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**Memorandum**

April 11, 2005

**SUBJECT:** Military Construction in Support of Afghanistan and Iraq

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This memorandum analyzes funding received or requested for projects to support U.S. military operations in Afghanistan and Iraq, describes recent changes in the Department of Defense's authorities governing military construction projects in response to the wars and occupations of those countries, and outlines several potential issues for Congress.

In the FY2005 Supplemental, DOD is requesting \$1.0 billion for military construction to support Afghanistan and Iraq either in-country or in surrounding countries. That amount compares to the \$912 million in funding for military construction for those purposes in previous supplementals since the 9/11 attacks.

Since that time, Congress has also provided DOD with additional flexibility to initiate military construction projects – without advance authorization – in order for DOD to move more quickly to meet wartime needs. At the same time, the committees have voiced concerns about insufficient or lack of information from DOD about the use of funds for construction projects in Iraq and Afghanistan and the whether all projects rejected qualify as emergency spending.<sup>2</sup>

**Potential Issues for Congress**

With the new request for additional funding for military construction in the FY2005 Supplemental, Congress faces several potential issues:

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<sup>1</sup> Amy Belasco wrote the legislative history and funding analysis, Dan Else compiled Tables A-1 and A-2 with the legislative authorities governing military construction, and Kenneth Katzman, Specialist in Middle Eastern Affairs, provided information on the roles of the facilities mentioned in this memo.

<sup>2</sup> See *H.Rept. 109-16*, p. 32-33 and *S. Rept. 109-52*, p.31-36.

- whether the \$2.2 billion in funding in support of military operations in Iraq and Afghanistan signals a longer-term U.S. presence in the region or is primarily for short-term improvements to facilities for U.S. troops;
- whether Congress has received sufficient information to evaluate these projects;
- whether current authorities that give DOD additional flexibility to fund unanticipated needs in military construction give Congress adequate tools for oversight; and
- whether DOD's decisions to rely primarily on supplemental rather than regular military construction funding and military construction rather than Operation and Maintenance funding for projects in Iraq and Afghanistan are appropriate and ensure congressional oversight.

### **Estimates of Military Construction Funding, FY2001-FY2005**

Since the 9/11 attacks, the Defense Department has received supplemental funding of about \$1.1 billion for military construction in or in support of Iraq and Afghanistan and other projects based on information available to CRS. This total may not capture all funding because it may not include all transfers of funds from special wartime accounts set up to give DOD flexibility, because there is no visibility on use of minor construction or planning and design funds, and because the use of some operation and maintenance funds for military construction projects in Iraq and Afghanistan was not reported to Congress. This table also does not include funds appropriated before the first 9/11 supplemental, P.L. 107-38, enacted September 18, 2001.

Of that \$1.1 billion total, \$912 million was for projects in Iraq and Afghanistan or in support of operations in those countries with the remainder allocated to unrelated projects in the United States. By way of comparison, as of the end of FY2003, DOD's Base Structure report assessed the plant replacement value – or amount needed to replace existing facilities – of U.S. bases located in this region at a total of \$109.8 million. That total includes funds for Oman, Kenya, Kuwait and Bahrain; the report shows no funds for United Arab Emirates (UAE), Qatar, Saudi Arabia, Afghanistan or Iraq.<sup>3</sup> Apparently, the Base Structure report includes some (e.g. Kuwait and Oman) but not all (e.g. Qatar, UAE, Saudi Arabia) countries where the United States has invested in facilities and has agreements to use those facilities for U.S. military operations.

DOD is requesting another \$1.0 billion in its current FY2005 Supplemental for overseas military construction projects in or in support of Iraq and Afghanistan.<sup>4</sup> **Table 1** shows CRS estimates of previous military construction supplemental funding and the FY2005

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<sup>3</sup> Department of Defense, *Base Structure Report, Fiscal Year 2004 Baseline*, 2004, various pages.

<sup>4</sup> The \$1.0 billion does not include \$300 million requested for military construction in the United States to support Army and Marine Corps unit restructuring; see Department of Defense, *FY2005 Supplemental Request for Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), and Operation Unified Assistance*, February 2005, p.11-13.  
[[http://www.dod.mil/comptroller/defbudget/fy2006/fy2005\\_supp.pdf](http://www.dod.mil/comptroller/defbudget/fy2006/fy2005_supp.pdf)]

Supplemental request by mission.<sup>5</sup> If Congress enacts the amount in the FY2005 Request, about \$2.2 billion would have been allocated to military construction projects in support of the war and occupation of Iraq and Afghanistan. Of that total, 44% would be for Iraq, 14% for Afghanistan, another 34% in support of both missions either overseas or in the United States and another 7% would be unspecified (see **Table 1**).

Funding in the FY2005 Supplemental would roughly double the amount previously provided to support operations in Iraq and Afghanistan, which may reflect the fact that the United States is now in its third and fourth year of occupation, respectively. Funding in the United States in support of Iraq in the FY2005 request also includes about \$250 million in funding for the Army and Marine Corp restructuring efforts, intended to make forces better able to meet unit rotations. Some observers have raised concerns about the lack of specificity in DOD's requests and whether the funding portends a more permanent U.S. presence in those countries.

**Table 1. Supplemental Funds for Military Construction By Mission, FY2001-FY2005 Request**

(in millions of dollars and percent of total)

Mission	FY01-FY04	FY05 Request	Total	FY01-FY04	FY05 Request	Total
In or in spt of Afghanistan	120.5	231.1	351.6	13%	17%	16%
In or in support of Iraq	304.6	672.6	977.2	33%	51%	44%
In support of both overseas	284.5	67.4	351.9	31%	5%	16%
In support of both in the United States	104.1	289.4	393.5	11%	22%	18%
Other unspecified	98.6	68.6	167.2	11%	5%	7%
<b>Total: Afghan. &amp; Iraq</b>	<b>912.3</b>	<b>1,329.0</b>	<b>2,241.3</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Other - United States	176.5	70.0	246.5	NA	NA	NA
<b>TOTAL</b>	<b>1,088.8</b>	<b>1,399.0</b>	<b>2,487.8</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>

Sources: CRS estimates from Congressional reports and Department of Defense, *FY2005 Supplemental Request for Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), and Operation Unified Assistance*, February 2005, p.59-74. [[http://www.dod.mil/comptroller/defbudget/fy2006/fy2005\\_supp.pdf](http://www.dod.mil/comptroller/defbudget/fy2006/fy2005_supp.pdf)]. List of individual projects available upon request.

Of the funds received for Afghanistan and Iraq, about two-thirds are for bases in country and one-third for those in surrounding areas. For Afghanistan, \$86 million is for projects in-country and \$34 million for projects in surrounding areas. Similarly, for Iraq, some \$209 million is in-country and another \$95 million in neighboring countries. Funds for bases that serve both missions include bases like Al Udeid in Qatar, the new U.S. regional headquarters. Almost \$100 million was for projects with unspecified locations.

In the FY2005 Supplemental, DOD is requesting \$1.0 billion for projects overseas with the following distribution:

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<sup>5</sup> The table is based on a CRS compilation and classification of 121 military construction projects listed in congressional reports, transfers from the Defense Emergency Response Fund (DERF), a special account set up to provide flexibility to allocate wartime funds, congressional reports on use of FY2004 Operation and Maintenance funds for military construction, and DOD's FY2005 Request for Emergency Supplemental Funds, February 2005; List of projects available on request.

- \$673 million including \$597 million for Iraq and \$75 million in neighboring areas;
- \$231 million including \$142 million for Afghanistan and \$89 million in supporting bases;
- \$67 million for overseas projects and \$289 million for projects in the United States that support both; and
- \$69 million in unspecified locations (see **Table 1** above)

Much of the funding requested for Iraq did not specify location (see **Table 2** below).

### **Bases Receiving or Targeted for Largest Amounts of Funding**

**Table 2** shows the distribution of funding by location and country for the current request and previous supplementals.

**Iraq Bases.** Of the funding received or requested, the bases within Iraq which have received or are slated to receive the largest amounts are:

- *Balad Air Base, Baghdad and Anaconda*, (co-located) – \$169 million (\$57.1 million requested in the FY2005 supp) and \$45 million (\$39 million requested) respectively;
- *Taji Military Complex and Camp Cooke* (co-located), – \$41 million (\$25 million requested) and \$8 million respectively;
- *Camp Speicher, Tikrit*, – \$24 million received; and
- *Aspen, Iraq* – \$36 million requested in FY2005 supp.

Some \$388 million or 27% of the requested funding in the FY2005 Emergency Supplemental currently under consideration is for unspecified locations, including \$300 million to provide hardened overhead protection from mortar and rocket attacks at facilities where service-members gather, a request in response to the December 2004 attack on the dining facility in Mosul. The remainder is to replace temporary tents and trailers in Iraq with concrete maintenance facilities, barracks, and repair facilities.<sup>6</sup> By way of comparison, this unspecified share is more than double the 12% that was unspecified in DOD's regular FY2005 military construction appropriations for minor construction and planning and design.<sup>7</sup>

Bases in surrounding countries that support Iraq that have or are slated to receive substantial funding are:

- *Ali Al Salem Air Base in Kuwait* – \$76 million (requested);
- *Al Sayliyah, Qatar* – \$37 million received.

**Bases in or Supporting Afghanistan.** In Afghanistan, the base receiving the most funds is Bagram Airfield, which is slated for \$228 million (\$142 million requested). DOD

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<sup>6</sup> Department of Defense, *FY2005 Supplemental Request for Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), and Operation Unified Assistance*, February 2005, p.59-74. [[http://www.dod.mil/comptroller/defbudget/fy2006/fy2005\\_supp.pdf](http://www.dod.mil/comptroller/defbudget/fy2006/fy2005_supp.pdf)]

<sup>7</sup> CRS calculations based on tables in H.Rept.108-773, p.69-90; unspecified funds in regular military construction appropriations bills are for minor construction and planning and design.

is also requesting \$43 million for Karshi-Khanabad Air Base in neighboring Uzbekistan that would support operations in Afghanistan.

Of bases that support both Afghanistan and Iraq, the following amounts have been received or are requested:

- *Al Udeid Air Base in Qatar* – has received \$200 million as headquarters operations formerly in Saudi Arabia were relocated to Qatar in response to concerns of the Saudi government; and
- *Al Dhafra, the United Arab Emirates* – \$147 million (\$67 million requested).

### **Limited Information on Military Construction Requests**

Very little information is available publicly on DOD's plans for bases in or around Iraq or Afghanistan. Congress recently received DOD's Master Plans for overseas bases but the plans are classified and reportedly do not address military construction in Iraq. DOD's justification materials for its FY2005 Supplemental characterize most projects as either replacements of temporary facilities in order to avoid replacement costs and improve quality of life for troops, or construction to improve safety or force protection. Some projects appear to have relatively narrow purposes while others suggest substantial U.S. investment to improve facilities that could be used for the longer-term. DOD has requested its military construction funds for five years, the standard length of time, which could be perceived as indicating a more extended U.S. presence.

Requests to, for example, replace tents and trailers with concrete barracks at Camp Hope, Camp Taji, Camp Warrior, Marez and other unspecified locations in Iraq are intended to avoid replacement costs and improve force protection.<sup>8</sup> Some observers would characterize these projects as fairly narrow in scope though they could be perceived locally as signals that U.S. troops are likely to remain in-country for some time.

Other projects that suggest a longer-term U.S. presence include \$57 million for Balad Air Base, designated as a strategic aerial port, to expand aircraft ramps, construct roads and storage areas for equipment, and replace airfield lighting. Other projects also suggest that DOD is undertaking a series of investments to build up facilities for the longer-term. For example, DOD is requesting:

- \$32 million to replace diesel generators with a gas turbine plant at Bagram Air Base in Afghanistan;
- \$75.5 million for a new aerial port and utilities and infrastructure at Ali Al Salem in Kuwait;
- \$66 million to consolidate flight facilities at Al Dhafra Air Base in the United Arab Emirates;
- \$43 million to build a 12,000 foot runway in Karshi-Khanabad Air Base in Uzbekistan to resupply U.S. forces in Afghanistan; and
- \$36 million to construct a road used for transporting supplies to Iraq from Kuwait that avoids urban areas.

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<sup>8</sup> See DOD, *FY2005 Supplemental Request*, February 2005, p. 59-74.

## Congressional Action on DOD's FY2005 Emergency Supplemental Request

Recent congressional action on H.R.1268, the FY2005 Supplemental, suggests that DOD's plans for military construction in and around Iraq and Afghanistan are of considerable concern. The House version of H.R. 1268 cuts funding for one overseas project, the \$57 million requested for the fuel tank farm at Bagram Airfield in Afghanistan stating that the cost of constructing a permanent facility rather than storing fuel in bladders would not pay off until 2012. The House report also voices concern about the lack of information on "how the construction projects requested in the supplemental are integrated with the Department's long-term strategy for the basing of U.S. forces in the Central Command Area of Responsibility"<sup>9</sup> The report also questions the emergency nature and lack of information for Congress about plans to commit the United States to substantial military construction in Kuwait, including two projects – \$36 million for a road in Iraq to link up with a new Kuwaiti road and \$75 million in construction at the Ali Al Salem Air Base in Kuwait – both intended to provide alternatives so U.S. forces would not use the commercial highway or airport.<sup>10</sup>

In the Senate report on H.R.1268, the appropriators voice considerable concern about whether all projects requested meet the emergency test of a supplemental. The Senate Appropriations Committee also questions "whether the construction of permanent facilities (where proposed), rather than those of a more expeditionary nature, is appropriate," adding that in light of the "expeditionary nature of our Nation's efforts in Southwest Asia," the Senate panel expects that temporary facilities would be the rule rather than the exception."<sup>11</sup> Emergency funding would not seem appropriate for projects requiring long-term planning according to the panel. Reflecting these concerns, the Senate Appropriations Committee cut funds for four overseas projects – the fuel tank farm (\$57 million) and prime power generation plant (\$32 million), at Bagram Airfield in Afghanistan and the aerial port at Ali Al Salem Air Base in Kuwait (\$76 million) and the launch, recovery and maintenance facility for surveillance at Al Dhafra Air Base in UAE (\$66 million). Another sign that the committees believe military construction funds should be limited to emergencies is the decision by both House and Senate appropriators to approve military construction monies for two years rather than the 5-year life that is standard for military construction and that DOD requested.

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<sup>9</sup> *H.Rept. 109-16*, p. 32.

<sup>10</sup> *H.Rept.109-16*, p.33

<sup>11</sup> *S.Rept. 109-52*, p.31.

**Table 2. Supplemental Funds for Military Construction By Location:  
FY2001-FY2005 Request**  
(in millions of dollars)

By country and location asterisks (*) designate co-located facilities	FY2001- FY2004	FY2005 Request	Total with Request
<b>Afghanistan</b>	<b>86.1</b>	<b>158.1</b>	<b>244.2</b>
Bagram Airfield	86.1	142.1	228.2
Kandahar Airfield	0.0	16.0	16.0
<b>In support of Afghanistan</b>	<b>34.4</b>	<b>73.0</b>	<b>107.3</b>
Diego Garcia	13.4	0.0	13.4
Ganci Air Base, Kyrgyzstan	21.0	0.0	21.0
Camp Lemonier, Djibouti	0.0	30.5	30.5
Karshi-Khanabad Air Base, Uzbekistan	0.0	42.5	42.5
<b>Iraq</b>	<b>208.8</b>	<b>597.1</b>	<b>805.8</b>
Al Fallujah, Iraq	8.0	0.0	8.0
Anaconda, Iraq*	5.9	39.0	44.9
Aspen, Iraq	0.0	36.0	36.0
Baghdad - Radwaniya Palace complex	11.7	0.0	11.7
Baghdad forward operating base Falcon	7.0	0.0	7.0
Baghdad, Victory Base	15.5	0.0	15.5
Balad Air Base, Baghdad, Iraq*	111.8	57.1	168.8
Camp Cooke, Iraq**	8.5	0.0	8.5
Camp Hope, Iraq	0.0	2.5	2.5
Camp Speicher, Tikrit, Iraq	23.9	0.0	23.9
Camp Warrior, Iraq	0.0	6.1	6.1
Muthanna Bunkers, Iraq	0.0	11.3	11.3
Marez, Iraq	0.0	12.2	12.2
Northern area, Iraq	0.0	9.9	9.9
Taji Military Complex**	16.5	24.6	41.1
Tallil Air Base, Iraq	0.0	10.8	10.8
Iraq unspecified	0.0	387.6	387.6
<b>In support of Iraq</b>	<b>95.8</b>	<b>75.5</b>	<b>171.3</b>
Al Jaber, & Ali Al Salem Air Base, Kuwait	2.9	0.0	2.9
Ali Al Salem Air Base, Kuwait	0.0	75.5	75.5
Al Sayliyah, Qatar	36.5	0.0	36.5
Kuwait unspecified	49.4	0.0	49.4
N. Arabian Gulf unspecified	3.5	0.0	3.5
<b>Supporting both Afghanistan &amp; Iraq</b>	<b>285.7</b>	<b>67.4</b>	<b>351.9</b>
Al Udeid Air Base, Qatar	199.6	0.0	199.6
Al Dhafra, United Arab Emirates	79.9	67.4	147.3
Camp Darby, Italy	5.0	0.0	5.0
<b>Sptg Afghanistan and Iraq in the United States</b>	<b>104.1</b>	<b>289.4</b>	<b>393.5</b>
Dover, Delaware	56.0		56.0
Guantanamo Naval Station, Cuba	48.1	40.4	88.5
Modularity and Restructuring	0.0	249.0	249.0
<b>Other, Unspecified, Classified</b>	<b>98.6</b>	<b>68.6</b>	<b>167.2</b>
Planning and design, unspecified	6.7	68.6	75.3
Unspecified	69.8	0.0	69.8
Classified	22.1	0.0	22.1
<b>Other - US</b>	<b>176.5</b>	<b>70.0</b>	<b>246.5</b>
<b>TOTAL</b>	<b>1,088.8</b>	<b>1,399.0</b>	<b>2,487.8</b>

**Notes and Sources:** CRS calculations based on congressional reports and DOD, *FY2005 Supplemental Request for Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), and Operation Unified Assistance*, Feb. 2005, p.59-74. [[http://www.dod.mil/comptroller/defbudget/fy2006/fy2005\\_supp.pdf](http://www.dod.mil/comptroller/defbudget/fy2006/fy2005_supp.pdf)]

## Standard Authorities Governing Military Construction

The Department of Defense (DOD) has certain longstanding permanent authorities that govern military construction in the United States and overseas.<sup>12</sup> Under these authorities, the Department of Defense can undertake military construction projects for “building, structure, or other improvement to real property” on both military installations in the United States and those under the “operational control” of the U.S. military in foreign countries as long as funding is included to “produce a complete and usable facility” – a provision intended to ensure that funding was provided to complete buildings.<sup>13</sup>

In FY2004, Congress added language stating that funding for military construction projects could be used “whether to satisfy *temporary or permanent* requirements,” and “*without regard to the duration of operational control*”[italics added].<sup>14</sup> This change was made in response to congressional concerns that DOD had used some \$750 million in Operation and Maintenance (O&M) funds for temporary military construction in Iraq and Afghanistan without informing Congress in advance.<sup>15</sup> (CRS estimates above do not include these funds.) Before this change, it was generally assumed that military construction funding would be confined to permanent facilities, and that O&M funding would be used for repairs to facilities.

Except in certain limited circumstances and for certain types of spending, military construction funding is provided for individual projects at specified locations which are authorized in advance and where funding is designated by project. The armed services committees generally specify funding by state, installation, and project in statutory language and the appropriations subcommittees handling construction include the same information in conference report language.<sup>16</sup> Both subcommittees generally receive detailed information from the Defense Department that include cost, schedule, location, and other information for individual projects using DOD’s Form 1391. Some funding is provided in lump sums for minor construction, planning and design funds, construction improvements, maintenance of real property, and furnishings.<sup>17</sup>

## Emergency Authorities

To meet unanticipated and urgent needs, the Secretary of Defense is also allowed to carry out military construction projects *without* advance authorization if certain criteria are met and Congress is notified. Prior to the 9/11 attacks, Title 10 included three permanent authorities to meet unanticipated military construction needs:

<sup>12</sup> See Table A1 for complete listing of authorities.

<sup>13</sup> Table A1 and Title 10, Section 2801(b) and (c).

<sup>14</sup> Title 10, Section 2801 (a) and 2801(c)(2); see also *H. Rept. 108-354*, p.330-331 and p. 814.

<sup>15</sup> See *H.Rept. 108-76*, conference report on the FY2003 Emergency Supplemental, p. 89-90.

<sup>16</sup> As of the 109<sup>th</sup> Congress, the Military Quality of Life and Veterans Affairs and Related Agencies Subcommittee in the House and the Military Construction and Veterans Affairs Subcommittee in the Senate handle military construction appropriations.

<sup>17</sup> See for example, *Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005*, H. Rept.108-767, p. 809-825, and *H. Rept.108-773*, p. 69-90.



- **Section 2803** permits the Secretary of Defense to initiate projects that are not authorized if they are “vital to the national security, or to the protection of health, safety or the quality of the environment,” or where deferral would be inconsistent with meeting those needs. The Secretary must, however, notify the defense committees 21 days in advance in writing, and an annual cap of \$45 million is placed on use of this authority;<sup>18</sup>
- **Section 2804** permits the Secretary to use “contingency construction” funds in those cases in which deferral of the project would be “inconsistent with national security or national interest,” and requires advance notification of 21 days; in recent years, the authorization committees have placed caps of \$10 million on contingency construction.<sup>19</sup>
- **Section 2808** permits the Secretary of Defense to undertake military construction projects “without regard to any other provision of law,” in case of a declaration of war or national emergency requiring the use of armed force; Congress is to be notified of the project and cost (see **Table A1** for more details on these sections).

### **Additional Flexibility Provided for Military Construction Since 9/11 attacks**

In the four war-related supplemental appropriations acts enacted since 9/11, Congress has provided DOD with new authorities that allow the department additional flexibility to initiate projects where funding has not been authorized and appropriated in advance. DOD was allowed to tap two special accounts that were set up to provide flexibility to allocate wartime funds where needed – the Defense Emergency Response Fund (DERF) and the Iraqi Freedom Fund (IFF). In addition, Congress gave DOD temporary authority in FY2004 and FY2005 to use Operation and Maintenance Funds (O&M), which are generally used for maintenance of equipment and facilities and to provide support services, for temporary military construction projects. Congress also raised the cap on contingency construction funds.

In the case of transfers from the DERF, the IFF, or contingency construction, Congress required advance notification although the length of time has shrunk from 15 days to 5 days. In the FY2003 and FY2004 emergency appropriations acts, Congress gave DOD temporary authority to tap O&M funds for unanticipated, temporary, military construction projects and required notification 15 days *after* funds are obligated. Congress has also generally required quarterly reporting after the fact as well (see below).

These new authorities are described below as well as in **Table A-2**:

- **P.L.107-117, the FY2002 DOD and Emergency Supplemental Appropriations Act.** DOD was authorized to use the Defense Emergency Response Fund (DERF), for projects that are not authorized but “are necessary to respond to or protect against acts or threatened acts of

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<sup>18</sup> Title 10, Section 2808, Section 2802, Section 2803.

<sup>19</sup> Title 10, Section 2804; Sec. 2403 in P.L.107-107; for caps, see Sec. 2404 in P.L.107-314; Sec. 2405 in P.L. 108-106; and Sec. 2404 in P.L.108-376.

terrorism” as long as the defense committees were notified 15 days in advance;<sup>20</sup>

- **P.L.107-206, the FY2002 Supplemental.** DOD could again tap DERF funds with 15-day advance notification;<sup>21</sup>
- **P.L.108-11, the FY2003 Emergency Supplemental.** DOD could tap Iraqi Freedom Fund (IFF) appropriations with 5-day advance notifications of transfers to the Congressional defense committees;<sup>22</sup>
- **P.L.108-11, the FY2003 Emergency Supplemental.** DOD could transfer up to \$150 million to contingency construction accounts for temporary or longer-term projects with a 7-day advance certification that the projects were necessary to “respond to, or protect against, acts or threatened acts of terrorism, or to support Department of Defense operations in Iraq,” and notification of the specific amounts and purposes of the projects; estimated costs were also required for individual projects 15 days after funds are obligated;<sup>23</sup>
- **P.L.108-106, the FY2004 Emergency Supplemental.** DOD could tap Iraq Freedom Fund appropriations for military construction projects with 5-day advance notifications of transfers, and quarterly reporting;<sup>24</sup>
- **P.L. 108-106, the FY2004 Emergency Supplemental.** DOD could use Operation and Maintenance funds for construction projects if the project was for “urgent military requirements of a temporary nature, “ involving Iraq or the ‘Global War on Terrorism,’” on a base where the United States did not intend to stay, and the project was the “minimum necessary to meet operational requirements;” the authorizers placed a cap of \$200 million on this authority.<sup>25</sup>

### Congressional Concerns

At the same time as Congress provided this additional flexibility to DOD to meet wartime requirements and acknowledged the cumbersome nature of the regular process, Committee reports also criticized DOD for initiating military construction projects without informing Congress and using inappropriate justifications to expand DOD’s authority. In the report on the FY2002 DOD appropriations act, conferees were concerned about DOD’s

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<sup>20</sup> See Section 1001(a) of *P.L.107-117*, and *H. Report 107-350*, p. 441-442.

<sup>21</sup> Section 1001, *P.L.107-206*, and *H. Rept.107-593*, p. 164.

<sup>22</sup> See section “Iraq Freedom Fund”, *P.L.108-11*.

<sup>23</sup> *P.L.108-11*, Section 1901.

<sup>24</sup> Iraq Freedom Fund, *P.L.108-106*.

<sup>25</sup> Section 1301, *P.L.108-106*; the authorizers raised the cap of \$150 million set in *P.L.108-106* to \$200 million in Sec. 2808, *P.L.108-136*.

decision to invoke its emergency authority to transfer \$68.9 million from previously authorized projects to terrorist-related projects.<sup>26</sup>

There was also considerable controversy in 2004 with the publication of Bob Woodward's book, *Plan of Attack*, that alleged that DOD had spent \$700 million in funds appropriated for Afghanistan on facilities that would later be used in the war on Iraq without informing Congress in advance.<sup>27</sup> DOD acknowledged that it had drawn \$178.4 million from the Defense Emergency Response Fund, a fund used for the Afghan war and crisis response to the 9/11 attacks, to improve communications, store fuel, and upgrade facilities in the Central Command area of operations. That total included about \$62 million to improve the Al Sayliyah headquarters in Qatar, set up facilities to unload and store munitions, store aircraft and support deployment of Army forces.<sup>28</sup>

In the report on the FY2003 Supplemental, the conferees stated that DOD had spent \$750 million in O&M funds for military construction to support the global war on terrorism without providing advance notice to Congress despite repeated requests, which was justified on the basis of an internal DOD memo that argued that O&M funds could be used for temporary operations requirements.<sup>29</sup>

The following year, in response to this action, the armed services committees changed the definition of military construction to include temporary as well as permanent facilities. Some observers argue that this change "closed a loophole" by putting temporary construction under the standard budgetary rules applying to military construction. Others would argue that this change blurred the distinctive nature of military construction, generally perceived as a permanent action signaling enduring presence.

To give commanders operational flexibility, in the same year, Congress provided DOD with temporary authority to use up to \$150 million in O&M funds for military construction where the Secretary of Defense determines that the project was:

- urgent;
- *not* "at an installation where the United States is reasonably expected to have a long-term presence";
- where the United States "has *no intention of using the construction after the operational requirements have been satisfied;*" and
- the *minimum necessary* to meet the need [*italics added*].<sup>30</sup>

The FY2004 authorization adopted the same criteria for a temporary one-year 'pilot program' that gave DOD authority to use up to \$200 million annually in O&M funds for military construction overseas. DOD was required to notify Congress 7 days after funds were obligated for projects, and also permitted the Secretary of Defense to waive the funding

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<sup>26</sup> See *H.Rept.107-350*, p. 442.

<sup>27</sup> Bob Woodward, **Plan of Attack**, New York: Simon and Shuster, 2004, p. 136-137

<sup>28</sup> CRS has included these projects in **Tables 1** and **Table 2**.

<sup>29</sup> See *H.Rept.108-76*, p. 89-90.

<sup>30</sup> Sec. 1301, P.L.107-106.

cap with 5-day after the fact notice.<sup>31</sup> By adopting after-the-fact notification rather than advance notification, Congress no longer required Congressional approval of these projects.

These two changes appear to give DOD the option to fund temporary military construction projects using either regular military construction funding or tap O&M funding for additional funding later in the year. Although Congress renewed the authority to use O&M funds for military construction in the FY2005 DOD Authorization, DOD could not use the authority until it submitted reports for the previous fiscal year.<sup>32</sup> This action was another signal of congressional dissatisfaction with DOD's performance in meeting reporting requirements. In FY2005, Congress prohibited DOD from using any of its funds to "initiate a new installation overseas" without advance notification in the FY2005 DOD Appropriations Act, which again, may signal concern that funds have flowed into military construction without congressional notification.<sup>33</sup>

Most recently, the House Appropriations Committee placed a hold on obligations of much of the \$1.0 billion in overseas military construction funding requested in the FY2005 Supplemental until DOD submits "comprehensive master plans for overseas military installations" required with the FY2006 budget.<sup>34</sup> That plan was submitted to the congressional defense committees in mid-March but is classified and reportedly does not address facilities in Iraq.

**Tables A-1 and A-2** in the **Appendix** provide additional details on these military construction authorities.

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<sup>31</sup> Sec.2808, *P.L. 108-136, H. Rept. 108-354*, p. 816.

<sup>32</sup> Section 2810, *H.Rept 108-767*, p. 318.

<sup>33</sup> See *H.Rept. 108-622*, p. 19-20, and 22.

<sup>34</sup> See Sec. Chapter 2, *H.R.1268* as engrossed by the House and sent to the Senate, 3-16-05.

## Appendix. Statutory Authorities Governing Military Construction

**Table A1. Permanent Military Construction Authorities**

Type of Construction	Funding Limits	Requirements	Statute
<b>Definition of Military Construction</b>	Not applicable.	10 USC 2801 defines a military construction project as all work “necessary to produce a complete and usable facility or . . . improvement,” “ <i>whether to satisfy temporary or permanent requirements . . .</i> ” of facilities in the United States or “under the operational control” of the U.S. military “ <i>without regard to the duration of operational control.</i> ” (Language in italics added by P.L. 108-136 in FY2004)	10 USC 2801; amended by P.L.108-136, FY2004 DOD Authorization Act.
<b>Military construction authorization</b>	Not applicable.	Projects must be authorized by law.	10 USC 2802
<b>Emergency construction</b>	Limited to \$45 million per Secretary per fiscal year within remaining unobligated military construction funds.	May initiate unauthorized projects that are: (1) Vital to the national security or to the protection of health, safety, or the quality of the environment, and (2) So urgent that deferral until the next Military Construction Authorization Act is inconsistent with national security or the protection of health, safety, or environmental quality. Secretary must wait 21 days after reporting in writing to appropriate committees: (a) justification for the project and current cost estimate; (b) justification for project under this subsection, and; (c) funding source for project.	10 USC 2803

**Table A1. Permanent Military Construction Authorities**

<b>Type of Construction</b>	<b>Funding Limits</b>	<b>Requirements</b>	<b>Statute</b>
<b>Contingency construction</b>	<p>Within existing funds.</p> <p>Cap of \$10 million included in FY2002, FY2003, and FY2005 DOD Authorization Acts; cap of \$9 million in FY2004 DOD Authorization Act.</p>	<p>Secretary of Defense may initiate unauthorized projects where deferral to next authorization would be “inconsistent with national security or national interest.” Requires 21 day wait after notification in writing to appropriate committees with:</p> <ul style="list-style-type: none"> <li>(1) justification and current cost estimate;</li> <li>(2) justification for project under this subsection; and</li> <li>(3) funding source for project</li> </ul>	10 USC 2804
<b>Unspecified minor construction</b>	<p>Within a total equal to 125 percent of the amount authorized by law for unspecified minor construction, DOD may initiate unauthorized military construction projects of up to \$1.5 million or up to \$3.0 million to correct threats to life, health, or safety; \$5 million limit applies to exercise-related projects of the Joint Chiefs of Staff outside the United States. Projects over \$750,000 must be authorized by military secretary.</p> <p>DOD may use operation and maintenance funding for minor construction costing \$1.5 million or less or \$3.0 million or less for projects to protect health and safety. Limitation do not apply to projects to enhance deployment and mobility of military forces and supplies.</p>	<p>Secretary of Defense must wait 21 days after notifying appropriate committees for projects costing over \$1.5 million providing information on</p> <ul style="list-style-type: none"> <li>(1) decision;</li> <li>(2) justification for the project ; and</li> <li>(3) estimated cost.</li> </ul>	10 USC 2805

**Table A1. Permanent Military Construction Authorities**

Type of Construction	Funding Limits	Requirements	Statute
<b>Declaration of War or National Emergency</b>	No cap or limits.	<p>In the event of the declaration of war or national emergency requiring the use of armed force, the Secretary of Defense, <i>without regard to any other provision of law</i>, DOD may undertake unauthorized military construction projects to support such use of the armed forces [italics added]. The Secretary of Defense shall notify the appropriate committees of Congress of the decision and of the estimated cost of the construction projects, including the cost of real estate required.</p> <p>The President made the necessary declaration in Executive Order No. 13235 of Nov. 16, 2001, and the authority was extended in 2002 and 2004. The authority ends with the termination of war or national emergency.</p>	10 USC 2808

**Sources:** Table compiled by Daniel Else and Amy Belasco, CRS, Foreign Affairs, Defense and Trade from the statutes and reports cited above.

**Table A2. Temporary Military Construction Authorities, FY2002-FY2005**

Act	Authority	Reporting Requirement	Citation
Fiscal Year 2002 Department of Defense Appropriations (P.L. 107-117, H. Rept. 107-350, Division B	Within amounts made available to the Department of Defense from funds appropriated in Public Law 107-38 in Defense Emergency Response Fund, (DERF) and this Act, Secretary of Defense may carry out unauthorized military construction projects determined to be necessary to respond to or protect against acts or threatened acts of terrorism.	<p>DOD may obligate funds for projects 15 days after notifying the appropriate committees of Congress of:</p> <ul style="list-style-type: none"> <li>(1) The determination to use such amounts for the project.</li> <li>(2) The estimated cost of the project and the accompanying Form 1391.</li> </ul> <p>Removes legal barrier to use of funds deposited into DERF account for military construction</p> <p>Conferees directed DOD to use unobligated balances from fiscal years prior to FY 2002 for terrorism-related military construction, and if insufficient, then unobligated funds from FY 2002 authorized projects.</p>	Division B, Chapter 10, Sec 1001 (a) and (b) and Joint Explanatory Statement
Fiscal Year 2002 Supplemental Appropriations (P.L. 107-206, H. Rept. 107-593)	Amounts made available to the Department of Defense from funds appropriated in this Act may be used to carry out unauthorized military construction projects that the Secretary of Defense determines are necessary to respond to or protect against acts or threatened acts of terrorism.	<p>DOD may obligate funds for projects 15 days after notifying the appropriate committees of Congress of</p> <ul style="list-style-type: none"> <li>(1) The determination to use such amounts for the project.</li> <li>(2) The estimated cost of the project and the accompanying Form 1391.</li> </ul>	Sec 1001 (a) and (b) and Joint Explanatory Statement



**Table A2. Temporary Military Construction Authorities, FY2002-FY2005**

Act	Authority	Reporting Requirement	Citation
Fiscal Year 2003 Emergency Wartime Supplemental Appropriations (P.L. 108-11, H. Rept. 108-76)	Permits DOD to transfer funds from newly-established Iraq Freedom Fund (IFF) to military construction accounts.	Secretary of Defense may not make transfers until 5 days after notifying congressional defense committees in writing of details of transfer.  Requires DOD to submit a report no later than July 1, 2003, and then 30 days after the end of each fiscal quarter to congressional defense committees summarizing details of transfers of funds from this appropriation.	Title I, Chapter 3
	Permits obligation of military construction or minor construction funds.	Requires DOD notification of congressional defense committees no later than 15 days after the obligation of funds for military construction activities or minor construction in excess of \$7.5 million.	Sec. 1312
	The Secretary of Defense may transfer not more than \$150 million of funds in this appropriation, in addition to any other DOD transfer authority, to the contingency construction account (10 USC 2804) to carry out unauthorized military construction projects.	Transfer cannot be made until 7 days after Secretary of Defense submits written notification to appropriate committees of Congress certifying the transfer is necessary to respond to, or protect against, acts or threatened acts of terrorism or to support Department of Defense operations in Iraq, and specifying the amounts and purposes of the transfer, including a list of proposed project and their estimated costs.  Requires that the Secretary of Defense shall submit written notice to the appropriate committees of Congress no later than 15 days after the obligation of the funds for the project, specifying the estimated cost of the project and including Form 1391. Defines "military installation" to include not only buildings, structures, and other improvements to real property under the operational control of the Secretary of a military department or the Secretary of Defense, but also those used by the Armed Forces, <i>regardless of whether such uses anticipated to be temporary or of longer duration</i> [italics added]. Waives requirement for 21-day advance notification in 10 USC 2804.	Sec. 1901

**Table A2. Temporary Military Construction Authorities, FY2002-FY2005**

Act	Authority	Reporting Requirement	Citation
Fiscal Year 2004 Emergency Supplemental for Defense and Reconstruction, P.L.108-106	Permits transfer of funds from Iraq Freedom Fund to military construction.	Requires 5-day advance written notification by the Secretary of Defense to congressional defense committees of details of transfers. Requires quarterly reports no later than 30 days after the end of each fiscal quarter to congressional defense committees summarizing details of transfers.	Title I, Chapter 1, Iraq Freedom Fund
		The conferees direct the Central Command to submit its master plan for facilities in the Central Command area of responsibility, including the operational requirements and the planned disposition of equipment, aircraft and personnel, no later than December 1, 2003 in both classified and unclassified form. Deadline moved to FY2006 budget in H.Rept 108-372, conference report on FY2004 Military Construction Appropriations.	Chapter 3 Joint Explanatory Statement, and H. Rept. 108-372, p.17.
FY2004 Department of Defense Authorization Act, (P.L.108-136)	Permits DOD to use up to \$200 million in O&M funds for temporary military construction projects outside the United States for one year. Cap may be waived by Secretary of Defense if projects are “vital to national security” with notification to Congress 5-days after waiver.	Secretary of Defense must certify that projects meet the following criteria (1) urgent military requirements during a declared state of emergency or contingency operation; (2) not at an installation where the United States is “reasonably expected to have a long-term presence;” (3) United States has no intention of using construction after military requirement is satisfied; (4) construction is minimum necessary. Secretary must notify congressional defense committees within 7 days of obligating funds, including description of purpose, documentation, and estimated funding.  Requires quarterly reports 30 days after end of quarter on worldwide obligation and expenditure of funds.	Sec. 2808, P.L. 108-136

**Table A2. Temporary Military Construction Authorities, FY2002-FY2005**

Act	Authority	Reporting Requirement	Citation
FY2004 DOD Authorization Act (P.L.108-106)	One-year extension of authority to use up to \$200 million of O&M for military construction projects authorized.	Authority not available until DOD submits the quarterly reports required in FY2004.	Sec. 2810, P.L.108-136
Fiscal Year 2005 Department of Defense Appropriations (P.L. 108-287, H. Rept. 108-622)	No funding provisions.	The President shall report to Congress by January 1, 2005 detailing estimated costs from FY2006 to FY2011 of Operation Iraqi Freedom and Operation Enduring Freedom, or any related military operations in and around Iraq and Afghanistan, and the estimated costs of reconstruction, internal security, and related economic support to Iraq and Afghanistan. President may waive the requirement only if he certifies in writing to the Congress that estimates of these future military and economic support costs cannot be provided for purposes of national security.	P.L. 108-287, Sec. 9012
FY2005 DOD Appropriations Act (P.L.108-287)		Prohibits using any funds in act to initiate new installations overseas without 30-day advance notification to congressional defense committees.	Sec. 8011, P.L.108-287

**Sources:** Table compiled by Daniel Else and Amy Belasco, CRS, Foreign Affairs, Defense and Trade from the statutes and reports cited above.