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

Section 2808 of the National Defense Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723), as most recently amended by section 2804 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328), is further amended—

(1) in subsection (c)(1)—

(A) by striking "$100,000,000" and inserting "$200,000,000";

(B) by striking "October 1, 2017" and inserting "October 1, 2018";

(C) by striking "December 31, 2018" and inserting "December 31, 2019"; and

(D) by striking "fiscal year 2019" and inserting "fiscal year 2021"; and

(2) in subsection (h)—

(A) in paragraph (1), by striking "December 31, 2018" and inserting "December 31, 2019"; and

(B) in paragraph (2), by striking "fiscal year 2019" and inserting "fiscal year 2021".

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

Section-by-Section Analysis

This proposal would provide continued authority for the Secretary of Defense 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 the end of fiscal year 2020.

Extension of this authority 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 forces during ongoing and future contingency operations.

This proposal would retain the current requirement to provide notice to Congress prior to the use of funds appropriated from 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 waiting period following the delivery of the notification to Congress. (The waiting period is 10 days, unless notification is by electronic means, in which case it is 7 days.)

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

Budget Implications: This proposal would authorize the Secretary of Defense to use operation and maintenance funds already authorized and appropriated for construction to meet temporary operational requirements when all necessary pre-requisites are met. It requires no additional appropriation of funds and results in no savings. It is merely an extension of a current, expiring authority.

RESOURCE REQUIREMENTS ($MILLION)								
	FY 2018	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
O&M- AF	0	0	0	0				
Total	0	0	0	0				

Changes to Existing Law: This proposal would make the following changes to section 2808 of the National Defense Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723):

SEC. 2808. TEMPORARY, LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS IN CERTAIN AREAS OUTSIDE THE UNITED STATES.

(a) TEMPORARY AUTHORITY.—The Secretary of Defense may obligate appropriated funds available for operation and maintenance to carry out a construction project inside the area of responsibility of the United States Central Command or the area of responsibility of Combined Joint Task Force-Horn of Africa 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~~ $200,000,000 between ~~October 1, 2017~~ October 1, 2018, and the earlier of ~~December 31, 2018~~ December 31, 2020, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for f~~iscal year 2019~~ fiscal year 2021.

(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) Repealed.**]**

(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, 2018~~ December 31, 2020; or

(2) the date of the enactment of an Act authorizing funds for military construction for ~~fiscal year 2019~~ fiscal year 2021.

(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.