SEC. 1207. TRANSFER AND REVISION OF AUTHORITY TO BUILD THE CAPACITY OF FOREIGN SECURITY FORCES.

(a) TRANSFER AND REDESIGNATION.—Section 2282 of title 10, United States Code, is transferred to chapter 16 of title 10, United States Code, as added by section 1201(a)(3), inserted after section 331, as transferred and redesignated by section 1205, and redesignated as section 332.

(b) REVISIONS.—Section 332 of title 10, United States Code, as transferred and redesignated by subsection (a), is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

"(4) To sustain the capacities built—

"(A) under paragraphs (1) through (3); or

"(B) under section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), as that section was in effect before being repealed by section 1205(c) of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3536).";

(2) in subsection (b)(1), by inserting "sustainment," after "defense services,";

(3) in subsection (c)—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (1) and inserting before the period at the end of that paragraph the following: ", except that reporting, notification and spend plan requirements shall not be considered prohibitions for purposes of this section or comparable provisions of law";

(C) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively;

(D) in subparagraph (A) of paragraph (3), as so redesignated, by striking "but end in the next fiscal year" and inserting "but end no later than the third fiscal year thereafter"; and

(E) in subparagraph (A) of paragraph (4), as so redesignated, by striking "$750,000" and inserting "the amount specified in section 301(2) of this title";

(4) by striking "military" after "small-scale" each place it appears (including in the heading of paragraph (4) of subsection (c)); and

(5) by striking subsection (g).

(c) SECTION HEADING.—The heading of such section is amended to read as follows:

"§ 332. Foreign security forces: authority to build capacity".

(d) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 136 of such title is amended by striking the item relating to section 2282.

Section-by-Section Analysis

This proposal would amend 10 U.S.C. 2282, "Authority to build the capacity of foreign security forces," to enable the sustainment of the capabilities and capacity developed through this and predecessor authorities, and to improve the effectiveness of planning and execution by allowing funds obligated in the initial year to be executed in subsequent years.

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.

10 U.S.C. 2282 is derived from Section 1206 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006 (P.L. 109-163). A Senate report accompanying the NDAA for FY 2012 reiterated that the Section 1206 authority "was not intended to duplicate or substitute for other foreign military assistance authorities, nor to sustain previous Section 1206 programs over multiple years." Subsequent revisions of Section 1206, including the codification of 1206 as 10 U.S. C. 2282, have changed the nature of the original authority to include authority to expend resources over multiple years. Congressional communications have encouraged the Department of Defense (DoD) to sustain equipment purchased through Sections 1206 and 10

U.S.C. 2282 more effectively by specifically applying 10 U.S.C. 2282 resources to sustainment. However, due to the NDAA for FY 2006 Senate Committee Report language, DoD's legal interpretation has prevented application of 10 U.S.C. 2282 resources in support of sustainment.

The inability to use 10 U.S.C. 2282 funds for sustainment is creating an unsustainable burden on Foreign Military Financing (FMF) and reduces the State Department's ability to use FMF strategically to achieve foreign policy or diplomatic objectives as more and more FMF is allocated to sustain equipment purchased through Section 1206 and 10 U.S.C. 2282. Moreover, absent FMF funding, investments made through Section 1206 and 10 U.S.C. 2282 are at risk of disrepair, misuse, and ultimately inoperability because partner nations often lack the capability to sustain such investments themselves. The proposal limits sustainment to that equipment purchased through Sections 1206 or 2282.

10 U.S.C. 2282 currently permits funds obligated in one year to be expended in the next year. Proposed changes would permit funds obligated in the first year to be expended across three years. This modification would improve planning effectiveness and decrease pressure on implementers to expend funds to meet fiscal year deadlines at the expense of program effectiveness.

The proposal makes a technical fix by removing the qualifier "military" from the authority to provide small scale construction, for the sake of consistency with other security cooperation authorities in Title 10. Further, the proposal relocates the cap of $750,000 on small scale construction from within the section to the beginning of the new Title 10, Chapter 16 on Security Cooperation. The cap amount is not changed by this proposal. Establishing the cap for all small scale construction related to security cooperation in one place (the definitions section) will simplify future adjustments of the cap. Changing the cap in the definition will apply to all of the sections where small scale construction is authorized.

The proposal removes subsection (c)(1) that limits the funding to those amounts specifically appropriated for Section 2282. Under a continuing resolution, the Department is unable to fund counterterrorism activities through the 2282 program. This change permits the Section 2282 program to continue operating in the event of a continuing resolution.

The definition of appropriate committees will be located in a new Section 301 in Chapter 16 of Title 10 and will be applicable to all security cooperation authorities in the chapter.

Budget Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded within the FY 2017 President's Budget. Of the amounts programmed below, up to $70 million per year will be available for sustainment items or equipment purchased through Section 2282 or Section 1206.

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
	270.2	347.2	347.2	347.2	350.0	Operation and Maintenance, Defense-wide	01	4GTD	1002200T

Changes to Existing Law: This proposal would transfer section 2282 of title 10, United States Code, to the proposed new chapter 16 of that title, redesignate it as section 332, and amend it as follows:

~~§2282. Authority to build the capacity of foreign security forces~~
§332. Foreign security forces: authority to build capacity

(a) AUTHORITY.—The Secretary of Defense, with the concurrence of the Secretary of State, is authorized to conduct or support a program or programs as follows:

(1) To build the capacity of a foreign country's national military forces in order for that country to-

(A) conduct counterterrorism operations; or

(B) participate in or support on-going allied or coalition military or stability operations that benefit the national security interests of the United States.

(2) To build the capacity of a foreign country's national maritime or border security forces to support counterterrorism operations.

(3) To build the capacity of a foreign country's national-level security forces that have among their functional responsibilities a counterterrorism mission in order for such forces to conduct counterterrorism operations.

(4) To sustain the capacities built—

(A) under paragraphs (1) through (3); or

(B) under section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), as that section was in effect before being repealed by section 1205(c) of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3536).

(b) TYPES OF CAPACITY BUILDING.—

(1) AUTHORIZED ELEMENTS.—A program under subsection (a) may include the provision of equipment, supplies, training, defense services, sustainment, and small scale ~~military~~ construction.

(2) REQUIRED ELEMENTS.—A program under subsection (a) shall include elements that promote the following:

(A) Observance of and respect for human rights and fundamental freedoms.

(B) Respect for civilian control of the military.

(c) LIMITATIONS.—

~~(1) ANNUAL FUNDING LIMITATION.—The Secretary of Defense may use amounts specifically authorized and appropriated or otherwise made available to carry out programs under this section to carry out programs authorized by subsection (a).~~

~~(2)~~ (1) ASSISTANCE OTHERWISE PROHIBITED BY LAW.—The Secretary of Defense may not use the authority in subsection (a) to provide any type of assistance described in subsection (b) that is otherwise prohibited by any provision of law, except that reporting, notification and spend plan requirements shall not be considered prohibitions for purposes of this section or comparable provisions of law.

~~(3)~~ (2) LIMITATION ON ELIGIBLE COUNTRIES.—The Secretary of Defense may not use the authority in subsection (a) to provide assistance described in subsection (b) to any foreign country that is otherwise prohibited from receiving such type of assistance under any other provision of law.

~~(4)~~ (3) AVAILABILITY OF FUNDS FOR ACTIVITIES ACROSS FISCAL YEARS.—

(A) IN GENERAL.— Amounts made available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in the fiscal year such amounts are made available but end ~~in the next fiscal year~~ no later than the third fiscal year thereafter.

(B) ACHIEVEMENT OF FULL OPERATIONAL CAPABILITY.— If, in accordance with subparagraph (A), equipment is delivered under a program under the authority in subsection (a) in the fiscal year after the fiscal year in which the program begins, amounts for supplies, training, defense services, and small-scale ~~military~~ construction associated with such equipment and necessary to ensure that the recipient unit achieves full operational capability for such equipment may be used in the fiscal year in which the foreign country takes receipt of such equipment and in the next fiscal year.

~~(5)~~ (4) LIMITATIONS ON AVAILABILITY OF FUNDS FOR SMALL-SCALE ~~MILITARY~~ CONSTRUCTION.—

(A) ACTIVITIES UNDER PARTICULAR PROGRAMS.—The amount that may be obligated or expended for small-scale ~~military~~ construction activities under any particular program authorized under subsection (a) may not exceed ~~$750,000~~ the amount specified in section 301(2) of this title.

(B) ACTIVITIES UNDER ALL PROGRAMS.—The amount that may be obligated or expended for small-scale ~~military~~ construction activities during a fiscal year for all programs authorized under subsection (a) during that fiscal year may not exceed up to five percent of the amount made available in such fiscal year to carry out the authority in subsection (a).

(d) FORMULATION AND EXECUTION OF PROGRAM.—The Secretary of Defense and the Secretary of State shall jointly formulate any program under subsection (a). The Secretary of Defense shall coordinate with the Secretary of State in the implementation of any program under subsection (a).

(e) CONGRESSIONAL NOTIFICATION.—

(1) IN GENERAL—Not less than 15 days before initiating activities under a program under subsection (a), the Secretary of Defense shall submit to the appropriate committees of Congress a notice of the following:

(A) The country whose capacity to engage in activities in subsection (a) will be built under the program.

(B) The budget, implementation timeline with milestones, anticipated delivery schedule for assistance, military department responsible for management and associated program executive office, and completion date for the program.

(C) The source and planned expenditure of funds to complete the program.

(D) A description of the arrangements, if any, for the sustainment of the program and the source of funds to support sustainment of the capabilities and performance outcomes achieved under the program beyond its completion date, if applicable.

(E) A description of the program objectives and assessment framework to be used to develop capability and performance metrics associated with operational outcomes for the recipient unit.

(F) Information, including the amount, type, and purpose, on the assistance provided the country during the three preceding fiscal years under each of the following programs, accounts, or activities:

(i) A program under this section.

(ii) The Foreign Military Financing program under the Arms Export Control Act.

(iii) Peacekeeping Operations.

(iv) The International Narcotics Control and Law Enforcement (INCLE) program under section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291).

(v) Nonproliferation, Anti-Terrorism, Demining, and Related Programs (NADR).

(vi) Counterdrug activities authorized by section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note) and section 1033 of the National Defense Authorization Act for Fiscal Year 1998.

(vii) Any other significant program, account, or activity for the provision of security assistance that the Secretary of Defense and the Secretary of State consider appropriate.

(G) An assessment of the capacity of the recipient country to absorb assistance under the program.

(H) An assessment of the manner in which the program fits into the theater security cooperation strategy of the applicable geographic combatant command.

(2) COORDINATION WITH SECRETARY OF STATE.—Any notice under paragraph (1) shall be prepared in coordination with the Secretary of State.

(f) ASSESSMENTS OF PROGRAMS.—Amounts available to conduct or support programs under subsection (a) shall be available to the Secretary of Defense to conduct assessments and determine the effectiveness of such programs in building the operational capacity and performance of the recipient units concerned.

~~(g) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means~~

~~(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and~~

~~(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.~~