

114TH CONGRESS
2D SESSION

S. 2865

To promote stability and security in the Asia-Pacific maritime domains,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2016

Mr. CARDIN (for himself, Mr. GARDNER, Mr. MENENDEZ, and Mr. SCHATZ)
introduced the following bill; which was read twice and referred to the
Committee on Foreign Relations

A BILL

To promote stability and security in the Asia-Pacific
maritime domains, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Asia-Pacific Maritime
5 Security Initiative Act of 2016”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
9 **TEES.**—The term “appropriate committees of Con-
10 gress” means—

1 (A) the Committee of Foreign Relations,
2 the Committee on Armed Services, and the
3 Committee on Appropriations of the Senate;
4 and

5 (B) the Committee of Foreign Affairs, the
6 Committee on Armed Services, and the Com-
7 mittee on Appropriations of the House of Rep-
8 resentatives.

9 (2) INCREMENTAL EXPENSES.—The term “in-
10 cremental expenses”—

11 (A) means the reasonable and proper cost
12 of the goods and services that are consumed by
13 a country as a direct result of that country’s
14 participation in training under the authority of
15 this section, including rations, fuel, training
16 ammunition, and transportation; and

17 (B) does not include pay, allowances, and
18 other normal costs of a country’s personnel.

19 (3) OTHER SECURITY FORCES.—The term
20 “other security forces” includes national security
21 forces that conduct maritime security, but does not
22 include self-described militias and paramilitary orga-
23 nizations.

1 **TITLE I—UNITED STATES POL-**
2 **ICY ON ASIA-PACIFIC MARI-**
3 **TIME SECURITY**

4 **SEC. 101. STATEMENT OF POLICY ON MAINTENANCE OF**
5 **FREEDOM OF OPERATIONS IN INTER-**
6 **NATIONAL WATERS AND AIRSPACE IN THE**
7 **ASIA-PACIFIC MARITIME DOMAINS.**

8 It is the policy of the United States that, as a long-
9 standing Asia-Pacific power, the United States will main-
10 tain and exercise routine freedom of operations in the
11 international waters and airspace in the Asia-Pacific mari-
12 time domains, which are critical to the prosperity, sta-
13 bility, and security of the Asia-Pacific region.

14 **SEC. 102. STATEMENT OF POLICY ON CLAIMS THAT IM-**
15 **PINGE ON RIGHTS, FREEDOMS, AND LAWFUL**
16 **USE OF THE SEAS.**

17 It is the policy of the United States—

18 (1) to oppose all claims in the maritime do-
19 mains that impinges on the rights, freedoms, and
20 lawful use of the seas that belong to all nations; and

21 (2) to uphold the principle that territorial and
22 maritime claims, including territorial waters or terri-
23 torial seas, must be derived from land features and
24 otherwise comport with international law.

1 **SEC. 103. STATEMENT OF POLICY ON OPPOSITION TO UNI-**
2 **LATERAL ACTIONS TO CHANGE THE STATUS**
3 **QUO IN THE SOUTH CHINA SEA.**

4 It is the policy of the United States—

5 (1) to oppose the unilateral actions by any
6 claimant seeking to change the status quo in the
7 South China Sea through the use of coercion, intimi-
8 dation, or military force;

9 (2) to oppose reclamation activities in the South
10 China Sea, including the militarization of any re-
11 claimed features;

12 (3) to oppose actions by any country to prevent
13 any other country from exercising its sovereign
14 rights to the resources of the exclusive economic
15 zone (EEZ) and continental shelf by making claims
16 to those areas in the South China Sea that have no
17 support in international law;

18 (4) to oppose unilateral declarations of adminis-
19 trative and military districts in contested areas in
20 the South China Sea;

21 (5) to oppose the militarization of new and re-
22 claimed land features in the South China Sea;

23 (6) to oppose the imposition of new fishing reg-
24 ulations covering disputed areas in the South China
25 Sea, which have raised tensions in the region; and

1 (7)(A) to welcome the expected landmark deci-
2 sion by the International Tribunal on the Law of the
3 Sea in the case of “The Republic of Philippines v.
4 The People’s Republic of China”;

5 (B) to note that the decision is binding on all
6 parties involved and will constitute international law;

7 (C) to call on all parties to abide by the ruling;
8 and

9 (D) to encourage other South China Sea claim-
10 ants to seek similar clarification of maritime dis-
11 putes through arbitration.

12 **SEC. 104. STATEMENT OF POLICY ON THE COMMITMENT**
13 **AND SUPPORT OF THE UNITED STATES FOR**
14 **ALLIES AND PARTNERS IN THE ASIA-PACIFIC**
15 **REGION.**

16 It is the policy of the United States—

17 (1) to reaffirm its unwavering commitment and
18 support for allies and partners in the Asia-Pacific
19 region, including longstanding United States policy
20 regarding Article V of the United States-Philippines
21 Mutual Defense Treaty;

22 (2) to reaffirm that Article V of the United
23 States-Japan Mutual Defense Treaty applies to the
24 Japanese-administered Senkaku Islands; and

1 (3) to station and regularly deploy the newest
2 and most advanced United States air power assets
3 to the Asia-Pacific region, including F-22 stealth
4 fighters, B-2 and B-52 strategic bombers, and the
5 expected forward-stationing of F-35 aircraft in
6 Iwakuni, Japan.

7 **SEC. 105. STATEMENT OF POLICY ON EFFORTS OF THE AS-**
8 **SOCIATION OF SOUTHEAST ASIAN NATIONS**
9 **AND THE PEOPLE'S REPUBLIC OF CHINA TO**
10 **DEVELOP AN EFFECTIVE CODE OF CONDUCT.**

11 It is the policy of the United States—

12 (1) to support efforts by the Association of
13 Southeast Asian Nations (ASEAN) and the People's
14 Republic of China to develop an effective Code of
15 Conduct; and

16 (2) to encourage claimants not to undertake
17 new or unilateral attempts to change the status quo
18 since the signing of the 2002 Declaration of Con-
19 duct, including reclamation activities or asserting
20 administrative measures or controls in disputed
21 areas in the South China Sea.

1 **SEC. 106. STATEMENT OF POLICY ON THE CONTINUITY OF**
2 **OPERATIONS BY THE ARMED FORCES IN THE**
3 **ASIA-PACIFIC REGION.**

4 It is the policy of the United States to assure the
5 continuity of operations by the United States Armed
6 Forces in the Asia-Pacific region, including, when appro-
7 priate, in cooperation with partners and allies, in order
8 to reaffirm the principle of freedom of operations in inter-
9 national waters and airspace in accordance with estab-
10 lished principles and practices of international law.

11 **TITLE II—MARITIME SECURITY**
12 **INITIATIVE**

13 **SEC. 201. MARITIME SECURITY INITIATIVE.**

14 (a) PROGRAM AUTHORIZED.—

15 (1) IN GENERAL.—The Secretary of Defense, in
16 concurrence with the Secretary of State, is author-
17 ized to provide assistance, for the purpose of in-
18 creasing maritime security and domain awareness
19 for countries in the Asia-Pacific region—

20 (A) to provide assistance to national mili-
21 tary or other security forces of such countries
22 that have among their functional responsibilities
23 maritime security missions;

24 (B) to provide training to ministry, agency,
25 and headquarters level organizations for such
26 forces; and

1 (C) to provide assistance to and training to
2 other relevant foreign affairs, maritime, or se-
3 curity-related ministries, agencies, departments
4 or offices that manage and oversight of mari-
5 time activities and policy that the Secretary
6 may so designate.

7 (2) DESIGNATION OF ASSISTANCE AND TRAIN-
8 ING.—The provision of assistance and training
9 under this section may be referred to as the “Mari-
10 time Security Initiative”.

11 (3) CONSTRUCTION OF LIMITATIONS.—The Sec-
12 retary may provide assistance under this section
13 without regard to any other provision of law, other
14 than section 620M of the Foreign Assistance Act of
15 1961 (22 U.S.C. 2378d).

16 (b) ELIGIBLE COUNTRIES.—In selecting countries in
17 the Asia-Pacific region to which assistance is to be pro-
18 vided under the Initiative, the Secretary of Defense, in
19 concurrence with the Secretary of State, shall prioritize
20 the provision of assistance to countries that will contribute
21 to the achievement of following objectives:

22 (1) Retaining unhindered access to and use of
23 international waterways in the Asia-Pacific region
24 that are critical to ensuring the security and free

1 flow of commerce and achieving United States na-
2 tional security objectives.

3 (2) Improving maritime domain awareness in
4 the Asia-Pacific region.

5 (3) Countering piracy in the Asia-Pacific re-
6 gion.

7 (4) Disrupting illicit maritime trafficking activi-
8 ties and other forms of maritime trafficking activity
9 in the Asia-Pacific that directly benefit organizations
10 that have been determined to be a security threat to
11 the United States.

12 (5) Enhancing the maritime capabilities of a
13 country or regional organization to respond to
14 emerging threats to maritime security in the Asia-
15 Pacific region.

16 (c) TYPES OF ASSISTANCE AND TRAINING.—

17 (1) AUTHORIZED ELEMENTS OF ASSISTANCE.—
18 Assistance provided under subsection (a)(1)(A) may
19 include the provision of equipment, supplies, train-
20 ing, and small-scale military construction.

21 (2) REQUIRED ELEMENTS OF ASSISTANCE AND
22 TRAINING.—Assistance and training provided under
23 subsection (a) shall include elements that promote
24 the following:

1 (A) Observance of and respect for human
2 rights and fundamental freedoms.

3 (B) Respect for legitimate civilian author-
4 ity within the country to which the assistance
5 is provided.

6 (d) PRIORITIES FOR ASSISTANCE AND TRAINING.—
7 In developing programs for assistance or training to be
8 provided under subsection (a), the Secretary of Defense
9 shall accord a priority to assistance, training, or both that
10 will enhance the maritime capabilities of the recipient for-
11 eign country, or a regional organization of which the re-
12 cipient country is a member, to respond to emerging
13 threats to maritime security.

14 (e) INCREMENTAL EXPENSES OF PERSONNEL OF
15 CERTAIN OTHER COUNTRIES FOR TRAINING.—

16 (1) AUTHORITY FOR PAYMENT.—If the Sec-
17 retary of Defense determines that the payment of in-
18 cremental expenses in connection with training de-
19 scribed in subsection (a)(1)(B) will facilitate the
20 participation in such training of organization per-
21 sonnel of foreign countries specified in paragraph
22 (2), the Secretary may use amounts available under
23 subsection (f) for assistance and training under sub-
24 section (a) for the payment of such incremental ex-
25 penses.

1 (2) COVERED COUNTRIES.—The foreign coun-
2 tries specified in this paragraph are the following:

3 (A) Brunei.

4 (B) Singapore.

5 (C) Taiwan.

6 (f) AVAILABILITY OF FUNDS.—

7 (1) FISCAL YEAR 2017.—Of the amounts au-
8 thorized to be appropriated for fiscal year 2017 for
9 the Department of Defense for operation and main-
10 tenance, Defense-wide, \$75,000,000 may be avail-
11 able for the provision of assistance and training
12 under subsection (a).

13 (2) FISCAL YEARS 2018 THROUGH 2021.—In
14 each of fiscal years 2018 through 2021, from
15 amounts authorized to be appropriated for the De-
16 partment of Defense for such fiscal year for oper-
17 ation and maintenance, Defense-wide, \$100,000,000
18 may be available for the provision of assistance and
19 training under subsection (a).

20 (3) NOTICE ON SOURCE OF FUNDS.—If the
21 Secretary of Defense uses funds available to the De-
22 partment pursuant to paragraph (1) to provide as-
23 sistance and training under subsection (a) during a
24 fiscal half-year, not later than 30 days after the end
25 of such fiscal half-year, the Secretary shall submit to

1 the appropriate congressional committees a notice on
2 the account or accounts providing such funds.

3 (g) NOTICE TO CONGRESS ON ASSISTANCE AND
4 TRAINING.—Not later than 15 days before exercising the
5 authority under subsection (a) or (e) with respect to a re-
6 cipient foreign country, the Secretary of Defense shall sub-
7 mit to the appropriate congressional committees a notifi-
8 cation containing the following information:

9 (1) The recipient foreign country.

10 (2) A detailed justification of the program for
11 the provision of the assistance or training concerned,
12 and its relationship to United States security inter-
13 ests.

14 (3) The budget for the program, including a
15 timetable of planned expenditures of funds to imple-
16 ment the program, an implementation timeline for
17 the program with milestones (including anticipated
18 delivery schedules for any assistance under the pro-
19 gram), the military department or component re-
20 sponsible for management of the program, and the
21 anticipated completion date for the program.

22 (4) A description of the arrangements, if any,
23 to support host nation sustainment of any capability
24 developed pursuant to the program, and the source
25 of funds to support sustainment efforts and per-

1 performance outcomes to be achieved under the pro-
 2 gram beyond its completion date, if applicable.

3 (5) A description of the program objectives and
 4 an assessment framework to be used to develop ca-
 5 pability and performance metrics associated with
 6 operational outcomes for the recipient force.

7 (6) Such other matters as the Secretary con-
 8 siders appropriate.

9 (h) ANNUAL REPORT.—The Secretary of Defense
 10 shall submit to the appropriate congressional committees
 11 each year a report on the status of the provision of equip-
 12 ment, training, supplies, or other services provided pursu-
 13 ant to the program carried out under this section during
 14 the preceding year.

15 (i) EXPIRATION.—Assistance and training may not
 16 be provided under this section after September 30, 2022.

17 **TITLE III—SPECIAL FOREIGN**
 18 **MILITARY SALES STATUS FOR**
 19 **THE PHILIPPINES**

20 **SEC. 301. SPECIAL FOREIGN MILITARY SALES STATUS FOR**
 21 **THE PHILIPPINES.**

22 The Arms Export Control Act (22 U.S.C. 2751 et
 23 seq.) is amended—

24 (1) in sections 3(d)(2)(B), 3(d)(3)(A)(i),
 25 3(d)(5), 21(e)(2)(A), 36(b), 36(c), 36(d)(2)(A),

1 62(c)(1), and 63(a)(2), by inserting “the Phil-
2 ippines,” before “or New Zealand” each place it ap-
3 pears;

4 (2) in section 3(b)(2), by inserting “the Govern-
5 ment of the Philippines,” before “or the Government
6 of New Zealand”; and

7 (3) in section 21(h), by inserting “the Phil-
8 ippines,” before “or Israel” each place it appears.

9 **TITLE IV—IMET**

10 **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

11 There is authorized to be appropriated for fiscal year
12 2017 for the Department of State, out of amounts appro-
13 priated or otherwise made available for assistance under
14 chapter 5 of part II of the Foreign Assistance Act of 1961
15 (22 U.S.C. 2301 et seq.) (relating to international military
16 education and training (IMET) assistance), \$15,000,000
17 for activities in the Asia-Pacific region in accordance with
18 this Act.

19 **TITLE V—FOREIGN MILITARY** 20 **FINANCING**

21 **SEC. 501. AUTHORIZATION OF APPROPRIATIONS.**

22 In addition to any amounts appropriated pursuant to
23 section 23 of the Arms Export Control Act (22 U.S.C.
24 2763) (relating to foreign military financing assistance),
25 there is authorized to be appropriated \$10,000,000 for fis-

1 cal year 2017 for activities in the Asia-Pacific region in
2 accordance with this Act.

3 **SEC. 502. PRIORITIES FOR ASSISTANCE.**

4 (a) SELECTION OF COUNTRIES.—In selecting coun-
5 tries in the Asia-Pacific region to which security assistance
6 should be provided, the Secretary of State may prioritize
7 the provision of maritime capacity building assistance to
8 countries in the Asia-Pacific that will contribute to the
9 achievement of following objectives:

10 (1) Retaining unhindered access to and use of
11 international waterways in the Asia-Pacific region
12 that are critical to ensuring the security and free
13 flow of commerce and achieving United States na-
14 tional security objectives.

15 (2) Improving maritime domain awareness in
16 the Asia-Pacific region.

17 (3) Countering piracy in the Asia-Pacific re-
18 gion.

19 (4) Disrupting illicit maritime trafficking activi-
20 ties and other forms of maritime trafficking activity
21 in the Asia-Pacific that directly benefit organizations
22 that have been determined to be a security threat to
23 the United States.

24 (5) Enhancing the maritime capabilities of a
25 country or regional organization to respond to

1 emerging threats to maritime security in the Asia-
2 Pacific region.

3 (b) PRIORITIES.—In carrying out the provision of
4 maritime capacity building—

5 (1) priority may be placed on assistance to en-
6 hance the maritime security capabilities of the mili-
7 tary or security forces of countries in the Asia-Pa-
8 cific region that have maritime missions and the
9 government agencies responsible for such forces; and

10 (2) assistance may be provided to a country in
11 the Asia-Pacific region to enhance the capabilities of
12 that country, or of a regional organization that in-
13 cludes that country, to conduct—

14 (A) maritime intelligence, surveillance, and
15 reconnaissance;

16 (B) littoral and port security;

17 (C) Coast Guard operations;

18 (D) command and control; and

19 (E) management and oversight of maritime
20 activities.

21 (c) ANNUAL REPORT.—The Secretary of State shall
22 submit to the appropriate committees of Congress each
23 year a report on the status of the provision of equipment,
24 training, supplies, or other services provided pursuant to

1 maritime capacity building in the Asia-Pacific in the pre-
2 ceding year.

3 **TITLE VI—MARITIME LAW**
4 **ENFORCEMENT INITIATIVE**

5 **SEC. 601. AUTHORIZATION OF APPROPRIATIONS.**

6 There is authorized to be appropriated for fiscal year
7 2017 for the Department of State for International Nar-
8 cotics Control and Law Enforcement (INCLE),
9 \$7,500,000 for the support of the Southeast Asia mari-
10 time Law Enforcement Initiative.

11 **TITLE VII—TRANSFER OF**
12 **EXCESS DEFENSE ARTICLES**

13 **SEC. 701. PRIORITY FOR TRANSFER OF EXCESS DEFENSE**
14 **ARTICLES.**

15 Section 516(c)(2) of the Foreign Assistance Act of
16 1961 (22 U.S.C. 2321j(c)(2)) is amended by striking “and
17 to the Philippines” and inserting “to the Philippines, and
18 to other major non-NATO allies of the United States lo-
19 cated in the Asia-Pacific region (including Japan, South
20 Korea, Thailand, Australia and New Zealand) and other
21 maritime ASEAN member states”.

22 **SEC. 702. TRANSFER OF NAVAL VESSELS TO FOREIGN RE-**
23 **CIPIENT.**

24 The Secretary of State, with the concurrence of the
25 Secretary of Defense, is authorized to transfer one OLI-

1 VER HAZARD PERRY class guided missile frigate on
2 a grant basis under section 516 of the Foreign Assistance
3 Act of 1961 (22 U.S.C. 2321j) to a foreign government
4 pursuant to the program authorized in section 201(a) for
5 the purposes of this Act.

6 **TITLE VIII—EQUALITY OF**
7 **TREATMENT IN ARMS SALES**
8 **FOR TAIWAN**

9 **SEC. 801. EQUALITY OF TREATMENT IN ARMS SALES FOR**
10 **TAIWAN.**

11 (a) IN GENERAL.—The President shall ensure that
12 the United States Government treats every proposed arms
13 sales for Taiwan with the same timelines, processes, and
14 procedures, including formal notification to Congress
15 under the Arms Export Control Act (22 U.S.C. 2751 et
16 seq.), accorded to proposed arms transfers for all other
17 countries.

18 (b) INSPECTOR GENERAL REPORTING.—Not later
19 than one year after the date of the enactment of this Act,
20 and annually thereafter for 5 years, the Inspectors Gen-
21 eral of the Department of State and the Department of
22 Defense shall review and report to the appropriate con-
23 gressional committees on the compliance of those depart-
24 ments with the requirements of subsection (a).

TITLE IX—REPORTS

1
2 **SEC. 901. REPORT ON PLANS FOR THE MAINTENANCE OF**
3 **FREEDOM OF OPERATIONS IN INTER-**
4 **NATIONAL WATERS AND AIRSPACE IN THE**
5 **ASIA-PACIFIC MARITIME DOMAINS.**

6 Not later than 180 days after the date of the enact-
7 ment of this Act, the Secretary of Defense shall, with the
8 concurrence with the Secretary of State, submit to the ap-
9 propriate committees of Congress a report in classified
10 form setting forth a plan, for each of the six-month, one-
11 year, and three-year periods beginning on the date of such
12 report, for freedom of navigation assertions, shows of
13 force, bilateral and multilateral military exercises, port
14 calls, and training intended to enhance the maritime capa-
15 bilities, respond to emerging threats, and maintain free-
16 dom of operations in international waters and airspace in
17 the Asia-Pacific maritime domains.

18 **SEC. 902. REPORT ON PLANS FOR PARTNER CAPACITY**
19 **BUILDING.**

20 Not later than 180 days after the date of the enact-
21 ment of this Act, the Secretary of State shall, with the
22 concurrence with the Secretary of Defense, submit to the
23 appropriate congressional committees a report (in classi-
24 fied or unclassified form) setting forth a plan, for each
25 of the six-month, one-year, and five-year periods beginning

1 on the date of such report, for Partner Capacity Building
2 assistance intended to enhance the maritime capabilities,
3 respond to emerging threats, and maintain freedom of op-
4 erations in international waters and airspace in the Asia-
5 Pacific maritime domains.

6 **SEC. 903. ANNUAL REPORT ON MILITARY AND NON-**
7 **MILITARY ACTIVITIES OF CHINA IN THE**
8 **SOUTH CHINA SEA.**

9 Not later than 90 days after the date of the enact-
10 ment of this Act, and annually thereafter, the Secretary
11 of State, in consultation with the Secretary of Defense,
12 shall submit to the appropriate congressional committees
13 an unclassified comprehensive report, with a classified
14 annex if necessary, detailing the military and nonmilitary
15 activities of the People's Republic of China in the South
16 China Sea.

17 **SEC. 904. NOTICE TO CONGRESS ON ASSISTANCE AND**
18 **TRAINING.**

19 Not later than 15 days before exercising the authority
20 under section 201, section 401, or section 501 or pursuant
21 to the amendments made by section 301 with respect to
22 a recipient foreign country, the Secretary of State or the
23 Secretary of Defense, as the case may be, shall submit
24 to the appropriate congressional committees a notification
25 containing the following elements:

1 (1) The name of the recipient foreign country.

2 (2) A detailed justification for the provision of
3 the assistance or training concerned, and its rela-
4 tionship to United States security interests.

5 (3) The budget for the program, including—

6 (A) a timetable of planned expenditures of
7 funds to implement the program;

8 (B) an implementation timeline for the
9 program with milestones (including anticipated
10 delivery schedules for any assistance under the
11 program);

12 (C) the military department or component
13 responsible for management of the program;
14 and

15 (D) the anticipated completion date for the
16 program.

17 (4) A description of the arrangements, if any,
18 to support host nation sustainment of any capability
19 developed pursuant to the program, and the source
20 of funds to support sustainment efforts and per-
21 formance outcomes to be achieved under the pro-
22 gram beyond its completion date, if applicable.

23 (5) A description of the program objectives and
24 an assessment framework to be used to develop ca-

1 pability and performance metrics associated with
2 operational outcomes for the recipient force.

3 (6) Such other matters as the Secretary con-
4 siders appropriate.

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