

116TH CONGRESS  
2D SESSION

# S. 3929

To authorize pilot programs on the remote provision by the National Guard to State governments and National Guards in other States of cybersecurity technical assistance in training, preparation, and response to cyber incidents, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 10, 2020

Mr. PETERS introduced the following bill; which was read twice and referred to the Committee on Armed Services

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## A BILL

To authorize pilot programs on the remote provision by the National Guard to State governments and National Guards in other States of cybersecurity technical assistance in training, preparation, and response to cyber incidents, 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,*

1 **SECTION 1. PILOT PROGRAMS ON REMOTE PROVISION BY**  
2 **NATIONAL GUARD TO STATE GOVERNMENTS**  
3 **AND NATIONAL GUARDS IN OTHER STATES**  
4 **OF CYBERSECURITY TECHNICAL ASSISTANCE**  
5 **IN TRAINING, PREPARATION, AND RESPONSE**  
6 **TO CYBER INCIDENTS.**

7 (a) PILOT PROGRAMS AUTHORIZED.—

8 (1) IN GENERAL.—The Secretary of the Army  
9 and the Secretary of the Air Force may each con-  
10 duct a pilot program to assess the feasibility and ad-  
11 visability of the development of a capability within  
12 the National Guard through which a National Guard  
13 of a State remotely provides State governments and  
14 the National Guard of other States (whether or not  
15 in the same Armed Force as the providing National  
16 Guard) with cybersecurity technical assistance in  
17 training, preparation, and response to cyber inci-  
18 dents.

19 (2) CONSTRUCTION IN DISCHARGE.—If such  
20 Secretary elects to conduct such a pilot program,  
21 such Secretary shall be known as an “administering  
22 Secretary” for purposes of this section, and any ref-  
23 erence in this section to “the pilot program” shall be  
24 treated as a reference to the pilot program con-  
25 ducted by such Secretary.

1           (3) COORDINATION AND CONSULTATION.—Ex-  
2       cept as otherwise provided in this section, if such  
3       Secretary elects to conduct such a pilot program,  
4       such Secretary shall conduct all components of the  
5       assessment in subsection (b) and all components of  
6       the pilot program and reports in subsection (i) joint-  
7       ly with the Secretary of Homeland Security and in  
8       consultation with the Chief of the National Guard  
9       Bureau and entities representing State governments  
10      (such as Governors and chief information officers).

11      (b) ASSESSMENT PRIOR TO COMMENCEMENT.—For  
12     purposes of evaluating existing platforms, technologies,  
13     and capabilities under subsection (c), and for establishing  
14     eligibility and participation requirements under subsection  
15     (d), for purposes of the pilot program, an administering  
16     Secretary shall, prior to commencing the pilot program—

17           (1) conduct an assessment of—

18               (A) existing cyber capabilities available to  
19               States;

20               (B) existing cyber response capacities of  
21               the Army National Guard or Air National  
22               Guard, as applicable, in each State;

23               (C) any existing platform, technology, or  
24               capability of a National Guard that provides the  
25               capability described in subsection (a); and

1 (D) any other available existing platform,  
2 technology, or capabilities that may provide the  
3 capability described in subsection (a); and

4 (2) determine whether a platform, technology,  
5 or capability described in paragraph (1)(C) or  
6 (1)(D) is suitable for expansion for purposes of the  
7 pilot program.

8 (c) ELEMENTS.—A pilot program under subsection  
9 (a) shall include the following:

10 (1) A technical capability that enables the Na-  
11 tional Guard of a State to remotely provide cyberse-  
12 curity technical assistance to State governments and  
13 the National Guard of other States, without the  
14 need to deploy outside its home State. The design  
15 and any development of such capability shall—

16 (A) occur in consultation with the Sec-  
17 retary of Homeland Security; and

18 (B) enable, upon deployment and operation  
19 of the capability, interoperability with other  
20 Federal and non-Federal cyber response enti-  
21 ties, including the Department of Homeland Se-  
22 curity.

23 (2) Policies, processes, procedures, and authori-  
24 ties for use of such a capability, including with re-  
25 spect to the following:

1 (A) The roles, responsibilities, and authori-  
2 ties of both requesting and deploying State gov-  
3 ernments, National Guards, and the Depart-  
4 ment of Homeland Security with respect to  
5 such remote technical assistance, taking into  
6 account the matters specified in subsection (f).

7 (B) Program management and governance  
8 structures for deployment and maintenance of  
9 the capability.

10 (C) Security when performing remote sup-  
11 port, including such in matters such as authen-  
12 tication and remote sensing.

13 (D) The efficient and effective use by Fed-  
14 eral and non-Federal entities of the interoper-  
15 ability functionality of the capability, as re-  
16 quired by paragraph (1)(B).

17 (3) The conduct, in consultation also with the  
18 Director of the Federal Bureau of Investigation,  
19 other Federal agencies, and appropriate non-Federal  
20 entities (in addition to the entities referred to in  
21 subsection (a)(3)), of at least one exercise to dem-  
22 onstrate the capability, which exercise shall include  
23 the following:

24 (A) Participation of not fewer than two  
25 State governments and their National Guards.

1           (B) Circumstances designed to test and  
2           validate the policies, processes, procedures, and  
3           authorities developed pursuant to paragraph (2)  
4           and the interoperability functionality of the ca-  
5           pability, as required pursuant to paragraph  
6           (1)(B).

7           (d) USE OF EXISTING TECHNOLOGY.—An admin-  
8           istering Secretary may use an existing platform, tech-  
9           nology, or capability to provide the capability described in  
10          subsection (a) under the pilot program.

11          (e) ELIGIBILITY AND PARTICIPATION REQUIRE-  
12          MENTS.—An administering Secretary shall establish re-  
13          quirements with respect to eligibility and participation of  
14          State governments and their National Guards in the pilot  
15          program.

16          (f) CONSTRUCTION WITH CERTAIN CURRENT AU-  
17          THORITIES.—

18               (1) COMMAND AUTHORITIES.—Nothing in a  
19               pilot program under subsection (a) may be construed  
20               as affecting or altering the command authorities  
21               otherwise applicable to any unit of the National  
22               Guard unit participating in the pilot program.

23               (2) EMERGENCY MANAGEMENT ASSISTANCE  
24               COMPACT.—Nothing in a pilot program may be con-  
25               strued as affecting or altering any current agree-

1       ment under the Emergency Management Assistance  
2       Compact, or any other State agreements, or as de-  
3       terminative of the future content of any such agree-  
4       ment.

5       (g) EVALUATION METRICS.—An administering Sec-  
6       retary shall establish metrics to evaluate the effectiveness  
7       of the pilot program.

8       (h) TERM.—A pilot program under subsection (a)  
9       shall terminate on the date that is three years after the  
10      date of the commencement of the pilot program.

11      (i) REPORTS.—

12           (1) INITIAL REPORT.—Not later than 180 days  
13      after the date of the commencement of the pilot pro-  
14      gram, the administering Secretary, in coordination  
15      solely with the Secretary of Homeland Security,  
16      shall submit to the appropriate committees of Con-  
17      gress a report setting forth a description of the pilot  
18      program and such other matters in connection with  
19      the pilot program as the administering Secretary  
20      considers appropriate.

21           (2) FINAL REPORT.—Not later than 180 days  
22      after the termination of the pilot program, the ad-  
23      ministering Secretary, in coordination solely with the  
24      Secretary of Homeland Security, shall submit to the

1 appropriate committees of Congress a report on the  
2 pilot program. The report shall include the following:

3 (A) A description of the pilot program, in-  
4 cluding any partnerships entered into by the  
5 administering Secretary under the pilot pro-  
6 gram.

7 (B) A summary of the assessment per-  
8 formed prior to the commencement of the pilot  
9 program in accordance with subsection (b).

10 (C) A summary of the evaluation metrics  
11 established in accordance with subsection (g).

12 (D) An assessment of the effectiveness of  
13 the pilot program, and of the capability de-  
14 scribed in subsection (a) under the pilot pro-  
15 gram.

16 (E) An assessment of any obstacles, either  
17 in statute or policies of the Department of De-  
18 fense or the Department of Homeland Security,  
19 that impacted the effectiveness of the capability  
20 described in subsection (a) under the pilot pro-  
21 gram.

22 (F) A description of costs associated with  
23 the implementation and conduct of the pilot  
24 program.

1           (G) A recommendation as to the termi-  
2 nation or extension of the pilot program, or the  
3 making of the pilot program permanent with an  
4 expansion nationwide.

5           (H) An estimate of the costs of making the  
6 pilot program permanent and expanding it na-  
7 tionwide in accordance with the recommenda-  
8 tion in subparagraph (G).

9           (I) Appropriate proposals for updates to  
10 national cyber response plans.

11           (J) Such recommendations for legislative  
12 or administrative action as the administering  
13 Secretary considers appropriate in light of the  
14 pilot program.

15           (3) JOINT EXERCISE AFTER ACTION REPORT.—  
16 Not later than 90 days after completion of the exer-  
17 cise described in subsection (c)(3), the administering  
18 Secretary, in coordination solely with the Secretary  
19 of Homeland Security and in consultation solely with  
20 the Chief of the National Guard Bureau, shall sub-  
21 mit to the appropriate committees of Congress a  
22 joint Department of Defense and Department of  
23 Homeland Security after-action report on the exer-  
24 cise. The report shall include the following:

1 (A) A description of the exercise scenario  
2 and participating entities.

3 (B) A discussion of the effectiveness of the  
4 exercise in evaluating the capability described in  
5 subsection (a), including the policies, processes,  
6 procedures, and authorities developed pursuant  
7 to subsection (c)(2) and the interoperability  
8 functionality of the capability, as required pur-  
9 suant to subsection (c)(1)(B).

10 (C) A discussion of the effectiveness of the  
11 exercise in evaluating coordination between the  
12 National Guards and the Department of Home-  
13 land Security during incident response.

14 (D) A discussion of strengths and weak-  
15 nesses of interdepartment communication, co-  
16 ordination, and joint support to the State gov-  
17 ernment or National Guard unit requesting as-  
18 sistance during the exercise.

19 (E) Such recommendations for legislative  
20 or administrative action as the administering  
21 Secretary or the Secretary of Homeland Secu-  
22 rity considers appropriate in light of the exer-  
23 cise.

1 (4) APPROPRIATE COMMITTEES OF CONGRESS  
 2 DEFINED.—In this subsection, the term “appro-  
 3 priate committees of Congress” means—

4 (A) the Committee on Armed Services and  
 5 the Committee on Homeland Security and Gov-  
 6 ernmental Affairs of the Senate; and

7 (B) the Committee on Armed Services and  
 8 the Committee on Homeland Security of the  
 9 House of Representatives.

10 (j) STATE DEFINED.—In this section, the term  
 11 “State” means each of the several States, the District of  
 12 Columbia, the Commonwealth of Puerto Rico, American  
 13 Samoa, Guam, the United States Virgin Islands, and the  
 14 Commonwealth of the Northern Mariana Islands.

15 (k) FUNDING.—

16 (1) AUTHORIZATION OF APPROPRIATIONS.—  
 17 There is hereby authorized to be appropriated for  
 18 fiscal year 2021 for the Department of Defense for  
 19 operation and maintenance, Defense-wide activities,  
 20 \$6,000,000, with the amount to be available for ad-  
 21 ministrative and service-wide activities for the Office  
 22 of the Secretary of Defense for the pilot programs  
 23 authorized by subsection (a).

24 (2) CONSTRUCTION WITH OTHER FUNDING.—  
 25 The amount authorized to be appropriated and

1       available pursuant to paragraph (1) is in additional  
2       to any other amounts authorized to be appropriated  
3       for fiscal year 2021 for the Department of Defense.

4       (l) TRANSFER OF FUNDS AUTHORIZED.—The Sec-  
5       retary of Defense may transfer amounts available pursu-  
6       ant to subsection (k)(1) to the Department of Homeland  
7       Security for credit to appropriations available for the Cy-  
8       bersecurity and Infrastructure Security Agency of the De-  
9       partment of Homeland Security. Amounts so transferred  
10      shall be merged with and available for the same time pe-  
11      riod as the appropriation to which transferred, and shall  
12      be available to carry out this section.

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