

113TH CONGRESS
1ST SESSION

S. 658

To amend titles 10 and 32, United States Code, to enhance capabilities to prepare for and respond to cyber emergencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2013

Mrs. GILLIBRAND (for herself, Mr. VITTER, Mr. COONS, Mr. BLUNT, Ms. LANDRIEU, Mr. LEAHY, Mr. WARNER, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend titles 10 and 32, United States Code, to enhance capabilities to prepare for and respond to cyber emergencies, 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 “Cyber Warrior Act of
5 2013”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The report of the Department of Defense
9 Science Board Task Force on Resilient Military Sys-

1 tems and the Advanced Cyber Threat finds that
2 “[i]t is not clear that high-end cyber practitioners
3 can be found in sufficient numbers within typical
4 recruitments pools”.

5 (2) The report recommends that “[t]he Depart-
6 ment must scale up its efforts to recruit, provided
7 facilities and training, and use effectively these crit-
8 ical people”.

9 (3) The National Guard has the authority to
10 operate on active duty under title 10, United States
11 Code, and in National Guard status under title 32,
12 United States Code.

13 (4) The National Guard can leverage the exper-
14 tise of private sector information technology (IT)
15 specialists and help retain the capability of retiring
16 military personnel trained in cybersecurity matters.

17 (5) The National Guard in its status under title
18 32, United States Code, supports the Department of
19 Homeland Security and the Governors of the States
20 in responding to natural disasters.

21 **SEC. 3. ENHANCEMENT OF PREPARATION FOR AND RE-**
22 **SPONSE TO CYBER EMERGENCIES.**

23 (a) ESTABLISHMENT OF CYBER AND COMPUTER
24 NETWORK INCIDENT RESPONSE TEAMS.—

1 (1) IN GENERAL.—The Secretary of Defense
2 shall establish in each of the several States and the
3 District of Columbia a separate team of members of
4 the National Guard under section 12310(d) of title
5 10, United States Code (as amended by subsection
6 (b)), and section 510 of title 32, United States Code
7 (as added by subsection (c)), to perform duties relat-
8 ing to analysis and protection in support of pro-
9 grams to prepare for and respond to emergencies in-
10 volving an attack or natural disaster impacting a
11 computer, electronic, or cyber network.

12 (2) DESIGNATION.—Each team established
13 under paragraph (1) shall be known as a “Cyber
14 and Computer Network Incident Response Team”.

15 (b) USE OF ACTIVE NATIONAL GUARD PER-
16 SONNEL.—Section 12310 of title 10, United States Code,
17 is amended—

18 (1) by redesignating subsection (d) as sub-
19 section (e); and

20 (2) by inserting after subsection (c) the fol-
21 lowing new subsection (d):

22 “(d) OPERATIONS RELATING TO PROTECTION OF
23 PUBLIC AND PRIVATE CYBER INFRASTRUCTURE.—(1)
24 Notwithstanding subsection (b), a member of the National
25 Guard on active duty as described in subsection (a), or

1 a member of the National Guard serving on full-time Na-
2 tional Guard duty under section 502(f) of title 32 in con-
3 nection with functions referred to in subsection (a), may
4 perform duties relating to analysis and protection in sup-
5 port of programs to prepare for and respond to emer-
6 gencies involving an attack or natural disaster impacting
7 a computer, electronic, or cyber network.

8 “(2) The duties of members under this subsection
9 may include duties to assist the combatant commands in
10 developing and expanding their capacity relating to anal-
11 ysis and protection in support of programs to prepare for
12 and respond to emergencies involving an attack or natural
13 disaster impacting a computer, electronic, or cyber net-
14 work.

15 “(3) The duties performed by members under this
16 subsection may be performed for or in support of cyber
17 and computer network incident response teams established
18 pursuant to section 3(a) of the Cyber Warrior Act of
19 2013.

20 “(4) Notwithstanding section 502(f) of title 32, the
21 costs of the pay, allowances, clothing, subsistence, gratu-
22 ities, travel, and related expenses for a member of the Na-
23 tional Guard performing duties under this subsection shall
24 be paid from the appropriation that is available to pay

1 such costs for members of the regular component of the
2 armed force of that member.

3 “(5) Members of the National Guard on active duty
4 who are performing duty described in this subsection shall
5 be counted against the annual end strength authorizations
6 required by section 115(a)(1) of this title. The justifica-
7 tion materials for the defense budget request for a fiscal
8 year shall identify the number and component of members
9 of the National Guard programmed to be performing du-
10 ties described in this subsection during that fiscal year.

11 “(6) Members may not perform duties under this
12 subsection unless the Secretary of Defense has certified
13 to the Committee on Armed Services of the Senate and
14 the Committee on Armed Services of the House of Rep-
15 resentatives that the members possess the requisite skills,
16 training, and equipment to be proficient in all mission re-
17 quirements.”.

18 (c) USE OF NATIONAL GUARD PERSONNEL PER-
19 FORMING TRAINING OR DRILL.—

20 (1) IN GENERAL.—Chapter 5 of title 32, United
21 States Code, is amended by adding at the end the
22 following new section:

1 **“§ 510. Preparation for and response to cyber emer-**
 2 **gencies**

3 “Under regulations prescribed by the Secretary of the
 4 Army or the Secretary of the Air Force, as the case may
 5 be, members of the National Guard performing training
 6 or drill required by this chapter may perform duties relat-
 7 ing to analysis and protection in support of programs to
 8 prepare for and respond to emergencies involving an at-
 9 tack or natural disaster impacting a computer, electronic,
 10 or cyber network, including in connection with cyber and
 11 computer network incident response teams established
 12 pursuant to section 3(a) of the Cyber Warrior Act of
 13 2013.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
 15 tions at the beginning of chapter 5 of such title is
 16 amended by adding at the end the following new
 17 item:

“510. Preparation for and response to cyber emergencies.”.

18 (d) HOMELAND DEFENSE ACTIVITIES.—

19 (1) IN GENERAL.—Chapter 9 of title 32, United
 20 States Code, is amended by inserting after section
 21 902 the following new section:

1 **“§ 902a. Homeland defense activities: activities relat-**
2 **ing to preparation for and response to**
3 **cyber emergencies**

4 “(a) IN GENERAL.—The homeland defense activities
5 for which funds may be provided under this chapter shall
6 include the following:

7 “(1) The provision by units or members of the
8 National Guard of education and training for State
9 and local law enforcement and governmental per-
10 sonnel on analysis and protection to prepare for and
11 respond to emergencies involving an attack or nat-
12 ural disaster impacting a computer, electronic, or
13 cyber network.

14 “(2) Upon the order of the Governor of the
15 State, the performance by units or members of the
16 National Guard of activities being undertaken by the
17 State government and local governments in the
18 State on analysis and protection to prepare for and
19 respond to emergencies described in paragraph (1).

20 “(b) MEMBERS AUTHORIZED TO PERFORM ACTIVI-
21 TIES.—The members of the National Guard who may per-
22 form activities authorized by this section are members on
23 full-time National Guard duty under section 502(f) of this
24 title.

25 “(c) PERFORMANCE IN CONNECTION WITH CYBER
26 AND COMPUTER NETWORK INCIDENT RESPONSE

1 TEAMS.—The activities performed by members under this
 2 section may be performed for or in support of cyber and
 3 computer network incident response teams established
 4 pursuant to section 3(a) of the Cyber Warrior Act of
 5 2013.

6 “(d) INAPPLICABILITY OF CERTAIN REQUIREMENTS
 7 AND LIMITATIONS.—The performance of activities under
 8 this section by members of the National Guard shall not
 9 be subject to the requirements and limitations in sub-
 10 sections (b), (c), and (d) of section 904 of this title.

11 “(e) DEFINITIONS.—In this section:

12 “(1) The term ‘Governor’, in the case of the
 13 District of Columbia, means the commanding gen-
 14 eral of the District of Columbia National Guard.

15 “(2) The term ‘State’ means the several States,
 16 the District of Columbia, the Commonwealth of
 17 Puerto Rico, and the Territories of the United
 18 States.”.

19 (2) CLERICAL AMENDMENT.—The table of sec-
 20 tions at the beginning of chapter 9 of such title is
 21 amended by inserting after the item relating to sec-
 22 tion 902 the following new item:

“902a. Homeland defense activities: activities relating to preparation for and re-
 sponse to cyber emergencies.”.

23 (e) TRAINING ON CYBER DUTIES.—

1 (1) IN GENERAL.—The Secretary of the Army
2 and the Secretary of the Air Force shall ensure that
3 the training provided to members of the Army Na-
4 tional Guard and the Air National Guard, respec-
5 tively, on analysis and protection to prepare for and
6 respond to emergencies involving an attack or nat-
7 ural disaster impacting a computer, electronic, or
8 cyber network shall, to the extent practicable, be
9 equivalent to the training provided members of the
10 regular component of the Army and the Air Force
11 on such matters.

12 (2) REPORTS.—Not later than one year after
13 the date of the enactment of this Act, and annually
14 thereafter for four years, the Secretary of Defense
15 shall submit to the Committee on Armed Services of
16 the Senate and the Committee on Armed Services of
17 the House of Representatives a report on the train-
18 ing provided to members of the Army National
19 Guard and the Air National Guard pursuant to
20 paragraph (1) on the matters described in that para-
21 graph. Each report shall include a description of the
22 training currently provided to members of the Army
23 National Guard and the Air National Guard on such
24 matters, and such recommendations as the Secretary
25 considers appropriate for improvements to such

1 training in order to better align such training for
2 members of the Army National Guard and the Air
3 National Guard, on the one hand, and members of
4 the regular component of the Army and the Air
5 Force, on the other.

6 (f) ADDITIONAL REPORT.—Not later than 180 days
7 after the date of the enactment of this Act, the Secretary
8 of Defense shall submit to the Committee on Armed Serv-
9 ices of the Senate and the Committee on Armed Services
10 of the House of Representatives a report setting forth the
11 following:

12 (1) A description and assessment of various
13 mechanisms to recruit and retain members of the
14 regular components and reserve components of the
15 Armed Forces with expertise in computer network
16 defense and operations, including modifications of
17 the curricula for the Reserve Officers' Training
18 Corps programs, enhanced opportunities for individ-
19 uals to select their preferred Armed Force of acces-
20 sion, payment of recruitment and retention bonuses,
21 the provision of educational scholarships and sti-
22 pends, and enhanced funding of training and certifi-
23 cation programs.

24 (2) An assessment of the circumstances (includ-
25 ing short-term deployment, virtual deployment, or

1 both) under which members of the reserve compo-
2 nents with computer network defense duties can be
3 managed without the geographic relocation of such
4 members.

5 (3) A description of the training requirements
6 and physical demands, if any, for military occupa-
7 tional specialties relating to computer network de-
8 fense.

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