SEC. 1205. TRANSFER OF AND REVISION TO AUTHORITY TO PROVIDE OPERATIONAL SUPPORT TO FORCES OF FRIENDLY FOREIGN COUNTRIES.

(a) IN GENERAL.—Section 127d of title 10, United States Code, is transferred to chapter 16 of such title, as added by section 1201(a)(3), inserted after the table of sections at the beginning of subchapter IV, redesignated as section 331, and amended to read as follows:

"§331. Friendly foreign countries: authority to provide support for conduct of operations

"(a) AUTHORITY.—The Secretary of Defense may provide support to friendly foreign countries in connection with the conduct of operations.

"(b) TYPES OF SUPPORT AUTHORIZED.—The types of support that may be provided under the authority in subsection (a) are the following:

"(1) Logistic support, supplies, and services to security forces of a friendly foreign country participating in—

"(A) an operation with the armed forces under the jurisdiction of the Secretary of Defense; or

"(B) a military or stability operation that benefits the national security interests of the United States.

"(2) Logistic support, supplies, and services—

"(A) to military forces of a friendly foreign country solely for the purpose of enhancing the interoperability of the logistical support systems of military forces participating in a combined operation with the United States in order to facilitate such operation; or

"(B) to a nonmilitary logistics, security, or similar agency of a friendly foreign government if such provision would directly benefit the armed forces under the jurisdiction of the Secretary of Defense.

"(3) Procurement of equipment for the purpose of the loan of such equipment to the military forces of a friendly foreign country participating in a United States-supported coalition or combined operation and the loan of such equipment to those forces to enhance capabilities or to increase interoperability with the armed forces under the jurisdiction of the Secretary of Defense and other coalition partners.

"(4) Small-scale construction to support military forces of a friendly foreign country participating in a United States-supported coalition or combined operation when the construction is directly linked to the ability of such forces to participate in such operation effectively.

"(c) CERTIFICATION REQUIRED.—

"(1) OPERATIONS IN WHICH THE UNITED STATES IS NOT PARTICIPATING.—The Secretary of Defense may provide support under subsection (a) to a friendly foreign country with respect to an operation in which the United States is not participating only—

"(A) if the Secretary of Defense and the Secretary of State jointly certify to Congress that the operation is in the national security interests of the United States; and

"(B) after the expiration of the 15-day period beginning on the date of such certification.

"(2) ACCOMPANYING REPORT.—Any certification under paragraph (1) shall be accompanied by a report that includes the following:

"(A) A description of the operation, including the geographic area of the operation.

"(B) A list of participating countries.

"(C) A description of the national security interests of the United States supported by the operation.

"(d) SECRETARY OF STATE CONCURRENCE. —The provision of support under subsection (a) may be made only with the concurrence of the Secretary of State.

"(e) SUPPORT OTHERWISE PROHIBITED BY LAW.—The Secretary of Defense may not use the authority in subsection (a) to provide any type of support described in subsection (b) that is otherwise prohibited by any provision of law.

"(f) LIMITATIONS ON VALUE.—

"(1) The aggregate value of all logistic support, supplies, services, and small-scale construction provided under subsections (b)(1) and (b)(4) in any fiscal year may not exceed $550,000,000.

"(2) The aggregate value of all logistic support, supplies, and services provided under subsection (b)(2) in any fiscal year may not exceed $5,000,000.

"(g) DEFINITION.—In this section, the term 'logistic support, supplies, and services' has the meaning given that term in section 2350(1) of this title.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of such title is amended by striking the item relating to section 127d.

Section-by-Section Analysis

This proposal would consolidate in one section, in a new chapter devoted to security cooperation authorities, multiple existing codified (10 U.S.C. 127d) and temporary authorities (section 1234 of the National Defense Authorization Act [NDAA] for Fiscal Year (FY) 2008 (P.L. 110-181), as amended) relating to the provision of operational support to partners and allies

engaged in combined operations with the United States Armed Forces or in military operations that directly support U.S. national security interests.

This proposal is part of a package of security cooperation authorities reform proposals intended to consolidate and simplify Title 10 security cooperation authorities as part of a new Chapter 16 in Title 10.

Existing authorities allow for the provision of logistics support, supplies, and services, as well as equipment loans, to partners and allies. The intent of this legislative proposal remains the same as that of the existing legislation – to encourage and leverage contributions of allies and partners in operations that advance U.S. national security objectives, and to facilitate safe, effective, and efficient interoperability with U.S. forces during combined operations. The authority provided under this proposal is not intended to build partner capacity; rather, it is intended solely to provide logistical and related operational support during specified operations. Other existing authorities, such as Foreign Military Financing (22 U.S.C. 2763) or the Global Train and Equip program (10 U.S.C. 2282), provide tools for building partner capacity where appropriate.

The consolidation achieved through this legislative proposal would enable the Department of Defense (DoD) to respond more rapidly to partner operational shortfalls during time-sensitive military operations. Specifically, this proposed legislation would authorize: 1) support to all potential allies and partners rather than only undeveloped partners; 2) small-scale construction; and 3) support to countries engaged in operations that directly support United States national security interests, but that the United States is not otherwise participating in. As an example, this proposed legislation would allow for the United States to airlift French forces to conduct counterterrorism operations where the United States is otherwise not participating in the operation (points 1 and 3). As another example, the proposed legislation would allow for construction of expeditionary hangars for aircraft of a new NATO partner operating out of an expeditionary location in a third country to conduct counter-ISIL missions (point 2).

Finally, current operational support authorities are often confined to specific regions or specific partners. For example, Section 1234 limits use of logistics support to “Iraq;” therefore, aerial refueling support to a European ally based outside the Iraq area of responsibility flying F-16 missions against targets in the Middle East (e.g., Syria), but not necessarily supporting Iraq, would not be authorized under Section 1234. The proposed legislation would address this shortfall by authorizing support according to specified operations, rather than specified regions or partners.

DoD and U.S. Government strategies increasingly seek to share global security burdens by working with and through partner security forces to address regional security challenges without requiring substantial U.S. investment. A vexing challenge in security cooperation is providing support to allies or partners that enables them to make good on the political decision to participate in a combined operation with the United States or a coalition that directly supports U.S. national security interests. Planners must cobble together a variety of authorities and programs to help provide training and protective equipment, enable participation in preparatory exercises, ensure interoperability, transport units to theater, sustain them in combat, and redeploy

them after their mission has ended. However, these investments are often critical in enabling partners to reduce operational burdens on U.S. forces.

The proposal to make these authorities both permanent and globally applicable is an expansion of current authorities that DoD does not take lightly. The flexibility inherent in a broader authority would permit DoD to respond more rapidly to contingencies and emergencies, without requiring new, operation-specific legislation each time a contingency arises. However, the proposal does not intend to establish an unconstrained authority; instead, it limits the authority's applicability solely to those operations determined to be in national security interests of the United States. The proposal establishes a dual certification requirement for both the Secretaries of Defense and State to certify that proposed support to an operation or coalition in which U.S. forces are not participating is in the national security interest of the United States. This certification process ensures that any such operational support is provided in accordance with U.S. foreign policy, and provides opportunity for Congress to exercise its oversight responsibilities and seek additional information about any proposed support.

Funding caps are derived from existing legislation. 10 U.S.C. 127d provides for an annual funding cap of $100 million and Section 1234 provides for an annual funding cap of $450 million. Therefore, this proposed legislation combines these two values at $550 million and incorporates the logistics support, supplies, and services that Sections 127d and 1234 allowed for, in addition to any small-scale construction that might be provided. This proposed legislation does not cap the purchase of equipment for loan to allies and partners.

Although this proposed legislation removes the requirement for annual reporting as part of this authority, the support that is provided will be reported under a consolidated annual reporting requirement in a companion legislative proposal.

Budget Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded within the FY2017 President's Budget. This proposal is comprised of both 10 U.S.C. 127d (Global lift and sustain) and FY08 NDAA 1234 (Afghanistan and Iraq lift and sustain)

For 10 U.S.C. 127d: The Army programs a small amount over the FYDP for this effort. The Defense Security Cooperation Agency (DSCA) programs for the following year only. For FY08 NDAA Section 1234: DSCA plans to use up to $450 million. The resources reflected in the table below are funded within the FY 2017 President's Base and Overseas Contingency Operation Budget.

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Defense	300.0	0	0	0	0	Operation and Maintenance, Defense-Wide OCO	04	4GTD	1002200T
Army	3.5	3.9	3.9	4.1	4.2	Operation and Maintenance, Army	01	121	0202214A
Navy	Navy does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Navy.								
USAF	Air Force does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Air Force.								

Changes to Existing Law: This section would transfer section 127d of title 10, United States Code, to the proposed new chapter 16 and would amend it to read as shown in the legislative text above.

The current text of 10 U.S.C. 127d, to be replaced by the revision above, is as follows:

TITLE 10, UNITED STATES CODE

~~§ 127d. Allied forces participating in combined operations: authority to provide logistic support, supplies, and services~~

~~(a) AUTHORITY.—(1) Subject to subsections (b) and (c), the Secretary of Defense may provide logistic support, supplies, and services to allied forces participating in a combined operation with the armed forces of the United States.~~

~~(2) In addition to any logistic support, supplies, and services provided under paragraph (1), the Secretary may provide logistic support, supplies, and services to allied forces solely for the purpose of enhancing the interoperability of the logistical support systems of military forces participating in combined operations with the United States in order to facilitate such operations. Such logistic support, supplies, and services may also be provided under this paragraph to a nonmilitary logistics, security, or similar agency of an allied government if such provision would directly benefit the armed forces of the United States.~~

~~(3) Provision of support, supplies, and services pursuant to paragraph (1) or (2) may be made only with the concurrence of the Secretary of State.~~

~~(b) LIMITATIONS.—(1) The authority provided by subsection (a)(1) may be used only in accordance with the Arms Export Control Act and other export control laws of the United States.~~

~~(2) The authority provided by subsection (a)(1) may be used only for a combined operation—~~

~~(A) that is carried out during active hostilities or as part of a contingency operation or a noncombat operation (including an operation in support of the provision of humanitarian or foreign disaster assistance, a country stabilization operation, or a~~

~~peacekeeping operation under chapter VI or VII of the Charter of the United Nations); and~~

~~(B) in a case in which the Secretary of Defense determines that the allied forces to be provided logistic support, supplies, and services—~~

~~(i) are essential to the success of the combined operation; and~~

~~(ii) would not be able to participate in the combined operation but for the provision of such logistic support, supplies, services by the Secretary.~~

~~(c) LIMITATIONS ON VALUE.—(1) The value of logistic support, supplies, and services provided under subsection (a)(1) in any fiscal year may not exceed $100,000,000.~~

~~(2) The value of the logistic support, supplies, and services provided under subsection (a)(2) in any fiscal year may not exceed $5,000,000.~~

~~(d) ANNUAL REPORT.—(1) Not later than December 31 each year, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives a report on the use of the authority provided by subsection (a) during the preceding fiscal year.~~

~~(2) Each report under paragraph (1) shall be prepared in coordination with the Secretary of State.~~

~~(3) Each report under paragraph (1) shall include, for the fiscal year covered by the report, the following:~~

~~(A) Each nation provided logistic support, supplies, and services through the use of the authority provided by subsection (a).~~

~~(B) For each such nation, a description of the type and value of logistic support, supplies, and services so provided.~~

~~(e) DEFINITION.—In this section, the term "logistic support, supplies, and services" has the meaning given that term in section 2350 (1) of this title.~~