

110TH CONGRESS
2D SESSION

S. 3585

To amend title 10, United States Code, to establish the responsibility of the Department of Defense to plan for and respond to catastrophic incidents in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25 (legislative day, SEPTEMBER 17), 2008

Mr. LIEBERMAN (for himself and Ms. COLLINS) 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 establish the responsibility of the Department of Defense to plan for and respond to catastrophic incidents in the United States, 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 “Ensuring Defense Sup-
5 port to Catastrophic Incident Response Act of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) The United States faces real threats of
2 man-made and natural disasters which could result
3 in catastrophic consequences to the Nation, its re-
4 sources, and its people. Because of the scale of the
5 potential consequences of these threats, they may
6 constitute threats to national security and will re-
7 quire the full range of Federal resources to save
8 lives, minimize human suffering, protect property,
9 and mitigate damage.

10 (2) Because of its manpower, communications,
11 logistics, and other capabilities, the Department of
12 Defense is uniquely suited to provide critical support
13 to other departments and agencies of the Federal
14 Government, State and local governments, and gov-
15 ernments of the Commonwealths and possessions of
16 the United States in response to a catastrophic inci-
17 dent in the United States.

18 (3) Planning and preparation for and execution
19 of civil support operations in responding to cata-
20 strophic incidents in support of the Department of
21 Homeland Security and State and local governments
22 is a national security issue.

23 (4) A successful response to catastrophic inci-
24 dents in the United States requires coordinated stra-
25 tegic plans and detailed operational plans with spe-

1 cific tasking and sourcing. The Department of De-
2 fense must develop such plans and should maintain
3 the required units and assets at the appropriate level
4 of readiness in order to deliver the capabilities which
5 will be required in a response led by the Department
6 of Homeland Security.

7 (5) The National Guard and Reserves are for-
8 ward-deployed in communities throughout the
9 United States, are integrated with State and local
10 governments, and have considerable homeland-re-
11 lated capabilities. The Department of Defense and
12 the United States Northern Command must there-
13 fore consider the plans and capabilities of the Na-
14 tional Guard and Reserves, and State and local gov-
15 ernments, in plans for civil support operations.

16 **SEC. 3. DEPARTMENT OF DEFENSE SUPPORT OF DOMESTIC**
17 **CIVILIAN AUTHORITIES IN RESPONSE TO**
18 **CATASTROPHIC INCIDENTS IN THE UNITED**
19 **STATES.**

20 (a) SUPPORT AUTHORIZED.—Part I of subtitle A of
21 title 10, United States Code, is amended by inserting after
22 chapter 18 the following new chapter:

1 **“CHAPTER 19—SUPPORT OF DOMESTIC CI-**
 2 **VILIAN AUTHORITIES IN RESPONSE**
 3 **TO CATASTROPHIC INCIDENTS IN THE**
 4 **UNITED STATES**

“Sec.

“390. Department of Defense support of domestic civilian authorities in response to catastrophic incidents in the United States.

5 **“§ 390. Department of Defense support of domestic ci-**
 6 **vilian authorities in response to cata-**
 7 **strophic incidents in the United States**

8 “(a) IN GENERAL.—Subject to the authority, direc-
 9 tion, and control of the President, the Department of De-
 10 fense shall undertake civil support operations in response
 11 to catastrophic incidents in the United States.

12 “(b) PLANS FOR SUPPORT.—(1) For purposes of car-
 13 rying out the requirement in subsection (a), the Secretary
 14 of Defense shall, in conjunction with the Secretary of
 15 Homeland Security, develop comprehensive plans for civil
 16 support operations.

17 “(2) The plans required under this subsection shall
 18 include strategies for the use of the armed forces, includ-
 19 ing units and personnel of the regular components of the
 20 armed forces, units and personnel of the National Guard
 21 (including personnel on active duty under this title, in sta-
 22 tus under title 32, and in State status, consistent with
 23 section 1814(c) of the National Defense Authorization Act
 24 for Fiscal Year 2008 (10 U.S.C. 113 note)), units and

1 personnel of the other reserve components of the armed
2 forces, the civilian personnel of the Department of De-
3 fense, and, if the Secretary considers it appropriate for
4 purposes of the plans, contractors of the Department of
5 Defense.

6 “(3) The plans required under this subsection shall
7 be developed in coordination with other departments and
8 agencies of the Federal Government with homeland secu-
9 rity responsibilities as part of an established national plan-
10 ning process and shall include the development of oper-
11 ations plans required by section 653(b) of the Post-
12 Katrina Emergency Management Reform Act of 2006 (6
13 U.S.C. 753(b)).

14 “(4) The plans required under this subsection shall
15 be developed to execute strategic requirements established
16 by the Secretary of Homeland Security through an estab-
17 lished national planning process.

18 “(c) IMPLEMENTATION AND EXECUTION OF
19 PLANS.—In implementing the plans developed under sub-
20 section (b), the Secretary of Defense shall—

21 “(1) ensure that—

22 “(A) the Department of Defense is orga-
23 nized and equipped with the capabilities and re-
24 sources required to execute the plans; and

1 “(B) the capabilities and resources re-
2 ferred to in subparagraph (A) are available, ac-
3 cessible, and maintained at the appropriate
4 readiness status to enable deployment in ac-
5 cordance with the plans; and

6 “(2) ensure that any capabilities and resources
7 identified under paragraph (1)(A), when appro-
8 priate, train and participate in exercises, including—

9 “(A) exercises administered under the na-
10 tional exercise program carried out under sec-
11 tion 648(b) of the Post-Katrina Emergency
12 Management Reform Act of 2006 (6 U.S.C.
13 748(b)); and

14 “(B) other exercises determined appro-
15 priate by the Secretary of Defense to ensure
16 such capabilities and resources are maintained
17 at the appropriate state of readiness.

18 “(d) BUDGET.—The budget of the Department of
19 Defense for any fiscal year (as submitted to Congress pur-
20 suant to section 1105 of title 31) shall include a request
21 for funds sufficient to carry out the requirements of this
22 section in such fiscal year. The request for a fiscal year
23 under this subsection shall set forth separately the fol-
24 lowing:

1 “(1) Each component, program, or activity of
2 the Department of Defense that will carry out the
3 requirements of this section in such fiscal year.

4 “(2) The amount requested for each such com-
5 ponent, program, or activity to carry out such re-
6 quirements in such fiscal year.

7 “(e) CONSTRUCTION.—Nothing in this section shall
8 be construed as prohibiting or limiting the authority of
9 the Department of Defense to provide support operations
10 in response to a disaster or incident that is not a cata-
11 strophic incident as otherwise provided by law.

12 “(f) REPORTS.—(1) Not later than one year after the
13 date of the enactment of this section, and every two years
14 thereafter, the Secretary of Defense shall submit to the
15 appropriate committees of Congress a report on the imple-
16 mentation of the requirements of this section, including
17 a discussion of the development and implementation of the
18 plans required by subsection (b).

19 “(2) Each report under this subsection shall be sub-
20 mitted in unclassified form, but may include a classified
21 annex.

22 “(g) DEFINITIONS.—In this section:

23 “(1) The term ‘catastrophic incident’ has the
24 meaning given that term in section 501(3) of the
25 Homeland Security Act of 2002 (6 U.S.C. 311(3)).

“19. Support of Domestic Civilian Authorities in Response to Catastrophic Incidents in the United States 390.”

16 Section 118 of title 10, United States Code, is
17 amended—

•S 3585 IS

1 (2) by inserting after subsection (g), as added
2 by section 951(a) of the National Defense Author-
3 ization Act for Fiscal Year 2008 (122 Stat. 290),
4 the following new subsection:

5 “(h) CONSIDERATION OF DEPARTMENT OF DEFENSE
6 ROLES AND RESPONSIBILITIES IN RESPONDING TO CATA-
7 STROPHIC INCIDENTS.—(1) The first national security
8 strategy and national defense strategy prepared after the
9 date of the enactment of this subsection shall include guid-
10 ance for military planners—

11 “(A) to determine the appropriate roles and re-
12 sponsibilities of the Department of Defense, in co-
13 ordination with and in support of the Department of
14 Homeland Security and other departments and
15 agencies of the Federal Government with homeland
16 security responsibilities and with State, local, and
17 tribal governments, in responding to catastrophic in-
18 cidents;

19 “(B) to update defense plans based on such de-
20 terminations, including working with the Depart-
21 ment of Homeland Security and other departments
22 and agencies of the Federal Government with home-
23 land security responsibilities in responding to such
24 incidents; and

1 “(C) to develop the capabilities needed to exe-
2 cute such plans.

3 “(2) The first quadrennial defense review prepared
4 after the date of the enactment of this subsection shall
5 examine the capabilities of the armed forces to support
6 civil authorities in responding to catastrophic incidents.

7 “(3) In this subsection:

8 “(A) The term ‘catastrophic incident’ has the
9 meaning given that term in section 501(3) of the
10 Homeland Security Act of 2002 (6 U.S.C. 311(3)).

11 “(B) The term ‘national security strategy’
12 means the annual national security strategy report
13 of the President under section 108 of the National
14 Security Act of 1947 (50 U.S.C. 404a).”.

15 **SEC. 5. RULE OF CONSTRUCTION.**

16 Nothing in this Act or the amendments made by this
17 Act may be construed—

18 (1) to modify the restrictions on the role of the
19 Department of Defense in law enforcement oper-
20 ations within the United States;

21 (2) to affect the authority of the Governor of a
22 State to respond to a natural disaster, act of ter-
23 rorism, or other man-made disaster within the
24 United States; or

1 (3) to affect the authority of the Governor of a
2 State to exercise command and control over the Na-
3 tional Guard of that State while in State status or
4 in title 32, United States Code, status.

5 **SEC. 6. DEFINITIONS.**

6 In this Act:

7 (1) The term “catastrophic incident” has the
8 meaning given that term in section 501(3) of the
9 Homeland Security Act of 2002 (6 U.S.C. 311(3)).

10 (2) The term “civil support operation” means a
11 mission performed by the Department of Defense in
12 support of other departments or agencies of the
13 Federal Government, State or local governments, or
14 governments of the Commonwealths or possessions
15 of the United States in their efforts to prevent, pro-
16 tect against, prepare for, respond to, and recover
17 from natural disasters, acts of terrorism, and other
18 man-made disasters.

19 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated such sums
21 as are necessary to carry out this Act and the amendments
22 made by this Act.

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