

1 **SEC. \_\_\_\_. AUTHORITY TO BUILD CAPACITY FOR ADDITIONAL OPERATIONS.**

2 Section 333(a) of title 10, United States Code, is amended by adding at the end the  
3 following new paragraph:

4 “(8) Cyberspace operations.”.

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

### **Section-by-Section Analysis**

This proposal amends section 333(a) of title 10, United States Code, to include authority for cyberspace operations. The proposed addition would provide valuable support to Department of Defense (DoD) efforts to clarify its authority to conduct cyber-related activities to build partnership capacity (BPC). The proposed addition will reduce confusion that currently exists when cyber-related proposals are couched within the span of other enumerated operations under section 333(a), thus better permitting Congress to conduct its oversight responsibilities.

Building off clear imperatives from the *2018 National Security Strategy* and *National Defense Strategy (NDS)*, particularly in response to the increasing pace and scope of malicious cyber activity by China and Russia, the United States began to revise fundamentally our national approach in cyberspace. In recognition of the full set of challenges we face in this emerging and dynamic warfighting domain, the White House published the *National Cyber Strategy*; at the same time, DoD released a new *Cyber Strategy*, which implemented the NDS in cyberspace. An associated *Cyber Posture Review* identified key gaps in the Department’s posture, including that it needed to improve significantly its approach to, and ability to work more closely and more actively with all tiers of international allies and partners in cyberspace.

DoD, and by extension the United States, will be unable to fulfill the imperatives laid out in the these Strategies without improving not just our own capabilities to defend and to operate in cyberspace, but also those of our allies and partners, who present us with a strategic advantage over adversaries. But, leveraging the contributions of our friends requires us first to help them strengthen their ability to operate in today’s cyber-contested environment, either alone or in concert with us. Cyberspace BPC is thus a high priority for the Department; however, current efforts are hindered by a number of factors, including lack of clarity about applicable authorities.

The proposed legislative change would clarify the Congress’s intent that section 333 is applicable to DoD’s BPC activities that are designed to build partners’ ability to defend and to operate in cyberspace. Given our global, interconnected nature, it is essential that partners not only raise their cybersecurity foundations, but also develop and employ the most advanced capabilities to defend their networks, systems, and information, which if unprotected can provide pathways to U.S. weapons systems or other networks. The proposed change made to add “cyberspace operations” as an enumerated authority in section 333 will clarify and strengthen the

Department’s ability to undertake such priority projects, and – with certain key partners – to better enable coalition operations across the full spectrum of cyberspace operations.

**Budget Implications:** The resources impacted are reflected in the table below and are included in the Fiscal Year (FY) 2021 President’s Budget.

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 )
Defense Security Cooperation Agency	\$1,036	\$1,068	\$1,089	\$1,120	\$1,132	0100	04	4GTD	1002200 TN/A
Total	\$1,036	\$1,068	\$1,089	\$1,120	\$1,132				

**Changes to Existing Law:** This proposal would make the following changes to section 333 of title 10, United States Code:

**§ 333. Foreign security forces: authority to build capacity**

(a) AUTHORITY.—The Secretary of Defense is authorized to conduct or support a program or programs to provide training and equipment to the national security forces of one or more foreign countries for the purpose of building the capacity of such forces to conduct one or more of the following:

- (1) Counterterrorism operations.
- (2) Counter-weapons of mass destruction operations.
- (3) Counter-illicit drug trafficking operations.
- (4) Counter-transnational organized crime operations.
- (5) Maritime and border security operations.
- (6) Military intelligence operations.
- (7) Operations or activities that contribute to an existing international coalition operation that is determined by the Secretary to be in the national interest of the United States.
- (8) Cyberspace operations.

(b) CONCURRENCE AND COORDINATION WITH SECRETARY OF STATE.—

(1) CONCURRENCE IN CONDUCT OF PROGRAMS.—The concurrence of the Secretary of State is required to conduct or support any program authorized by subsection (a).

(2) JOINT DEVELOPMENT AND PLANNING OF PROGRAMS.—The Secretary of Defense and the Secretary of State shall jointly develop and plan any program carried out pursuant to subsection (a). In developing and planning a program to build the capacity of the national security forces of a foreign country under subsection (a), the Secretary of

Defense and Secretary of State should jointly consider political, social, economic, diplomatic, and historical factors, if any, of the foreign country that may impact the effectiveness of the program.

(3) IMPLEMENTATION OF PROGRAMS.—The Secretary of Defense and the Secretary of State shall coordinate the implementation of any program under subsection (a). The Secretary of Defense and the Secretary of State shall each designate an individual responsible for program coordination under this paragraph at the lowest appropriate level in the Department concerned.

(4) COORDINATION IN PREPARATION OF CERTAIN NOTICES.—Any notice required by this section to be submitted to the appropriate committees of Congress shall be prepared in coordination with the Secretary of State.

(c) TYPES OF CAPACITY BUILDING.—

(1) AUTHORIZED ELEMENTS.—A program under subsection (a) may include the provision and sustainment of defense articles, training, defense services, supplies (including consumables), and small-scale construction supporting security cooperation programs under this section.

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

(A) Observance of and respect for the law of armed conflict, human rights and fundamental freedoms, the rule of law, and civilian control of the military.

(B) Institutional capacity building.

(3) OBSERVANCE OF AND RESPECT FOR THE LAW OF ARMED CONFLICT, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, THE RULE OF LAW, AND CIVILIAN CONTROL OF THE MILITARY.—In order to meet the requirement in paragraph (2)(A) with respect to particular national security forces under a program under subsection (a), the Secretary of Defense shall certify, prior to the initiation of the program, that the Department of Defense or the Department of State is already undertaking, or will undertake as part of the security sector assistance provided to the foreign country concerned, training that includes a comprehensive curriculum on the law of armed conflict, human rights and fundamental freedoms, and the rule of law, and that enhances the capacity to exercise responsible civilian control of the military, as applicable, to such national security forces.

(4) INSTITUTIONAL CAPACITY BUILDING.—In order to meet the requirement in paragraph (2)(B) with respect to a particular foreign country under a program under subsection (a), the Secretary shall certify, prior to the initiation of the program, that the Department of Defense or another department or agency is already undertaking, or will undertake as part of the security sector assistance provided to the foreign country concerned, a program of institutional capacity building with appropriate institutions of such foreign country to enhance the capacity of such foreign country to organize, administer, employ, manage, maintain, sustain, or oversee the national security forces of such foreign country.

(d) LIMITATIONS.—

(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 (c) that is otherwise prohibited by any provision of law.

(2) PROHIBITION ON ASSISTANCE TO UNITS THAT HAVE COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS.—The provision of assistance pursuant to a program under subsection (a) shall be subject to the provisions of section 362 of this title.

(3) DURATION OF SUSTAINMENT SUPPORT.—Sustainment support may not be provided pursuant to a program under subsection (a), or for equipment previously provided by the Department of Defense under any authority available to the Secretary during fiscal year 2015 or 2016, for a period in excess of five years unless the notice on the program pursuant to subsection (e) includes the information specified in paragraph (7) of subsection (e).

(e) NOTICE AND WAIT ON ACTIVITIES UNDER PROGRAMS.—Not later 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 written and electronic notice of the following:

(1) The foreign country, and specific unit, whose capacity to engage in activities specified in subsection (a) will be built under the program, and the amount, type, and purpose of the support to be provided.

(2) A detailed evaluation of the capacity of the foreign country and unit to absorb the training or equipment to be provided under the program.

(3) The cost, implementation timeline, and delivery schedule for assistance under the program.

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

(5) Information, including the amount, type, and purpose, on the security assistance provided the foreign country during the three preceding fiscal years pursuant to authorities under this title, the Foreign Assistance Act of 1961, and any other train and equip authorities of the Department of Defense.

(6) A description of the elements of the theater security cooperation plan of the geographic combatant command concerned, and of the interagency integrated country strategy, that will be advanced by the program.

(7) In the case of a program described in subsection (d)(3), each of the following:

(A) A written justification that the provision of sustainment support described in that subsection for a period in excess of five years will enhance the security interest of the United States.

(B) To the extent practicable, a plan to transition such sustainment support from funding through the Department to funding through another security sector assistance program of the United States Government or funding through partner nations.

(8) In the case of activities under a program that results in the provision of small-scale construction above \$750,000, the location, project title, and cost of each small-scale construction project that will be carried out, a Department of Defense Form 1391 for each such project, and a masterplan of planned infrastructure investments at the location over the next 5 years.

(9) In the case of a program described in subsection (a), each of the following:

(A) A description of whether assistance under the program could be provided pursuant to other authorities under this title, the Foreign Assistance Act of 1961, or any other train and equip authorities of the Department of Defense.

(B) An identification of each such authority described in subparagraph (A).

(f) QUARTERLY MONITORING REPORTS.—The Director of the Defense Security Cooperation Agency shall, on a quarterly basis, submit to the appropriate committees of Congress a report setting forth, for the preceding calendar quarter, the following:

(1) Information, by recipient country, of the delivery and execution status of all defense articles, training, defense services, supplies (including consumables), and small-scale construction under programs under subsection (a).

(2) Information on the timeliness of delivery of defense articles, defense services, supplies (including consumables), and small-scale construction when compared with delivery schedules for such articles, services, supplies, and construction previously provided to Congress.

(3) Information, by recipient country, on the status of funds allocated for programs under subsection (a), including amounts of unobligated funds, unliquidated obligations, and disbursements.

(g) FUNDING.—

(1) SOLE SOURCE OF FUNDS.—Amounts for programs carried out pursuant to subsection (a) in a fiscal year, and for other purposes in connection with such programs as authorized by this section, may be derived only from amounts authorized to be appropriated for such fiscal year for the Department of Defense for operation and maintenance, Defense-wide, and available for the Defense Security Cooperation Agency for such programs and purposes.

(2) AVAILABILITY OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—

(A) IN GENERAL.—Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in such fiscal year and end not later than the end of the second fiscal year thereafter.

(B) ACHIEVEMENT OF FULL OPERATIONAL CAPACITY.—If, in accordance with subparagraph (A), equipment or training 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 defense articles, training, defense services, supplies (including consumables), and small-scale construction associated with such equipment or training and necessary to ensure that the recipient unit achieves full operational capability for such equipment or training may be used in the fiscal year in which the foreign country takes receipt of such equipment and in the next two fiscal years.