



**DEPARTMENT OF DEFENSE  
OFFICE OF GENERAL COUNSEL  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600**

**MAY 19 2009**

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
Washington, DC 20515

Dear Madam Speaker:

The Department of Defense requests that the Congress enact the enclosed legislative proposal as part of the National Defense Authorization Bill for Fiscal Year 2010.

The purpose of the proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presenting of this legislative proposal for your consideration and the consideration of the Congress.

Sincerely,

A handwritten signature in black ink, appearing to be "Jeh Charles Johnson", written over a large, circular scribble.

Jeh Charles Johnson

Enclosure:  
As stated





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MAY 19 2009

The Honorable Joseph Biden  
President of the Senate  
Washington, DC 20510

Dear Mr. President:

The Department of Defense requests that the Congress enact the enclosed legislative proposal as part of the National Defense Authorization Bill for Fiscal Year 2010.

The purpose of the proposal is stated in the accompanying section-by-section analysis.

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

1 (a) EXTENSION OF AUTHORITY.—Subsection (a) of section 2808 of the Military  
2 Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117  
3 Stat. 1723), as most recently amended by section 2806 of the Military Construction  
4 Authorization Act for Fiscal Year 2009 (division B of Public Law 110-417; 112 Stat. 4724), is  
5 amended—

6 (1) in subsection (a), by striking “During fiscal year 2004, and, subject to  
7 subsection (d)(2), fiscal years 2005 through 2009, the Secretary of Defense may use this  
8 section as authority to obligate” and inserting “The Secretary of Defense may obligate”;  
9 and

10 (2) by adding at the end the following new subsection:

11 “(h) EXPIRATION OF AUTHORITY.—The authority to obligate funds under this section  
12 expires on December 31, 2010.”.

13 (b) CLARIFICATION AND REVISION OF OVERALL COST LIMITATION ON USE OF O&M  
14 FUNDS.—Subsection (c) of such section is amended—

15 (1) by striking the last sentence of paragraph (2); and

16 (2) by adding at the end the following new paragraph:

17 “(3) For any fiscal year during which the authority under this section is in effect, from  
18 funds appropriated for operation and maintenance for that fiscal year, the total amount made  
19 available for construction projects under the authority of this section and section 2805(c) of title  
20 10, United States Code, may not exceed \$500,000,000. However, the Secretary of Defense may

1 authorize up to an additional \$25,000,000 for any such fiscal year upon a determination by the  
2 Secretary that such additional funds are needed for costs associated with contract closeouts.”.

3 (c) CLERICAL AND CONFORMING AMENDMENTS.—Such section is further amended—

4 (1) in the section heading, by striking "TEMPORARY,";

5 (2) in the heading for subsection (a), by striking "TEMPORARY";

6 (3) in subsection (e), by striking “temporary” and inserting “limited”; and

7 (4) in subsection (f), by striking “Subcommittees on Defense and Military

8 Construction” both places it appears and inserting “Subcommittee on Defense and the

9 Subcommittee on Military Construction, Veterans Affairs, and Related Agencies”.

### Section-by-Section Analysis

This section would provide the Secretary of Defense with continued authority 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 December 2010. This 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.

This section would retain the current requirement to provide the Congress with notice 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 7-10 day waiting period following the delivery of the pre-notification to the Congress.

This section would permit the Department to exceed the \$500 million cap by up to \$25,000,000 upon a determination by the Secretary of Defense that such additional funds are needed for costs associated with contract closeouts.

This section would continue to allow the Secretary to waive the long-term base restriction in Afghanistan, as Contingency Construction Authority (CCA) 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.

**Changes to Existing Law:** This section 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), and section 2806 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110–417; 122 Stat. 4724):

**SEC. 2808. ~~TEMPORARY, LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS INSIDE THE UNITED STATES CENTRAL COMMAND AND UNITED STATES AFRICA COMMAND AREAS OF RESPONSIBILITY.~~**

(a) ~~TEMPORARY AUTHORITY.—During fiscal year 2004, and, subject to subsection (d)(2), fiscal years 2005 through 2009, the Secretary of Defense may use this section as authority to obligate~~ The Secretary of Defense may obligate appropriated funds available for operation and maintenance to carry out a construction project inside the United States Central Command or the United States Africa Command areas of responsibility 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 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 \$300,000,000 in funds available for operation and maintenance may be used in Afghanistan upon completing the prenotification requirements under subsection (b). ~~Under no circumstances shall the total appropriated funds available from operation and maintenance for fiscal year 2009 exceed \$500,000,000.~~

(3) For any fiscal year during which the authority under this section is in effect, from funds appropriated for operation and maintenance for that fiscal year, the total amount made available for construction projects under the authority of this section and section 2805(c) of title 10, United States Code, may not exceed \$500,000,000. However, the Secretary of Defense may authorize up to an additional \$25,000,000 for any such fiscal year upon a determination by the Secretary that such 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 such 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 limited 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 ~~Subcommittees on Defense and Military Construction~~ 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 ~~Subcommittees on Defense and Military Construction~~ 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 the 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 December 31, 2010.