

112TH CONGRESS  
1ST SESSION

# S. 473

To extend the chemical facility security program of the Department of Homeland Security, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 3, 2011

Ms. COLLINS (for herself, Mr. PRYOR, Mr. PORTMAN, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To extend the chemical facility security program of the Department of Homeland Security, 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 “Continuing Chemical  
5 Facilities Antiterrorism Security Act of 2011”.

6 **SEC. 2. EXTENSION OF CHEMICAL FACILITIES**  
7 **ANTITERRORISM SECURITY PROGRAM.**

8 (a) IN GENERAL.—Section 550(b) of the Department  
9 of Homeland Security Appropriations Act, 2007 (6 U.S.C.

1 121 note) is amended by striking “October 4, 2010” and  
2 inserting “October 4, 2014”.

3 (b) CHEMICAL FACILITY SECURITY ENHANCE-  
4 MENTS.—

5 (1) IN GENERAL.—The Homeland Security Act  
6 of 2002 (6 U.S.C. 101 et seq.) is amended by add-  
7 ing at the end the following:

8 **“TITLE XXI—CHEMICAL**  
9 **FACILITY SECURITY**

10 **“SEC. 2101. DEFINITIONS.**

11 “In this title—

12 “(1) the term ‘Board’ means the Chemical Fa-  
13 cility Security Advisory Board established under sec-  
14 tion 2105(a);

15 “(2) the term ‘Chemical Facility Anti-Ter-  
16 rorism Standards’ means the interim final regula-  
17 tions issued by the Secretary under section 550 of  
18 the Department of Homeland Security Appropria-  
19 tions Act, 2007 (6 U.S.C. 121 note); and

20 “(3) the term ‘covered chemical facility’ means  
21 a chemical facility subject to the Chemical Facility  
22 Anti-Terrorism Standards.

23 **“SEC. 2102. CHEMICAL SECURITY TRAINING PROGRAM.**

24 “(a) ESTABLISHMENT.—Acting through the Admin-  
25 istrator of the Federal Emergency Management Agency

1 and in coordination with the Under Secretary for National  
2 Protection and Programs, the Secretary shall establish a  
3 voluntary chemical security training program (referred to  
4 in this section as the ‘training program’) for the purpose  
5 of enhancing the capabilities of covered chemical facilities  
6 to prevent, prepare for, respond to, mitigate against, and  
7 recover from threatened or actual acts of terrorism, nat-  
8 ural disasters, and other man-made disasters.

9 “(b) REQUIREMENTS.—The training program shall  
10 provide validated voluntary training that—

11 “(1) reaches multiple disciplines, including Fed-  
12 eral, State, and local government officials, commer-  
13 cial personnel and management, and governmental  
14 and nongovernmental emergency response providers;

15 “(2) provides training at the awareness, per-  
16 formance, and management and planning levels;

17 “(3) uses multiple training mediums and meth-  
18 ods;

19 “(4) is coordinated with training provided by  
20 government training facilities, academic institutions,  
21 private organizations, and other entities that provide  
22 specialized, state-of-the-art training for govern-  
23 mental and nongovernmental emergency responder  
24 providers or commercial personnel and management;

1           “(5) uses, as appropriate, government training  
2 facilities, courses provided by community colleges,  
3 public safety academies, State and private univer-  
4 sities, and other facilities;

5           “(6) is consistent with, and supports implemen-  
6 tation of, the National Incident Management Sys-  
7 tem, the National Response Framework, the Na-  
8 tional Infrastructure Protection Plan, the National  
9 Preparedness Guidance, the National Preparedness  
10 Goal, the National Maritime Transportation Security  
11 Plan, and other such national initiatives, and any  
12 successors thereto;

13           “(7) is evaluated against clear and consistent  
14 performance measures;

15           “(8) addresses security requirements under  
16 chemical facility security plans; and

17           “(9) educates, trains, and involves individuals  
18 in neighborhoods around chemical facilities on how  
19 to observe and report security risks.

20 **“SEC. 2103. CHEMICAL SECURITY EXERCISE PROGRAM.**

21           “(a) IN GENERAL.—Acting through the Adminis-  
22 trator of the Federal Emergency Management Agency and  
23 in coordination with Under Secretary for National Protec-  
24 tion and Programs, the Secretary shall develop a voluntary  
25 chemical security exercise program (referred to in this sec-

1 tion as the ‘exercise program’) for the purpose of offering  
2 voluntary testing and evaluation of the capabilities of the  
3 Federal Government, State governments, commercial per-  
4 sonnel and management, governmental and nongovern-  
5 mental emergency response providers, the private sector,  
6 or any other organization or entity, as the Secretary deter-  
7 mines to be appropriate, to prevent, prepare for, mitigate  
8 against, respond to, and recover from acts of terrorism,  
9 natural disasters, and other emergencies at covered chem-  
10 ical facilities.

11 “(b) REQUIREMENTS.—Under the exercise program,  
12 the Secretary shall conduct, on a periodic basis, voluntary  
13 joint security exercises at chemical facilities that are—

14 “(1) scaled and tailored to the needs of each  
15 chemical facility;

16 “(2) for the highest risk chemical facilities, as  
17 determined by the Secretary, live training exercises;

18 “(3) as realistic as practicable and based on  
19 current risk assessments, including credible threats,  
20 vulnerabilities, and consequences;

21 “(4) consistent with the National Incident Man-  
22 agement System, the National Response Framework,  
23 the National Infrastructure Protection Plan, the Na-  
24 tional Preparedness Guidance, the National Pre-  
25 paredness Goal, the National Maritime Transpor-

1 tation Security Plan, and other such national initia-  
2 tives, and any successors thereto;

3 “(5) evaluated against clear and consistent per-  
4 formance measures;

5 “(6) assessed to learn best practices, which  
6 shall be shared with appropriate Federal, State, and  
7 local officials, commercial personnel and manage-  
8 ment, governmental and nongovernmental emergency  
9 response providers, and the private sector;

10 “(7) followed by remedial action in response to  
11 lessons learned; and

12 “(8) designed to assist State and local govern-  
13 ments and chemical facilities in designing, imple-  
14 menting, and evaluating exercises that—

15 “(A) conform to the requirements of this  
16 paragraph; and

17 “(B) are consistent with any applicable  
18 Buffer Zone Protection Plan, State homeland  
19 security plan, or urban area homeland security  
20 plan.

21 **“SEC. 2104. VOLUNTARY TECHNICAL ASSISTANCE PRO-**  
22 **GRAM.**

23 “(a) ESTABLISHMENT.—The Secretary, acting  
24 through the Assistant Secretary for Infrastructure Protec-  
25 tion, in coordination with the Under Secretary for Science

1 and Technology, and in consultation with the Board, shall  
2 establish a voluntary technical assistance program under  
3 which, upon request by the owner or operator of a covered  
4 chemical facility, and subject to the availability of re-  
5 sources at the Department, the Secretary may provide  
6 nonbinding assistance or recommendations to the owner  
7 or operator to—

8           “(1) reduce the risk or consequences associated  
9           with a successful act of terrorism against a covered  
10          chemical facility, including the reduction of risk or  
11          consequences—

12                 “(A) sufficient to decrease the risk-based  
13                 tier assigned to the covered chemical facility  
14                 under the Chemical Facility Anti-Terrorism  
15                 Standards; or

16                 “(B) such that the covered chemical facil-  
17                 ity no longer presents a high level of security  
18                 risk; or

19           “(2) aid in compliance with the risk-based per-  
20          formance standards applicable to the covered chem-  
21          ical facility under the Chemical Facility Anti-Ter-  
22          rorism Standards.

23          “(b) VOLUNTARY NATURE OF ASSISTANCE.—

24                 “(1) IN GENERAL.—The decision to—

1           “(A) participate in the voluntary technical  
2 assistance program under this section; or

3           “(B) implement any assistance or rec-  
4 ommendations provided by the Secretary under  
5 this section,

6 shall be at the sole discretion of the owner or oper-  
7 ator of a covered chemical facility.

8           “(2) NO REQUIRED ASSESSMENT.—The Sec-  
9 retary may not require the owner or operator of a  
10 covered chemical facility to—

11           “(A) consider any assistance or rec-  
12 ommendation provided under this section as  
13 part of a security vulnerability assessment  
14 under the Chemical Facility Anti-Terrorism  
15 Standards; or

16           “(B) assess, directly or indirectly, the  
17 costs, benefits, economic or technical feasibility,  
18 or practicality of implementing any assistance  
19 or recommendation provided under this section.

20           “(3) SITE SECURITY PLAN REVIEW.—If the site  
21 security plan for a covered chemical facility satisfies  
22 the risk-based performance standards applicable to  
23 the covered chemical facility under the Chemical Fa-  
24 cility Anti-Terrorism Standards, the Secretary may  
25 not disapprove the site security plan based on—

1           “(A) a decision by the owner or operator  
2 of a covered chemical facility not to—

3           “(i) participate in the voluntary tech-  
4 nical assistance program under this sec-  
5 tion; or

6           “(ii) implement assistance or a rec-  
7 ommendation provided by the Secretary  
8 under this section; or

9           “(B) the presence or absence of a par-  
10 ticular security measure.

11           “(4) EFFECT ON TIERING.—At the request of  
12 the owner or operator of a covered chemical facility,  
13 the Secretary shall advise the owner or operator of  
14 the overall effect that implementing all categories of  
15 assistance or recommendations provided by the Sec-  
16 retary under this section would have on the deter-  
17 mination by the Secretary—

18           “(A) of the placement of the covered chem-  
19 ical facility in a risk-based tier under the Chem-  
20 ical Facility Anti-Terrorism Standards; or

21           “(B) regarding whether the covered chem-  
22 ical facility would no longer present a high level  
23 of security risk.

24           “(5) CIVIL LIABILITY.—

1           “(A) IN GENERAL.—Subject to subpara-  
2 graph (B), no action, or failure to act, by the  
3 owner or operator of a covered chemical facility  
4 relating to assistance or a recommendation pro-  
5 vided by the Secretary under this section shall  
6 be interpreted, construed, implied, or applied to  
7 create any liability or cause of action for com-  
8 pensation for bodily injury, any other injury, or  
9 property damage to any person that may result  
10 from an act of terrorism or incident at the cov-  
11 ered chemical facility.

12           “(B) ADDITIONAL OR INTERVENING ACTS  
13 OR OMISSIONS.—Subparagraph (A) shall not  
14 apply to any injury or damage caused by any  
15 additional or intervening act or omission of the  
16 owner or operator of a covered chemical facility.

17           “(C) RULE OF CONSTRUCTION.—Except as  
18 provided in this section, nothing in subpara-  
19 graph (A) shall be construed to abrogate or  
20 limit any right, remedy, or authority that the  
21 Federal Government, any State or local govern-  
22 ment, or any entity or agency of the Federal  
23 Government or a State or local government may  
24 possess under any other provision of law.

1       “(c) BEST PRACTICES.—Subject to subsection (d),  
2 the Secretary shall develop a repository for information  
3 and data on best practices and cost-effective technologies  
4 for implementing the Chemical Facility Anti-Terrorism  
5 Standards and the voluntary technical assistance program  
6 under this section.

7       “(d) INFORMATION PROTECTION.—Any information  
8 obtained by the Secretary under the voluntary technical  
9 assistance program under this section or for purposes of  
10 subsection (c) shall—

11           “(1) to the extent that the information may re-  
12 veal vulnerabilities or other details of the security  
13 capabilities of a covered chemical facility that may  
14 be exploited by terrorists, be protected as chemical-  
15 terrorism vulnerability information under the Chem-  
16 ical Facility Anti-Terrorism Standards; and

17           “(2) to the extent that the information may re-  
18 veal trade secrets or commercial or financial infor-  
19 mation that is not customarily in the public domain,  
20 be protected as though the information was volun-  
21 tarily shared critical infrastructure information  
22 under section 214, except that the requirement  
23 under section 214 that the information be volun-  
24 tarily submitted, including the requirement for an  
25 express statement specified in section 214(a)(2),

1 shall not apply to information obtained under this  
2 section.

3 “(e) REPORT ON LESSONS LEARNED.—Not later  
4 than October 4, 2013, the Secretary, in coordination with  
5 the Board, shall submit to the Committee on Homeland  
6 Security and Governmental Affairs of the Senate and the  
7 Committee on Homeland Security of the House of Rep-  
8 resentatives a report regarding lessons learned from the  
9 voluntary technical assistance program under this section.

10 “(f) AVAILABILITY OF APPROPRIATIONS.—Of the  
11 amounts made available for the Chemical Facility Anti-  
12 Terrorism Standards for each of fiscal years 2011 through  
13 2015, not less than \$5,000,000 shall be made available  
14 for the provision of voluntary technical assistance under  
15 this section.

16 **“SEC. 2105. CHEMICAL FACILITY SECURITY ADVISORY**  
17 **BOARD.**

18 “(a) ESTABLISHMENT.—Not later than 90 days after  
19 the date of enactment of this section, the Secretary shall  
20 establish under section 871 a Chemical Facility Security  
21 Advisory Board.

22 “(b) RESPONSIBILITIES.—The Board shall advise the  
23 Secretary on the implementation of the Chemical Facility  
24 Anti-Terrorism Standards, including regarding the imple-

1 mentation of the voluntary technical assistance program  
2 under section 2103.

3 “(c) MEMBERSHIP.—There shall be 9 members of the  
4 Board, who shall be appointed by the Secretary and shall  
5 represent a geographic and substantive cross-section of  
6 the United States, including—

7 “(1) not less than 5 owners or operators of cov-  
8 ered chemical facilities;

9 “(2) not less than 2 employees of covered chem-  
10 ical facilities with direct responsibility for process  
11 design and engineering, production and operations,  
12 or chemical process security; and

13 “(3) not less than 2 other experts in the fields  
14 of chemistry, security, process design and engineer-  
15 ing, process controls and instrumentation, environ-  
16 mental health and safety, maintenance, production  
17 and operations, or chemical process security.

18 “(d) TERM.—The members of the Board shall be ap-  
19 pointed for such terms as the Secretary may determine.

20 “(e) APPLICABILITY OF FEDERAL ADVISORY COM-  
21 MITTEE ACT.—Notwithstanding section 871(a), except as  
22 provided in subsection (f), the Federal Advisory Com-  
23 mittee Act (5 U.S.C. App.) shall apply to the Board.

24 “(f) EXEMPTION FROM TERMINATION REQUIRE-  
25 MENTS.—Section 14 of the Federal Advisory Committee

1 Act (5 U.S.C. App.) and section 871(b) shall not apply  
2 to the Board.

3 **“SEC. 2106. AUTHORIZATION OF APPROPRIATIONS.**

4 “There are authorized to be appropriated to the Sec-  
5 retary such sums as are necessary to carry out this title.”.

6 (2) TABLE OF CONTENTS.—The table of con-  
7 tents in section 1(b) of the Homeland Security Act  
8 of 2002 (6 U.S.C. 101 et seq.) is amended by insert-  
9 ing after the item relating to section 2022 the fol-  
10 lowing:

“TITLE XXI—CHEMICAL FACILITY SECURITY

“Sec. 2101. Definitions.

“Sec. 2102. Chemical security training program.

“Sec. 2103. Chemical security exercise program.

“Sec. 2104. Voluntary technical assistance program.

“Sec. 2105. Chemical Facility Security Advisory Board.

“Sec. 2106. Authorization of appropriations.”.

