SEC. 2804. REVISIONS TO MINOR MILITARY CONSTRUCTION AUTHORITIES.

(a) ESTABLISHMENT OF MINOR MILITARY CONSTRUCTION EXCEPTION THRESHOLD.—Subsection (a) of section 2805 of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(3) For purposes of this section, the minor military construction exception threshold is $4,000,000.".

(b) INCREASE IN DOLLAR THRESHOLDS FOR CERTAIN AUTHORITIES RELATING TO UNSPECIFIED MINOR MILITARY CONSTRUCTION.—

(1) MAXIMUM AMOUNT FOR PROJECTS TO CORRECT DEFICIENCIES THAT ARE LIFE-, HEALTH-, OR SAFETY-THREATENING.—Subsection (a)(2) of such section is amended by striking "$3,000,000" in the second sentence and inserting "the minor military construction exception threshold".

(2) MAXIMUM AMOUNT FOR GENERAL RULE FOR PROJECTS FOR WHICH O&M FUNDS MAY BE USED.—Subsection (c) of such section is amended by striking "$750,000" and inserting "$1,000,000".

(3) EXCEPTION AMOUNT FOR SPECIFIED CATEGORIES OF PROJECTS .—Subsection (c) of such section is further amended—

(A) by striking "The Secretary" and inserting "Except as provided in paragraph (2), the Secretary" and

(B) by adding at the end the following new paragraph:

"(2) Notwithstanding the amount specified in paragraph (1), the Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than the minor military

construction exception threshold for projects as follows:

"(A) For a project to enhance the deployment and mobility of military forces and supplies.

"(B) For a project that is necessary to meet military operational requirements involving the use of the armed forces in support of—

"(i) a declaration of war;

"(ii) a declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621); or

"(iii) a contingency operation.

(c) MINIMUM AMOUNT FOR PROJECTS SUBJECT TO SECRETARIAL APPROVAL AND CONGRESSIONAL NOTICE-AND-WAIT.—Subsection (b)(1) of such section is amended by striking "$750,000" and inserting "the amount specified in subsection (c)(1)".

(d) CONFORMING AMENDMENT.—Subsection (b)(1) of such section is amended by striking "made available" in the second sentence and all that follows through "supplies" and inserting "as provided in subsection (c)(2)".

(e) MODIFICATION AND EXTENSION OF AUTHORITY FOR LABORATORY REVITALIZATION PROJECTS.—

(1) MODIFICATION.—Subsection (d) of such section is amended—

(A) in paragraph (1)(A), by striking "not more than $2,000,000" and inserting "not more than $4,000,000, notwithstanding subsection (c)"; and

(B) in paragraph (2), by inserting after "(2)" the following new sentence: "For purposes of this subsection, an unspecified minor military construction

project is a military construction project that (notwithstanding subsection (a)) has an approved cost equal to or less than $4,000,000.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) do not apply to any laboratory revitalization project for which the design phase has been completed as of the date of the enactment of this Act.

Section-by-Section Analysis

Unspecified minor construction (UMC) projects are military construction projects authorized by 10 U.S.C. 2805 that the Department may undertake without specific project authorization from Congress. This proposal consists of four parts that would increase various dollar thresholds for UMC projects and provide additional authority for specific types of UMC projects. This proposal would also streamline the language of section 2805 and improve internal consistency and references.

SUBSECTIONS (a), (b)(1)-(2), AND (c): INCREASE TO GENERAL DOLLAR LIMITS AND THRESHOLDS

This proposal would increase several general UMC dollar limits in accordance with a generally recognized cost index. The National Defense Authorization Act for Fiscal Year (FY) 2008 (Pub. L. 110-181; enacted January 28, 2008), adjusted the basic general UMC threshold from $1.5 to $2.0 million in apparent recognition of construction market escalation since the previous adjustment in 1991. With the National Defense Authorization Act for FY 2012, the provision for life/health/safety projects using Operation and Maintenance (O&M) funding was eliminated. However, the other three UMC thresholds specified in section 2805 have remained unchanged since their last adjustments (in 1996 and 2002), and cost escalation has rendered them obsolete as well. The following table reflects all of the UMC dollar thresholds, the year each was last amended, and the subsequent change in the Bureau of Labor Statistics Consumer Price Index (CPI) as of June 2011.

10 U.S.C. 2805 subsection	current limit	Year last amended	CPI* in year last amended	CPI* June 2011	CPI* % chg	adjusted limit	proposed limit
(a)(2) (1st sentence)	$2,000,000	2008	218.8	225.7	+3%	$2,063,071	no change
(a)(2)(2nd sentence)	$3,000,000	1996	156.7	225.7	+44%	$4,320,996	$4,000,000
(b)(1)	$750,000	2002	179.9	225.7	+25%	$940,939	$1,000,000

(c)	$750,000	2002	179.9	225.7	+25%	$940,939	$1,000,000

*Consumer Price Index for all urban consumers—U.S. average (U.S. Bureau of Labor Statistics)

The CPI has increased 44 percent since 1996 and 25 percent since 2002. Without an associated amendment to the thresholds, this general cost escalation has significantly degraded the Department's ability to correct life/health/safety-threatening deficiencies and to undertake small, urgent projects using Operation and Maintenance funding.

Based upon the increase in the consumer price index as displayed in the above table, this proposal would accomplish the following:

- For unspecified minor construction projects to correct deficiencies that are life/health/safety-threatening authorized in the second sentence of subsection (a)(2) of section 2805, the proposal would increase the project limit from $3,000,000 to $4,000,000.
- For unspecified minor construction projects for which congressional notification is required per subsection (b)(1) of section 2805, the proposal would increase the threshold from $750,000 to $1,000,000.
- For unspecified minor construction projects authorized to be funded with Operation and Maintenance appropriations per subsection (c) of section 2805, the proposal would increase the limit from $750,000 to $1,000,000.

SUBSECTION (e): INCREASE TO LABORATORY REVITALIZATION THRESHOLDS

This proposal would increase one of the UMC dollar thresholds for laboratory projects. Subsection (d) of section 2805, which was passed as part of the FY 2008 Defense Authorization Act, recognized that specialized laboratory and technical facilities have much higher than normal per square foot construction costs. Section 2805(d) provided increased ceilings for certain laboratory construction projects. This amendment would raise the limit for O&M-funded laboratory UMC projects to the same level as that for laboratory UMC projects funded from military construction appropriations, a level that more correctly reflects the cost of research facilities..

This authority is needed because the speed of technological advancement continues to out-pace current military construction programming cycles, leaving a void in the laboratories' ability to achieve and deliver rapid solutions to warfighter needs. Department of Defense laboratories depend on the ability to upgrade facilities and infrastructure quickly provided by this authority to meet emergent mission requirements in support of transformational initiatives requested by the Department of Defense.

Use of this authority in FYs 2008-2010 has resulted in rapid development of technologies in technical areas: Aerospace Research, Computational Physics, Electromagnetic Effects, Energetics, Directed Energy, Soldier and Equipment Development, Maritime Surveillance, and Unmanned Air Systems. It also supported and advanced new missions involving Rapid Prototyping, Irregular Warfare, and Specialized Testing Systems Integration of Unmanned Air Systems.

Specially, subsection (e) of the proposal would make the following changes:

- Subsection (e)(1)(A) would raises the threshold from $2 million to $4 million.

- Subsection (e)(1)(B) would conform the definition of unspecified military construction appearing in subsection (a) of 2805 to the exception created in section 2805(d).

- Subsection (e)(2) would permit the use of this authority to construct projects which are still in the design or competitive bidding phase so that the laboratory could adjust the scope or size of the construction project prior to the actual beginning of construction as long as construction has not been initiated by the date the statute passes the Congress.

SUBSECTION (b)(3): RENEWED AUTHORITY FOR ENHANCING MOBILITY AND DEPLOYMENT OF MILITARY FORCES

This proposal would amend subsection (c) of section 2805 to re-establish special authority to undertake projects such as en route infrastructure improvements that increase the mobility and improve deployment of military forces. The amendment is necessary to provide for needed capabilities and to account for changes that occurred in 2000-2001 in which specific program funding for mobility enhancements within the O&M appropriation ceased. As a result, the utility of the former language to meet critical mobility needs was nullified. The proposed amendment alters the former section 2805 language to allow funding through the general Operation and Maintenance appropriations, rather than rely on the former special program funding. The dollar limit for individual projects is unchanged from the former provision, i.e., the limit for life/health/safety-related UMC projects specified in the second sentence of section 2805(a)(2). All projects would be subject to the approval and congressional notification thresholds of section 2805(b).

Currently, many of the real property improvements that would facilitate deployment operations, typically surge requirements, fail to receive military construction (MILCON) funding because other projects for day-to-day operations of the host installation command take fiscal precedence. Many of these strategic improvements, such as railroad track improvements, multimodal access roads, taxiway enhancements and parking apron expansions to handle surge Department of Defense aircraft, or small equipment shops and storage facilities, cost more than the current general limits for O&M-funded projects. However, many cost less than the limit for life/health/safety-related UMC projects. It is anticipated that the projects would be vetted by the United States Transportation Command (USTRANSCOM) pursuant to regulations provided by the Department of Defense (DoD) with the impacted combatant commands to ensure that only those improvements most needed to enable worldwide mobility of U.S. forces are funded.

This proposal would enable the Department of Defense, through USTRANSCOM or another designated executive agent, to assist combatant commanders to identify and enhance key enroute locations that would be required to have robust wartime support capabilities in order to support combat operations in any area of the globe during a contingency. The proposal would not place the burden of creating the required infrastructure on the host installation, which may

not be able to fund that kind of surge infrastructure when weighed against its own baseline requirements in the constrained MILCON process. It also would likely eliminate the need to develop separate operating locations at greater expense in order to preserve deployment options.

SUBSECTION (b)(3): STANDING AUTHORITY FOR PROJECTS IN SUPPORT OF URGENT MILITARY OPERATIONS

This proposal would establish a special standing authority for O&M-funded UMC projects in support of urgent military operations, as defined by several specific criteria such as a contingency operation like Operation Enduring Freedom (OEF). This authority would provide a needed capability to the Combined Joint Task Force commander to execute small projects that do not require long-term project development, but exceed the dollar limit for generic O&M-funded UMC projects specified in section 2805(c).

Currently, when the cost for a project exceeds the generic O&M UMC funding limit in section 2805(c), commanders have one or possibly two alternatives, depending upon the project cost. If the project costs less than the UMC funding limit in section 2805(b)(2) that applies, commanders may seek UMC military construction funding. However, this funding is typically not available, and/or the project cost exceeds the lower (general) UMC dollar limit (first sentence of subsection (b)(2)) when the project does not qualify as a bona fide life/health/safety requirement with a higher dollar limit (second sentence of subsection (b)(2)). Alternatively, commanders may seek project authority via a special provision (if it is available) such as that provided by the FY 2004 NDAA for use of O&M funding for contingency construction. However, this special authority is typically temporary in duration, and the centralized process for executing it within the Department is poorly suited to small projects that require less advance planning and development, and are needed sooner than the process allows.

Without the proposed authority, the cost limit for generic O&M-funded UMC projects causes work-arounds in theater, often requiring solutions or reduction in capabilities that do not fully meet operational requirements. This was evident after many years of operation in Operation Iraqi Freedom (OIF) and in OEF. Rising construction costs have affected every project considered for OEF. The Army component of Central Command (ARCENT) experienced annual OEF/OIF construction cost growth ranging between 20-40% per year, pushing many minor yet essential projects beyond either O&M construction thresholds or unspecified minor military construction thresholds. The following examples demonstrate this cost growth (all amounts in thousands of dollars):

Project	Location	FY04	FY08-10
Landfill	Iraq	$ 420	$ 880
DFAC	Dwyer	$ 500	$2,000
Medical Facility	Dwyer	$ 800	$2,000
Dining Facility	Wolverine	$ 880	$2,200
MedLog Warehouse	Bagram	$ 700	$3,350
Brigade HQ Building	Kandahar	$ 750	$3,500

The FY 2004 costs for similar facilities were derived from previously approved Operation and Maintenance, Army (OMA) projects built in the United States Central Command's Area of Responsibility (AOR).

Rising cost factors include:

1) Increases in cost of construction materials (concrete costs $500 per cubic yard (CY) in Afghanistan versus $100 per CY stateside),
2) Lack of a skilled local labor force requires outsourcing more technicians,
3) Contractors in country who cannot support the scale of construction requires going outside of the country or using larger contractors which can drive costs up due to minimal competition, and
4) Cost to ship and transport materials due to limitations in air, sea, and land access.

Impact: A higher cost limit for these types of O&M-funded UMC projects would provide the commander the flexibility to reposition forces in response to the enemy situation without delay. As commanders begin transition and retrograde efforts, enabling facilities may be required. The increased limit would permit rapid construction of these facilities to include force protection, wash racks, cargo and vehicle handling yards, and temporary logistics support (e.g., fuel and ammunition storage).

Budget Implications:
Subsections (a), (b)(1)-(2), and (c):
An increase to the remaining UMC thresholds does not generate cost implications, but rather recognizes the implications of inflation on DoD construction. Increasing the remaining UMC thresholds would allow the Secretary to more effectively respond to urgent mission requirements and critical life/health/safety deficiencies with properly sized and scoped facilities, using available appropriations.

Subsection (b)(3) (Enhancing Mobility and Deployment of Military Forces):
This proposal would not increase the overall budget requirements of the Department of Defense. Funding would come from operating and maintenance accounts and would compete with other Departmental needs for discretionary funding. Air Force is the Executive Agent for USTRANSCOM and Air Mobility Command, our air component, has an interest in enroute infrastructure improvements to save fuel costs of having to fly more circuitous routes to the next AOR.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	+0	+0	+0	+0	+0	O&M, Army	01	131
Navy	+0	+0	+0	+0	+0	O&M, Navy	01	BSM1

Marine Corps	+0	+0	+0	+0	+0	O&M, Marine Corps	01	BSM1
Coast Guard	+0	+0	+0	+0	+0	O&M, Coast Guard		
Air Force	+3	+3	+3	+3	+3	O&M, Air Force – 3400	02	21R
Total	+3	+3	+3	+3	+3			

Subsection (b)(3) (Projects in Support of Urgent Military Operations):
This proposal would have no budget impact as it would simply authorize the Secretary of Defense to use funds already appropriated for operations and maintenance for construction to meet temporary operational requirements. Consequently, a budget table is omitted from this document.

Subsection (e):
There are no budgetary impacts associated with the implementation of the proposed amendment. Funds for any construction project authorized by this amendment would have already been appropriated as operation and maintenance (O&M) funds to a specific laboratory or budgeted as overhead funds by a working capital funded organization.

There is inherent accountability and budgetary discipline associated with this provision because any construction project must be paid from O&M or overhead funds, which are very scarce at laboratories. Consequently, if a laboratory director chooses to proceed with an unspecified military construction project under this authority he or she is spending "scarce money" which introduces an inherent level of discipline into any decision making process.

Based on historical data for the current authority, the chart below depicts the five-year projected cost for all of the Department of Defense. It is expected that these projects will range from a few hundred thousand dollars up to $4 million.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Total	33.5	34.2	34.9	35.6	36.3	O&M,UMC, WCF	Multiple	Multiple

Changes to Existing Law: This proposal would make the following changes to section 2805 of title 10, United States Code:

§ 2805. Unspecified minor construction

(a) AUTHORITY TO CARRY OUT UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—(1) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law.

(2) An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than $2,000,000. However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, an unspecified minor military construction project may have an approved cost equal to or less than ~~$3,000,000~~ **the minor military construction exception threshold**.

(3) For purposes of this section, the minor military construction exception threshold is $4,000,000.

(b) APPROVAL AND CONGRESSIONAL NOTIFICATION.—(1) An unspecified minor military construction project costing more than ~~$750,000~~ **the amount specified in subsection (c)(1)** may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds ~~made available to enhance the deployment and mobility of military forces and supplies~~ **as provided in subsection (c)(2)**.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(c) USE OF OPERATION AND MAINTENANCE FUNDS.—**(1) Except as provided in paragraph (2), the** ~~The~~ Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than ~~$750,000~~ **$1,000,000**.

(2) Notwithstanding the amount specified in paragraph (1), the Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than the minor military construction exception threshold for projects as follows:

(A) For a project to enhance the deployment and mobility of military forces and supplies.

(B) For a project that is necessary to meet military operational requirements involving the use of the armed forces in support of—

(i) a declaration of war;

(ii) a declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621); or

(iii) a contingency operation.

(d) LABORATORY REVITALIZATION.—(1) For the revitalization and recapitalization of laboratories owned by the United States and under the jurisdiction of the Secretary concerned, the Secretary concerned may obligate and expend—

(A) from appropriations available to the Secretary concerned for operation and maintenance, amounts necessary to carry out an unspecified minor military construction project costing not more than ~~$2,000,000~~ **$4,000,000, notwithstanding subsection (c),** or

(B) from appropriations available to the Secretary concerned for military construction not otherwise authorized by law or from funds authorized to be made available under section 219(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2358 note), amounts necessary to carry out an unspecified minor military construction project costing not more than $4,000,000.

(2) **For purposes of this subsection, an unspecified minor military construction project is a military construction project that (notwithstanding subsection (a)) has an approved cost equal to or less than $4,000,000.** For an unspecified minor military construction project conducted pursuant to this subsection, $2,000,000 shall be deemed to be the amount specified in subsection (b)(1) regarding when advance approval of the project by the Secretary concerned and congressional notification is required. The Secretary of Defense shall establish procedures for the review and approval of requests from the Secretary of a military department to carry out a construction project under this subsection.

(3) Not later than February 1, 2014, the Secretary of Defense shall submit to the congressional defense committees a report on the use of the authority provided by this subsection. The report shall include a list and description of the construction projects carried out under this subsection, including the location and cost of each project.

(4) In this subsection, the term "laboratory" includes—

(A) a research, engineering, and development center; and

(B) a test and evaluation activity.

(5) The authority to carry out a project under this subsection expires on September 30, 2016.

(e) PROHIBITION ON USE FOR NEW HOUSING UNITS.—Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

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