To amend title 10, United States Code, to enhance the national defense through empowerment of the National Guard, enhancement of the functions of the National Guard Bureau, and improvement of Federal-State military coordination in domestic emergency response, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 19, 2011

Mr. LEAHY (for himself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to enhance the national defense through empowerment of the National Guard, enhancement of the functions of the National Guard Bureau, and improvement of Federal-State military coordination in domestic emergency response, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Guard Empowerment and State-National Defense Integration Act of 2011”.
SEC. 2. REESTABLISHMENT OF POSITION OF VICE CHIEF
OF THE NATIONAL GUARD BUREAU AND TERMINATION OF POSITION OF DIRECTOR OF
THE JOINT STAFF OF THE NATIONAL GUARD BUREAU.

(a) REESTABLISHMENT AND TERMINATION OF POSITIONS.—Section 10505 of title 10, United States Code, is amended to read as follows:

§ 10505. Vice Chief of the National Guard Bureau

"(a) APPOINTMENT.—(1) There is a Vice Chief of the National Guard Bureau, selected by the Secretary of Defense from officers of the Army National Guard of the United States or the Air National Guard of the United States who—

"(A) are recommended for such appointment by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

"(B) have had at least 10 years of federally recognized service in an active status in the National Guard; and

"(C) are in a grade above the grade of colonel.

“(2) The Chief and Vice Chief of the National Guard Bureau may not both be members of the Army or of the Air Force.
“(3)(A) Except as provided in subparagraph (B), an officer appointed as Vice Chief of the National Guard Bureau serves for a term of four years, but may be removed from office at any time for cause.

“(B) The term of the Vice Chief of the National Guard Bureau shall end within a reasonable time (as determined by the Secretary of Defense) following the appointment of a Chief of the National Guard Bureau who is a member of the same armed force as the Vice Chief.

“(b) DUTIES.—The Vice Chief of the National Guard Bureau performs such duties as may be prescribed by the Chief of the National Guard Bureau.

“(c) GRADE.—The Vice Chief of the National Guard Bureau shall be appointed to serve in the grade of lieutenant general.

“(d) FUNCTIONS AS ACTING CHIEF.—When there is a vacancy in the office of the Chief of the National Guard Bureau or in the absence or disability of the Chief, the Vice Chief of the National Guard Bureau acts as Chief and performs the duties of the Chief until a successor is appointed or the absence of disability ceases.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 10502 of such title is amended by striking subsection (e).
(2) Section 10506(a)(1) of such title is amended by striking “and the Director of the Joint Staff of the National Guard Bureau” and inserting “and the Vice Chief of the National Guard Bureau”.

(c) Clerical Amendments.—

(1) Heading Amendment.—The heading of section 10502 of such title is amended to read as follows:

“§ 10502. Chief of the National Guard Bureau: appointment; advisor on National Guard matters; grade”.

(2) Table of Sections.—The table of sections at the beginning of chapter 1011 of such title is amended—

(A) by striking the item relating to section 10502 and inserting the following new item:

“10502. Chief of the National Guard Bureau: appointment; advisor on National Guard matters; grade.”;

and

(B) by striking the item relating to section 10505 and inserting the following new item:

“10505. Vice Chief of the National Guard Bureau.”.
SEC. 3. MEMBERSHIP OF THE CHIEF OF THE NATIONAL

GUARD BUREAU ON THE JOINT CHIEFS OF

STAFF.

(a) Membership on Joint Chiefs of Staff.—

Section 151(a) of title 10, United States Code, is amended
by adding at the end the following new paragraph:

“(7) The Chief of the National Guard Bu-

reau.”.

(b) Conforming Amendments.—Section 10502 of
such title, as amended by section 2(b)(1) of this Act, is
further amended—

(1) by redesignating subsection (d) as sub-

section (e); and

(2) by inserting after subsection (c) the fol-

lowing new subsection (d):

“(d) Member of Joint Chiefs of Staff.—The
Chief of the National Guard Bureau shall perform the du-

ties prescribed for him or her as a member of the Joint

Chiefs of Staff under section 151 of this title.”.

SEC. 4. CONTINUATION AS A PERMANENT PROGRAM AND

ENHANCEMENT OF ACTIVITIES OF TASK

FORCE FOR EMERGENCY READINESS PILOT

PROGRAM OF THE FEDERAL EMERGENCY

MANAGEMENT AGENCY.

(a) Continuation.—
(1) Continuation as permanent program.—The Administrator of the Federal Emergency Management Agency shall continue the Task Force for Emergency Readiness (TFER) pilot program of the Federal Emergency Management Agency as a permanent program of the Agency.

(2) Limitation on termination.—The Administrator may not terminate the Task Force for Emergency Readiness program, as so continued, until authorized or required to terminate the program by law.

(b) Expansion of program scope.—As part of the continuation of the Task Force for Emergency Readiness program pursuant to subsection (a), the Administrator shall carry out the program in at least five States in addition to the five States in which the program is carried out as of the date of the enactment of this Act.

(c) Additional FEMA activities.—As part of the continuation of the Task Force for Emergency Readiness program pursuant to subsection (a), the Administrator shall—

(1) establish guidelines and standards to be used by the States in strengthening the planning and planning capacities of the States with respect to responses to catastrophic disaster emergencies; and
(2) develop a methodology for implementing the
Task Force for Emergency Readiness that includes
goals and standards for assessing the performance
of the Task Force.

(d) **National Guard Bureau Activities.**—As part of the continuation of the Task Force for Emergency Readiness program pursuant to subsection (a), the Chief of the National Guard Bureau shall—

(1) assist the Administrator in the establishment of the guidelines and standards, implementation methodology, and performance goals and standards required by subsection (c);

(2) in coordination with the Administrator—

(A) identify, using catastrophic disaster response plans for each State developed under the program, any gaps in State civilian and military response capabilities that Federal military capabilities are unprepared to fill; and

(B) notify the Secretary of Defense, the Commander of the United States Northern Command, and the Commander of the United States Pacific Command of any gaps in capabilities identified under subparagraph (A); and

(3) acting through and in coordination with the Adjutants General of the States, assist the States in
the development of State plans on responses to cata-
 strophic disaster emergencies.

(e) ANNUAL REPORTS.—The Administrator and the
Chief of the National Guard Bureau shall jointly submit
to the appropriate committees of Congress each year a re-
port on activities under the Task Force for Emergency
Readiness program during the preceding year. Each re-
port shall include a description of the activities under the
program during the preceding year and a current assess-
ment of the effectiveness of the program in meeting its
purposes.

(f) APPROPRIATE COMMITTEES OF CONGRESS DE-
FINED.—In this section, the term “appropriate commit-
tees of Congress” means—

(1) the Committee on Armed Services and the
Committee on Homeland Security and Governmental
Affairs of the Senate; and

(2) the Committee on Armed Services and the
Committee on Homeland Security of the House of
Representatives.
SEC. 5. MEMORANDUM OF UNDERSTANDING BETWEEN DEPARTMENT OF DEFENSE AND DEPARTMENT OF HOMELAND SECURITY ON UNITY OF EFFORT IN RESPONSE OF MILITARY FORCES TO DOMESTIC EMERGENCIES.

(a) Memorandum of Understanding Required.—

(1) In general.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of Homeland Security shall enter into a memorandum of understanding on coordination between the Department of Defense and the Department of Homeland Security, and between the Departments and the States, in the use of military forces in response to domestic emergencies.

(2) Purpose.—The purpose of the memorandum is to ensure, to the maximum extent practicable, a unity of effort within the Federal Government, and between the Federal Government and the States, regarding the use of military forces in response to domestic emergencies.

(b) Consultation With the States.—In entering into the memorandum of understanding required by subsection (a), the Secretary of Defense and the Secretary of Homeland Security shall jointly consult with the Coun-
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council of Governors established by Executive Order No. 13528 for purposes of coordinating plans under the memorandum of understanding with the plans of the States for the use of military forces of the States in response to domestic emergencies.

(c) SUBMITTAL TO CONGRESS.—Upon entry into the memorandum of understanding required by subsection (a), the Secretary of Defense and the Secretary of Homeland Security shall jointly submit to the appropriate committees of Congress a report on the memorandum of understanding. The report shall include the following:

(1) The memorandum of understanding.

(2) A comprehensive description of the manner in which the mechanisms set forth in the memorandum of understanding will ensure a unity of effort within the Federal Government, and between the Federal Government and the State or States concerned, regarding the use of military forces in response to domestic emergencies, including, in particular, the manner in which such mechanisms will ensure a unity of such effort between the Federal Government and the States in the use of such forces in such response.

(3) Such other matters as the Secretaries jointly consider appropriate.
(d) Appropriate Committees of Congress Defined.—In this section, the term “appropriated committees of Congress” means—

(1) the Committees on Armed Services, Homeland Security and Governmental Affairs, and Appropriations of the Senate; and

(2) the Committees on Armed Services, Homeland Security, and Appropriations of the House of Representatives.

SEC. 6. REPORT ON COMPARATIVE ANALYSIS OF COSTS OF COMPARABLE UNITS OF THE RESERVE COMPONENTS AND THE REGULAR COMPONENTS OF THE ARMED FORCES.

(a) Report Required.—

(1) In general.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report setting forth a comparative analysis of the costs of units of the regular components of the Armed Forces with the costs of similar units of the reserve components of the Armed Forces. The analysis shall include a separate comparison of the costs of units in the aggregate and of the costs of units solely when on active duty.
(2) **Similar units.**—For purposes of this subsection, units of the regular components and reserve components shall be treated as similar if such units have the same general structure, personnel, or function, or are substantially composed of personnel having identical or similar military occupational specialties (MOS).

(b) **Assessment of Increased Reserve Component Presence in Total Force Structure.**—The Secretary shall include in the report required by subsection (a) an assessment of the advisability of increasing the number of units and members of the reserve components of the Armed Forces within the total force structure of the Armed Forces. The assessment shall take into account the comparative analysis conducted for purposes of subsection (a) and such other matters as the Secretary considers appropriate for purposes of the assessment.

(c) **Comptroller General Report.**—Not later than 180 days after the date of the submittal of the report required by subsection (a), the Comptroller General of the United States shall submit to the congressional defense committees a report setting forth a review of such report by the Comptroller General. The report of the Comptroller General shall include an assessment of the comparative analysis contained in the report required by subsection (a)
and of the assessment of the Secretary pursuant to sub-
section (b).

(d) Congressional Defense Committees Defined.—In this section, the term “congressional defense
committees” has the meaning given that term in section
101(a)(16) of title 10, United States Code.

SEC. 7. DISPLAY OF PROCUREMENT OF EQUIPMENT FOR
THE RESERVE COMPONENTS OF THE ARMED
FORCES UNDER ESTIMATED EXPENDITURES
FOR PROCUREMENT IN FUTURE-YEARS DE-
FENSE PROGRAMS.

Each future-years defense program submitted to
Congress under section 221 of title 10, United States
Code, shall, in setting forth estimated expenditures and
item quantities for procurement for the Armed Forces for
the fiscal years covered by such program, display sepa-
rately under such estimated expenditures and item quan-
tities the estimated expenditures for each such fiscal year
for equipment for each reserve component of the Armed
Forces that will receive items in any fiscal year covered
by such program.

SEC. 8. FISCAL YEAR 2012 FUNDING FOR THE NATIONAL
GUARD FOR CERTAIN DOMESTIC ACTIVITIES.

(a) Continuity of Operations, Continuity of
Government, and Consequence Management.—
(1) AUTHORIZATION OF APPROPRIATIONS.—
There is hereby authorized to be appropriated for fiscal year 2012 for the Department of Defense amounts as follows:

(A) For National Guard Personnel, Army, $11,000,000.

(B) For National Guard Personnel, Air Force, $3,500,000.

(C) For Operation and Maintenance, Army National Guard, $11,000,000.

(2) AVAILABILITY.—The amounts authorized to be appropriated by paragraph (1) shall be available to the Army National Guard and the Air National Guard, as applicable, for costs of personnel in training and operations with respect to continuity of operations, continuity of government, and consequence management in connection with response to terrorist and other attacks on the United States homeland and natural and man-made catastrophes in the United States.

(b) DOMESTIC OPERATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—
There is hereby authorized to be appropriated for fiscal year 2012 for the Department of Defense,
$300,000,000 for Operation and Maintenance, Defense-wide.

(2) Availability.—The amount authorized to be appropriated by paragraph (1) shall be available for the Army National Guard and the Air National Guard for emergency preparedness and response activities of the National Guard while in State status under title 32, United States Code.

(3) Transfer.—Amounts under the amount authorized to be appropriated by paragraph (1) shall be available for transfer to accounts for National Guard Personnel, Army, and National Guard Personnel, Air Force, for purposes of the pay and allowances of members of the National Guard in conducting activities described in paragraph (2).

(e) Joint Operations Coordination Centers.—

(1) Authorization of Appropriations.—There is hereby authorized to be appropriated for fiscal year 2012 for the Department of Defense amounts as follows:

(A) For National Guard Personnel, Army, $28,000,000.

(B) For National Guard Personnel, Air Force, $7,000,000.
(2) Availability.—The amounts authorized to be appropriated by paragraph (1) shall be available to the Army National Guard and the Air National Guard, as applicable, for costs of personnel in continuously staffing a Joint Operations Coordination Center (JOCC) in the Joint Forces Headquarters of the National Guard in each State and Territory for command and control and activation of forces in response to terrorist and other attacks on the United States homeland and natural and man-made catastrophes in the United States.

(d) Supplement Not Supplant.—The amounts authorized to be appropriated by subsections (a), (b), and (c) for the purposes set forth in such subsections are in addition to any other amounts authorized to be appropriated for fiscal year 2012 for the Department of Defense for such purposes.

SEC. 9. ENHANCEMENT OF AUTHORITIES RELATING TO THE UNITED STATES NORTHERN COMMAND AND OTHER COMBATANT COMMANDS.

(a) Commands Responsible for Support to Civil Authorities in the United States.—The United States Northern Command and the United States Pacific Command shall be the combatant commands of the Armed Forces that are principally responsible for the sup-
port of civil authorities in the United States by the Armed Forces.

(b) Discharge of Responsibility.—In discharging the responsibility set forth in subsection (a), the Commander of the United States Northern Command and the Commander of the United States Pacific Command shall each—

(1) in consultation with and acting through the Chief of the National Guard Bureau and the Joint Force Headquarters of the National Guard of the State or States concerned, assist the States in the employment of the National Guard under State control, including National Guard operations conducted in State active duty or under title 32, United States Code; and

(2) facilitate the deployment of the Armed Forces on active duty under title 10, United States Code, as necessary to augment and support the National Guard in its support of civil authorities when National Guard operations are conducted under State control, whether in State active duty or under title 32, United States Code.

(c) Memorandum of Understanding.—

(1) Memorandum Required.—Not later than 180 days after the date of the enactment of this Act,
the Commander of the United States Northern Command, the Commander of the United States Pacific Command, and the Chief of the National Guard Bureau shall, with the approval of the Secretary of Defense, jointly enter into a memorandum of understanding setting forth the operational relationships, and individual roles and responsibilities, during responses to domestic emergencies among the United States Northern Command, the United States Pacific Command, and the National Guard Bureau.

(2) MODIFICATION.—The Commander of the United States Northern Command, the Commander of the United States Pacific Command, and the Chief of the National Guard Bureau may from time to time modify the memorandum of understanding under this subsection to address changes in circumstances and for such other purposes as the Commander of the United States Northern Command, the Commander of the United States Pacific Command, and the Chief of the National Guard Bureau jointly consider appropriate. Each such modification shall be subject to the approval of the Secretary of Defense.

(d) AUTHORITY TO MODIFY ASSIGNMENT OF COMMAND RESPONSIBILITY.—Nothing in this section shall be
construed as altering or limiting the power of the President or the Secretary of Defense to modify the Unified Command Plan in order to assign all or part of the responsibility described in subsection (a) to a combatant command other than the United States Northern Command or the United States Pacific Command.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations for purposes of aiding the expeditious implementation of the authorities and responsibilities in this section.

SEC. 10. REQUIREMENTS RELATING TO NATIONAL GUARD OFFICERS IN CERTAIN COMMAND POSITIONS.

(a) COMMANDER OF ARMY NORTH COMMAND.—The officer serving in the position of Commander, Army North Command, shall be an officer in the Army National Guard of the United States.

(b) COMMANDER OF AIR FORCE NORTH COMMAND.—The officer serving in the position of Commander, Air Force North Command, shall be an officer in the Air National Guard of the United States.

(c) SENSE OF CONGRESS.—It is the sense of Congress that, in assigning officers to the command positions specified in subsections (a) and (b), the President should afford a preference in assigning officers in the Army National Guard of the United States or Air National Guard
of the United States, as applicable, who have served as
the adjutant general of a State.

SEC. 11. AVAILABILITY OF FUNDS UNDER STATE PARTNER-
SHIP PROGRAM FOR ADDITIONAL NATIONAL
GUARD CONTACTS ON MATTERS WITHIN THE
CORE COMPETENCIES OF THE NATIONAL
GUARD.

(a) IN GENERAL.—The Secretary of Defense shall,
in consultation with the Secretary of State, modify the
regulations prescribed pursuant to section 1210 of the Na-
tional Defense Authorization Act for Fiscal Year 2010
(Public Law 111–84; 123 Stat. 2517; 32 U.S.C. 107 note)
to provide for the use of funds available pursuant to such
regulations for contacts between members of the National
Guard and civilian personnel of foreign governments out-
side the ministry of defense on matters within the core
competencies of the National Guard such as the following:

(1) Disaster response and mitigation.

(2) Defense support to civilian authorities.

(3) Consequence management and installation
protection.

(4) Chemical, biological, radiological, or nuclear
event (CBRNE) response.

(5) Border and port security and cooperation
with civilian law enforcement.
(6) Search and rescue.

(7) Medical matters.

(8) Counterdrug and counternarcotics activities.

(9) Public affairs.

(10) Employer and family support of reserve forces.

(11) Such other matters within the core competencies of the National Guard and suitable for contacts under the State Partnership Program as the Secretary of Defense shall specify.

(b) FUNDING FOR FISCAL YEAR 2012.—There is hereby authorized to be appropriated for fiscal year 2012 for the Department of Defense for the National Guard, $50,000,000 to be available for contacts under the State Partnership Program authorized pursuant to the modification of regulations required by subsection (a).