SEC. ___. EXPENDITURE OF FUNDS FOR DEPARTMENT OF DEFENSE CLANDESTINE ACTIVITIES THAT SUPPORT PREPARATION OF THE ENVIRONMENT BY SPECIAL OPERATIONS FORCES.

(a) AUTHORITY.—Subject to subsections (b) and (c), the Secretary of Defense may expend up to $15,000,000 in any fiscal year for clandestine activities for any purpose the Secretary determines to be proper for preparation of the environment operations of a confidential nature. Such a determination is final and conclusive upon the accounting officers of the United States. The Secretary may certify the amount of any such expenditure authorized by the Secretary that he considers advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount.

(b) FUNDS.—Funds for expenditures under this section in a fiscal year shall be from amounts appropriated for that fiscal year for Operation and Maintenance, Defense-wide.

(c) EXCLUSION OF INTELLIGENCE ACTIVITIES.—This section does not constitute authority to conduct, or expend funds for, intelligence, counterintelligence, or intelligence-related activities. For purposes of this subsection, the terms “intelligence” and “counterintelligence” have the meanings given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(d) ADDITIONAL AUTHORITY.—The authority provided by this section is in addition to any other authority provided by law.

Section-by-Section Analysis

This proposal would create authority for the expenditure of U.S. Special Operations Command (USSOCOM) operation and maintenance funds for clandestine non-intelligence preparation of the environment (PE) activities. It is modeled after title 10, U.S. Code, section 127, “Emergency and extraordinary expenses” (EEE) and a similar Office of the Under Secretary of Defense (Intelligence) (OUSD(I)) legislative proposal that was submitted for Fiscal

Year (FY) 2020 consideration on "Expenditure of Funds for Department of Defense Intelligence and Counterintelligence Activities."

The legislative history of section 1041 of the National Defense Authorization Act (NDAA) for 2018 reflects congressional concern with the use of existing EEE authority (10 USC 127) for certain recurring or anticipated expenses for intelligence and counterintelligence (CI) activities. USSOCOM currently uses EEE authority to pay for recurring and anticipated clandestine PE activities absent another available fiscal authority. Activities currently supported with EEE authority include the operational use of individuals in support of non-intelligence PE requirements and OPSEC and signature reduction enabling activities. Many PE activities are deliberately planned, anticipated and recurring. They are confidential in nature such that compliance with normal government expenditure and acquisition laws and regulations would place the PE operation, operator, and individual at risk of security compromise.

Analysis of fiscal authority gaps, derived from both legal and policy concerns, for sensitive PE activities:

Fiscal Authority	**Analysis**
10 USC Section 127 EEE for CMP	Developing congressional concern with use for recurring intelligence and counterintelligence activities.
10 USC Section 127e	Limited to CT activities. Excludes payments to U.S. citizens. Not available for non-CT SOF PE activities, including those in support of National Defense Strategy priorities. Not intended for unilateral clandestine source operations.
Section 1202 of the NDAA for FY 2018	Limited to IW activities. Excludes payments to U.S. citizens. Currently limited by appropriated funding levels and congressional constraints. Not available for non-IW SOF PE activities, including those in support of National Defense Strategy priorities. Not intended for unilateral clandestine source operations.
Section 943 of the NDAA for 2009	Limited to non-conventional assisted recovery (NAR) activities. Not available for non-NAR SOF PE activities, including those in support of National Defense Strategy priorities. Infrastructure is limited to exfiltration activities and does not include infiltration or reception, staging, onward movement, and integration (RSOI).
OUSD(I)'s legislative proposal for "Expenditure of Funds for Department of Defense Intelligence and Counterintelligence Activities" using MIP O&M.	Limited to intelligence and intelligence-related activities and specifically utilizes military intelligence program (MIP) funds. SOF PE activities are not intelligence or intelligence-related activities per joint doctrine and therefore inappropriate to use MIP funding. Joint doctrine states specifically that Intelligence Operations (INTOPs) support PE, but are separate activities.

This proposal complements the proposal related to the expenditure of funds for intelligence and counterintelligence activities and the existing authority of 10 USC 127. PE activities may include operational activities that use intelligence tactics, techniques, and procedures (TTP) to keep operations and relationships secure; however, use of such TTPs does not mean that the underlying activity is an intelligence, CI, or intelligence-related activity. This proposal addresses expenses for clandestine PE activities, that are not intelligence, CI, or intelligence-related activities, but are not necessarily of an extraordinary or emergency nature.

Budget Implications: Resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President's Budget request. USSOCOM will centrally budget for and manage expenditures for this authority.

RESOURCE IMPACT ($MILLIONS)									
Program	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**	**Appropriation**	**Budget Activity**	**BLI/ SAG**	**Program Element (for all RDT&E programs)**
USSOCOM Clandestine PE Activities	$15.0	$15.0	$15.0	$15.0	$15.0	Operation & Maintenance, Defense-Wide	01	1PLR	1190492BB
No other defense agency or service intends to use this authority									
Total	$15.0	$15.0	$15.0	$15.0	$15.0	--	--	--	--

Changes to Existing Law: None.