NOTIFICATION OF OBLIGATION OF FUNDS.—Before using appropriated funds available for operation and maintenance to carry out a construction project outside the United States that has an estimated cost in excess of the amounts authorized for unspecified minor military construction projects under section 2805(c) of title 10, United States Code, the Secretary of Defense shall submit to the congressional committees specified in subsection (f) a notice regarding the construction project. The project may be carried out only after the end of the 10-day period beginning on the date the notice is received by the committees or, if earlier, the end of the 7-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of title 10, United States Code. The notice shall include the following:

(1) Certification that the conditions specified in subsection (a) are satisfied with regard to the construction project.

(2) A description of the purpose for which appropriated funds available for operation and maintenance are being obligated.

(3) All relevant documentation detailing the construction project.

(4) An estimate of the total amount obligated for the construction.

(c) ANNUAL LIMITATION ON USE OF AUTHORITY.—(1) The total cost of the construction projects carried out under the authority of this section using, in whole or in part, appropriated funds available for operation and maintenance shall not exceed $200,000,000 in a fiscal year.

(2) If the Secretary of Defense certifies to the congressional defense committees that additional construction in Afghanistan is required to meet urgent military requirements in Afghanistan, up to an additional $100,000,000 in funds available for operation and maintenance for ~~fiscal year 2011~~ fiscal year 2012 may be used in Afghanistan subject to the notification requirements under subsection (b). Under no circumstances shall the total appropriated funds available from operation and maintenance for that fiscal year exceed $300,000,000.

(3) Notwithstanding paragraph (1), the Secretary of Defense may authorize the obligation under this section of not more than an additional $10,000,000 of appropriated funds available for operation and maintenance for a fiscal year if the Secretary determines that the additional funds are needed for costs associated with contract closeouts. Funds obligated under this paragraph are not subject to the limitation in the second sentence of paragraph (2).

(d) QUARTERLY REPORT.—(1) Not later than 45 days after the end of each fiscal-year quarter during which appropriated funds available for operation and maintenance are obligated or expended to carry out construction projects outside the United States, the Secretary of Defense shall submit to the congressional committees specified in subsection (f) a report on the worldwide obligation and expenditure during that quarter of appropriated funds for such construction projects.

(2) The ability to use this section as authority during a fiscal year to obligate appropriated funds available for operation and maintenance to carry out construction projects outside the United States shall commence for that fiscal year only after the date on which the Secretary of Defense submits to the congressional committees specified in subsection (f) all of the quarterly reports that were required under paragraph (1) for the preceding fiscal year.

(e) RELATION TO OTHER AUTHORITIES.—The temporary authority provided by this section, and the limited authority provided by section 2805(c) of title 10, United States Code, to use appropriated funds available for operation and maintenance to carry out a construction project are the only authorities available to the Secretary of Defense and the Secretaries of the military departments to use appropriated funds available for operation and maintenance to carry out construction projects.

(f) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in this section are the following:

(1) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the Senate.

(2) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the House of Representatives.

(g) EFFECT OF FAILURE TO SUBMIT ~~QUARTERLY REPORTS OR~~ PROJECT NOTIFICATIONS.—If ~~the report for a fiscal-year quarter under subsection (d) or~~ the advance notice of the proposed obligation of funds for a construction project required by subsection (b) is not submitted to the congressional committees specified in subsection (f) by the required date, appropriated funds available for operation and maintenance may not be obligated or expended after that date under the authority of this section to carry out construction projects outside the United States until the date on which the ~~report or~~ notice is finally submitted.

(h) EXPIRATION OF AUTHORITY.—The authority to obligate funds under this section expires on the later of—

(1) ~~September 30, 2011~~ September 30, 2012; or

(2) the date of the enactment of an Act authorizing funds for military construction for ~~fiscal year 2012~~ fiscal year 2013.

(i) DEFINITIONS.—In this section:

(1) The term "area of responsibility", with respect to the Combined Joint Task Force-Horn of Africa, is Kenya, Somalia, Ethiopia, Sudan, Eritrea, Djibouti, and Seychelles.

(2) The term "area of interest", with respect to the Combined Joint Task Force-Horn of Africa, is Yemen, Tanzania, Mauritius, Madagascar, Mozambique, Burundi, Rwanda, Comoros, Chad, the Democratic Republic of Congo, and Uganda.