SEC. 1012. MANAGEMENT OF DEPARTMENT OF DEFENSE INSTALLATIONS.

(a) SECRETARY OF DEFENSE AUTHORITY. —Chapter 159 of title 10, United States Code, is amended by inserting after section 2671 the following new section:

"§ 2672. Protection of property

"(a) IN GENERAL.—The Secretary of Defense shall protect the buildings, grounds, and property that are under the jurisdiction, custody, or control of the Department of Defense and the persons on that property.

"(b) OFFICERS AND AGENTS.—

"(1) DESIGNATION. —The Secretary may designate military or civilian personnel of the Department of Defense as officers and agents to perform the functions of the Secretary under subsection (a), including, with regard to civilian officers and agents, duty in areas outside the property specified in that subsection to the extent necessary to protect that property and persons on that property.

"(2) POWERS.—Subject to subsection (f), while engaged in the performance of official duties pursuant to this section, an officer or agent designated under this subsection may—

"(A) enforce Federal laws and regulations for the protection of persons and property;

"(B) carry firearms;

"(C) make arrests—

"(i) without a warrant for any offense against the United States committed in the presence of the officer or agent; or

"(ii) for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(D) serve warrants and subpoenas issued under the authority of the United States; and

"(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property under the jurisdiction, custody, or control of the Department of Defense or persons on such property.

"(c) REGULATIONS.—

"(1) IN GENERAL.—The Secretary may prescribe regulations, including traffic regulations, necessary for the protection and administration of property under the jurisdiction, custody, or control of the Department of Defense and persons on that property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property to which they apply.

"(2) PENALTIES. —A person violating a regulation prescribed under this subsection shall be fined under title 18, imprisoned for not more than 30 days, or both.

"(d) FACILITIES AND SERVICES OF OTHER AGENCIES.—In implementing this section, when the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, tribal, and local law enforcement agencies, with the consent of those agencies, and may reimburse those agencies for the use of their facilities and services.

"(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—For the protection of property under the jurisdiction, custody, or control of the Department of Defense and persons on that property, the Secretary may enter into agreements with Federal agencies and with State, tribal, and local governments to obtain authority for civilian officers and agents designated under this section to enforce Federal laws and State, tribal, and local laws concurrently with other Federal law enforcement officers and with State, tribal, and local law enforcement officers.

"(f) ATTORNEY GENERAL APPROVAL.—The powers granted pursuant to subsection (b)(2) to officers and agents designated under subsection (b)(1) shall be exercised in accordance with guidelines approved by the Attorney General.

"(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

"(1) preclude or limit the authority of any Federal law enforcement agency;

"(2) restrict the authority of the Secretary of Homeland Security or of the Administrator of General Services to promulgate regulations affecting property under the custody and control of that Secretary or the Administrator, respectively;

"(3) expand or limit section 21 of the Internal Security Act of 1950 (50 U.S.C. 797);

"(4) affect chapter 47 of this title; or

"(5) restrict any other authority of the Secretary of Defense or the Secretary of a military department.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2671 the following new item:

"2672. Protection of property.".

Section-by-Section Analysis

This proposal would provide the Secretary of Defense with the same general powers and authorities currently provided to the Secretary of Homeland Security in section 1315 of title 40, United States Code, which would allow the Secretary of Defense to establish regulations that are enforceable by criminal penalties.

The proposal would add new section 2672 to chapter 159 of title 10, United States Code (U.S.C.). Subsection (a) of section 2672 would provide that the Secretary shall protect the property under the jurisdiction, custody, or control of the Department of Defense (DoD).

Subsection (b) would provide that the Secretary may appoint civilian or military personnel of the DoD to perform the functions of the Secretary under subsection (a). Such functions, when off an installation, could only be performed by civilian law enforcement agents. It also would provide that the appointed personnel will have the general powers of law enforcement agents.

Subsection (c) would provide that the Secretary may prescribe regulations providing for the administration and protection of the property and that such regulations may include penalties as provided in title 18, United States Code.

Subsection (d) would provide that the Secretary may, with their consent, utilize the facilities and services of other Federal and State, tribal, and local law enforcement agencies and reimburse them for the use of such facilities and services.

Subsection (e) would provide that the Secretary may enter into agreements with other Federal agencies and State, tribal, and local governments to allow DoD civilian personnel to enforce the laws of those entities, i.e., to be deputized.

Subsection (f) would provide that the powers of the officers and agents appointed by the Secretary will be exercised in accordance with guidelines approved by the Attorney General.

Subsection (g) would provide that the section will not conflict with the existing authorities of other Federal law enforcement organizations, the authority of the Secretary of Homeland Security or of the Administrator of General Services with regard to property under the Secretary's or the Administrator's jurisdiction, section 21 of the Internal Security Act of 1950, the Uniform Code of Military Justice, or other authority of the Secretary of Defense or of a military department.

In 2002, Congress amended section 1315 of title 40, U.S.C. (in section 1706(b) of the Homeland Security Act of 2002 (Pub. L. 107-296)) to transfer the responsibility for protecting Federal property from the Administrator of General Services to the Secretary of Homeland Security. Previously, section 1315 only applied to property under the jurisdiction of the Administrator, which, by definition, did not include DoD property.

That distinction was eliminated in 2002 and the Secretary of Homeland Security was given responsibility for all Federal property, regardless of administrative jurisdiction. The Department of Homeland Security (DHS) has not exercised this authority on DoD installations, nor has it any intention of doing so. It views protection of DoD property as DoD's responsibility, and DHS is not funded to provide such a massive level of support to DoD. Nor does there appear to be any desire within DoD to turn over law enforcement on its installations to DHS.

When section 1315 was amended, a special provision that gave criminal effect to DoD traffic regulations was eliminated. The changes to section 1315 do not appear to have intended the consequences they have created.

Correcting the legal underpinning of DoD's traffic regulations is but one element of a broader gap in DoD law enforcement authority (the current memorandum of understanding with DHS probably cannot be fixed to solve this problem because the underlying authority for it was removed from section 1315). As a specific example, a current major issue centers on our lack of jurisdiction over a growing population of non-DoD affiliated civilians living in privatized housing on our installations. Traditionally, this lack of jurisdiction would be covered by support from local civilian law enforcement or, in the case of exclusive jurisdiction property, Federal law enforcement officers (e.g., the Marshal's Service or the Federal Bureau of Investigation). In today's climate of constrained resources, the norm has become a lack of support from civilian law enforcement agencies, as they are tied up with their own jurisdiction and missions and do not or cannot respond to DoD's need for support. Without the ability to create regulations with criminal penalties, this leaves DoD with the option to bar a non-DoD affiliated civilian tenant from the installation (an eviction), but leaves the criminal act that caused that bar unaddressed. This proposal would correct that deficiency.

Other jurisdictional issues include installations in remote areas with no close adjoining civilian law enforcement agency; DoD-leased facilities off of DoD installations; and enforcement of federal and state conservation laws on DoD installations. Problems have surfaced where DoD's lack of law enforcement authority has caused DoD civilian law enforcement personnel to seek deputization from outside agencies (e.g., local law enforcement agencies, Federal Marshals Service). DoD law enforcement organizations should not have to "shop" from non-DoD agencies for enforcement authority necessary to carry out their required duties. This proposal would allow the Secretary of Defense to confer the appropriate authorities on DoD law enforcement agencies for the performance of their mission.

This proposal does not affect how offenses against the United States would be prosecuted. Prosecutions would continue to be performed by the United States Attorney's Office, or, for those installations having a Federal Magistrates Program, in U.S. Magistrate's Court on the installation and by DoD attorneys designated for this purpose as Special Assistant United States Attorneys by the local United States Attorney.

In summary, this proposed legislation would correct two major defects: the current lack of statutory authority to promulgate regulations enforceable with criminal penalties on DoD installations, and the need for explicit law enforcement authority. This lack of authority is not an anticipated problem; it currently exists. The security of DoD installations is at risk due to the

lack of proper statutory law enforcement authority. It is long overdue for DoD to have explicit authority to enforce the laws on DoD installations.

Similar authority has already been conferred on the Secretary of Defense with regard to the Pentagon Reservation and facilities in the National Capital Region by section 2674 of title 10, U.S.C. This new authority would not apply in those locations currently under the protection of the Federal Protective Service, e.g., office buildings provided by the General Services Administration in which DoD organizations are tenants.

Budget Implications: This proposal has no discernable budget implications. It creates no new organizational structure and requires no new personnel; rather, it would ensure existing DoD law enforcement organizations have the necessary authorities to perform their existing missions.

RESOURCE REQUIREMENTS								
	FY 2012	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
USA	$5K	$5K	$5K	$5K	$5K	O&M	BA 01	131
USN	$5K	$5K	$5K	$5K	$5K	O&M	BA 01	BSS1
USAF	$5K	$5K	$5K	$5K	$5K	O&M	BA 01	011Z
USMC	$5K	$5K	$5K	$5K	$5K	O&M	BA 01	BSS1

Changes to Existing Law: This proposal would amend chapter 159 of title 10, United States Code, by inserting a new section 2672, shown in full in the legislative text.