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

(a) EXTENSION OF AUTHORITY.—Subsection (h) of 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 2806 of the Military Construction Authorization Act for Fiscal Year 2015 (division B of Public Law 113-291; 128 Stat. XXXX), is amended—

(1) in paragraph (1), by striking "December 31, 2015" and inserting "December 31, 2016"; and

(2) in paragraph (2), by striking "fiscal year 2016" and inserting "fiscal year 2017".

(b) LIMITATION ON USE OF AUTHORITY.—Subsection (c)(1) of such section is amended—

(1) by striking "October 1, 2014" and inserting "October 1, 2015";

(2) by striking "December 31, 2015" and inserting "December 31, 2016"; and

(3) by striking "fiscal year 2016" and inserting "fiscal year 2017".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would provide continued authority for the Secretary of Defense to use operation and maintenance (O&M) funds for construction to meet temporary operational requirements during a time of declared war, national emergency, or contingency operation through December 31, 2016, or until an Act authorizing military construction funds for fiscal year (FY) 2017 is enacted, for projects in the United States Central Command (USCENTCOM) and parts of the United States Africa Command (USAFRICOM) areas of responsibility (AOR). The annual cap for this authority is currently $100,000,000; the Secretary of Defense may authorize obligation of up to an additional $10,000,000 if needed for contract closeout costs.

When directed by the President or the Secretary of Defense, U.S. forces must be able to operate quickly and effectively from remote and undeveloped or underdeveloped locations in support of national emergencies and contingency operations.

Extension of this authority would enable DoD to provide basic facilities and infrastructure to meet urgent military operational requirements months and years ahead of the regular annual authorization and appropriation process for construction projects. Crucially, this authority allows DoD to perform construction at locations over which it may be difficult or unable to expediently receive the operational control and supporting agreements from the host nation necessary to perform military construction.

It was only through this authority that USAFRICOM was able to maintain a critical capability to conduct remotely piloted aircraft (RPA) operations from Djibouti in support of USAFRICOM and USCENTCOM operations. The Department's ability to respond quickly to urgent, temporary requirements for a contingency operation depends on contingency construction authority (CCA). Thus, when the host nation directed that RPA operations at Djibouti's Ambouli International Airport stop, the Department was able to use CCA to make repairs quickly to the road between Camp Lemonnier and Chabelley Airfield and to construct the airfield support facilities and improvements necessary to support continued RPA operations. This would not have been possible using traditional military construction authorities and timelines.

The Department recognizes that CCA is a focused authority limited to the criteria provided in the legislation, and has instituted the necessary oversight to ensure construction proposals adequately meet the this criteria. At those locations where DoD expects to conduct activities of an enduring nature (unrelated to a contingency, national emergency, or a declaration of war), the Department would use its existing authorities, processes, and mechanisms to procure military construction funds overseas.

This proposal would retain the current requirement to provide notice to Congress prior to the use of funds appropriated for O&M under the conditions set forth in subsection (a) of section 2808 of the Military Construction Authorization Act for FY 2004. In addition, the Department of Defense would not be able to proceed with these projects until after a waiting period following the delivery of the written notice to Congress.

This proposal would continue to allow the Secretary to utilize CCA in Afghanistan, even though CCA generally is not authorized at installations where the United States is reasonably expected to have a long-term presence. As a result, from an operational standpoint, if the United States intends to have a long-term presence at key locations in Afghanistan, the proposal does not preclude the emergence of critical, urgent operational capability requirements at these locations. USCENTCOM needs to retain the flexibility that CCA provides across Afghanistan, including use at long-term presence locations.

Budgetary Implications: This proposal would authorize the Secretary of Defense to use authorized and appropriated O&M funds for construction to meet temporary operational requirements when all necessary pre-requisites for this authority are met. It requires no

additional appropriation of funds. It results in no savings. It is merely an extension of a current, expiring authority. A budget table is inapplicable and has not been provided.

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 amended:

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, inside the area of responsibility of the United States Central Command or certain countries in the area of responsibility of the United States Africa Command, a construction project 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 $100,000,000 between October

1, ~~2014~~ 2015, and the earlier of December 31, ~~2015~~ 2016, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year ~~2016~~ 2017.

(2) 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.

(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 PROJECT NOTIFICATIONS.—If 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 notice is finally submitted.

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

(1) December 31, ~~2015~~ 2016, or

(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year ~~2016~~ 2017.

(i) CERTAIN COUNTRIES IN THE AREA OF RESPONSIBILITY OF UNITED STATES AFRICA COMMAND DEFINED.—In this section, the term "certain countries in the area of responsibility of the United States Africa Command" means Kenya, Somalia, Ethiopia, Djibouti, Seychelles, Burundi, and Uganda.