

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

S. 885

To establish a Civilian Cybersecurity Reserve in the Department of Homeland Security as a pilot project to address the cybersecurity needs of the United States with respect to national security, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Ms. ROSEN

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Home-
5 land Security Civilian Cybersecurity Reserve Act”.

6 **SEC. 2. CIVILIAN CYBERSECURITY RESERVE PILOT**
7 **PROJECT.**

8 (a) DEFINITIONS.—In this section:

9 (1) AGENCY.—The term “Agency” means the
10 Cybersecurity and Infrastructure Security Agency.

1 (2) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term “appropriate congressional com-
3 mittees” means—

4 (A) the Committee on Homeland Security
5 and Governmental Affairs of the Senate;

6 (B) the Committee on Appropriations of
7 the Senate;

8 (C) the Committee on Homeland Security
9 of the House of Representatives;

10 (D) the Committee on Oversight and Ac-
11 countability of the House of Representatives;
12 and

13 (E) the Committee on Appropriations of
14 the House of Representatives.

15 (3) COMPETITIVE SERVICE.—The term “com-
16 petitive service” has the meaning given the term in
17 section 2102 of title 5, United States Code.

18 (4) DIRECTOR.—The term “Director” means
19 the Director of the Agency.

20 (5) EXCEPTED SERVICE.—The term “excepted
21 service” has the meaning given the term in section
22 2103 of title 5, United States Code.

23 (6) SIGNIFICANT INCIDENT.—The term “sig-
24 nificant incident”—

1 (A) means an incident or a group of re-
2 lated incidents that results, or is likely to re-
3 sult, in demonstrable harm to—

4 (i) the national security interests, for-
5 eign relations, or economy of the United
6 States; or

7 (ii) the public confidence, civil lib-
8 erties, or public health and safety of the
9 people of the United States; and

10 (B) does not include an incident or a por-
11 tion of a group of related incidents that occurs
12 on—

13 (i) a national security system, as de-
14 fined in section 3552 of title 44, United
15 States Code; or

16 (ii) an information system described
17 in paragraph (2) or (3) of section 3553(e)
18 of title 44, United States Code.

19 (7) TEMPORARY POSITION.—The term “tem-
20 porary position” means a position in the competitive
21 or excepted service for a period of 6 months or less.

22 (8) UNIFORMED SERVICES.—The term “uni-
23 formed services” has the meaning given the term in
24 section 2101 of title 5, United States Code.

25 (b) PILOT PROJECT.—

1 (1) IN GENERAL.—The Director may carry out
2 a pilot project to establish a Civilian Cybersecurity
3 Reserve at the Agency.

4 (2) PURPOSE.—The purpose of a Civilian Cy-
5 bersecurity Reserve is to enable the Agency to effec-
6 tively respond to significant incidents.

7 (3) ALTERNATIVE METHODS.—Consistent with
8 section 4703 of title 5, United States Code, in car-
9 rying out a pilot project authorized under paragraph
10 (1), the Director may, without further authorization
11 from the Office of Personnel Management, provide
12 for alternative methods of—

13 (A) establishing qualifications require-
14 ments for, recruitment of, and appointment to
15 positions; and

16 (B) classifying positions.

17 (4) APPOINTMENTS.—Under the pilot project
18 authorized under paragraph (1), upon occurrence of
19 a significant incident, the Director—

20 (A) may activate members of the Civilian
21 Cybersecurity Reserve by—

22 (i) noncompetitively appointing mem-
23 bers of the Civilian Cybersecurity Reserve
24 to temporary positions in the competitive
25 service; or

1 (ii) appointing members of the Civil-
2 ian Cybersecurity Reserve to temporary po-
3 sitions in the excepted service;

4 (B) shall notify Congress whenever a mem-
5 ber is activated under subparagraph (A); and

6 (C) may appoint not more than 30 mem-
7 bers to temporary positions.

8 (5) STATUS AS EMPLOYEES.—An individual ap-
9 pointed under subsection (b)(4) shall be considered
10 a Federal civil service employee under section 2105
11 of title 5, United States Code.

12 (6) ADDITIONAL EMPLOYEES.—Individuals ap-
13 pointed under subsection (b)(4) shall be in addition
14 to any employees of the Agency who provide cyberse-
15 curity services.

16 (7) EMPLOYMENT PROTECTIONS.—The Sec-
17 retary of Labor shall prescribe such regulations as
18 necessary to ensure the reemployment, continuation
19 of benefits, and non-discrimination in reemployment
20 of individuals appointed under subsection (b)(4),
21 provided that such regulations shall include, at a
22 minimum, those rights and obligations set forth
23 under chapter 43 of title 38, United States Code.

24 (8) STATUS IN RESERVE.—During the period
25 beginning on the date on which an individual is re-

1 cruited by the Agency to serve in the Civilian Cyber-
2 security Reserve and ending on the date on which
3 the individual is appointed under subsection (b)(4),
4 and during any period in between any such appoint-
5 ments, the individual shall not be considered a Fed-
6 eral employee.

7 (c) ELIGIBILITY; APPLICATION AND SELECTION.—

8 (1) IN GENERAL.—Under the pilot project au-
9 thorized under subsection (b), the Director shall es-
10 tablish criteria for—

11 (A) individuals to be eligible for the Civil-
12 ian Cybersecurity Reserve; and

13 (B) the application and selection processes
14 for the Civilian Cybersecurity Reserve.

15 (2) REQUIREMENTS FOR INDIVIDUALS.—The
16 criteria established under paragraph (1)(A) with re-
17 spect to an individual shall include—

18 (A) previous employment—

19 (i) by the executive branch;

20 (ii) within the uniformed services;

21 (iii) as a Federal contractor within
22 the executive branch; or

23 (iv) by a State, local, Tribal, or terri-
24 torial government;

1 (B) if the individual has previously served
2 as a member of the Civilian Cybersecurity Re-
3 serve of the Agency, that the previous appoint-
4 ment ended not less than 60 days before the in-
5 dividual may be appointed for a subsequent
6 temporary position in the Civilian Cybersecurity
7 Reserve of the Agency; and

8 (C) cybersecurity expertise.

9 (3) PRESCREENING.—The Agency shall—

10 (A) conduct a prescreening of each indi-
11 vidual prior to appointment under subsection
12 (b)(4) for any topic or product that would cre-
13 ate a conflict of interest; and

14 (B) require each individual appointed
15 under subsection (b)(4) to notify the Agency if
16 a potential conflict of interest arises during the
17 appointment.

18 (4) AGREEMENT REQUIRED.—An individual
19 may become a member of the Civilian Cybersecurity
20 Reserve only if the individual enters into an agree-
21 ment with the Director to become such a member,
22 which shall set forth the rights and obligations of
23 the individual and the Agency.

24 (5) EXCEPTION FOR CONTINUING MILITARY
25 SERVICE COMMITMENTS.—A member of the Selected

1 Reserve under section 10143 of title 10, United
2 States Code, may not be a member of the Civilian
3 Cybersecurity Reserve.

4 (6) PRIORITY.—In appointing individuals to the
5 Civilian Cybersecurity Reserve, the Agency shall
6 prioritize the appointment of individuals described in
7 clause (i) or (ii) of paragraph (2)(A) before consid-
8 ering individuals described in clause (iii) or (iv) of
9 paragraph (2)(A).

10 (7) PROHIBITION.—Any individual who is an
11 employee (as defined in section 2105 of title 5,
12 United States Code) of the executive branch may not
13 be recruited or appointed to serve in the Civilian Cy-
14 bersecurity Reserve.

15 (d) SECURITY CLEARANCES.—

16 (1) IN GENERAL.—The Director shall ensure
17 that all members of the Civilian Cybersecurity Re-
18 serve undergo the appropriate personnel vetting and
19 adjudication commensurate with the duties of the
20 position, including a determination of eligibility for
21 access to classified information where a security
22 clearance is necessary, according to applicable policy
23 and authorities.

24 (2) COST OF SPONSORING CLEARANCES.—If a
25 member of the Civilian Cybersecurity Reserve re-

1 quires a security clearance in order to carry out
2 their duties, the Agency shall be responsible for the
3 cost of sponsoring the security clearance of a mem-
4 ber of the Civilian Cybersecurity Reserve.

5 (e) STUDY AND IMPLEMENTATION PLAN.—

6 (1) STUDY.—Not later than 60 days after the
7 date of enactment of this Act, the Agency shall
8 begin a study on the design and implementation of
9 the pilot project authorized under subsection (b)(1)
10 at the Agency, including—

11 (A) compensation and benefits for mem-
12 bers of the Civilian Cybersecurity Reserve;

13 (B) activities that members may undertake
14 as part of their duties;

15 (C) methods for identifying and recruiting
16 members, including alternatives to traditional
17 qualifications requirements;

18 (D) methods for preventing conflicts of in-
19 terest or other ethical concerns as a result of
20 participation in the pilot project and details of
21 mitigation efforts to address any conflict of in-
22 terest concerns;

23 (E) resources, including additional fund-
24 ing, needed to carry out the pilot project;

1 (F) possible penalties for individuals who
2 do not respond to activation when called, in ac-
3 cordance with the rights and procedures set
4 forth under title 5, Code of Federal Regula-
5 tions; and

6 (G) processes and requirements for train-
7 ing and onboarding members.

8 (2) IMPLEMENTATION PLAN.—Not later than 1
9 year after beginning the study required under para-
10 graph (1), the Agency shall—

11 (A) submit to the appropriate congres-
12 sional committees an implementation plan for
13 the pilot project authorized under subsection
14 (b)(1); and

15 (B) provide to the appropriate congres-
16 sional committees a briefing on the implementa-
17 tion plan.

18 (3) PROHIBITION.—The Agency may not take
19 any action to begin implementation of the pilot
20 project authorized under subsection (b)(1) until the
21 Agency fulfills the requirements under paragraph
22 (2).

23 (f) PROJECT GUIDANCE.—Not later than 2 years
24 after the date of enactment of this Act, the Director shall,
25 in consultation with the Office of Government Ethics,

1 issue guidance establishing and implementing the pilot
2 project authorized under subsection (b)(1) at the Agency.

3 (g) BRIEFINGS AND REPORT.—

4 (1) BRIEFINGS.—Not later than 1 year after
5 the date on which the Director issues the guidance
6 required under subsection (f), and every year there-
7 after, the Agency shall provide to the appropriate
8 congressional committees a briefing on activities car-
9 ried out under the pilot project of the Agency, in-
10 cluding—

11 (A) participation in the Civilian Cybersecu-
12 rity Reserve, including the number of partici-
13 pants, the diversity of participants, and any
14 barriers to recruitment or retention of mem-
15 bers;

16 (B) an evaluation of the ethical require-
17 ments of the pilot project;

18 (C) whether the Civilian Cybersecurity Re-
19 serve has been effective in providing additional
20 capacity to the Agency during significant inci-
21 dents; and

22 (D) an evaluation of the eligibility require-
23 ments for the pilot project.

24 (2) REPORT.—Not earlier than 6 months and
25 not later than 3 months before the date on which

1 the pilot project of the Agency terminates under
2 subsection (i), the Agency shall submit to the appro-
3 priate congressional committees a report and provide
4 a briefing on recommendations relating to the pilot
5 project, including recommendations for—

6 (A) whether the pilot project should be
7 modified, extended in duration, or established
8 as a permanent program, and if so, an appro-
9 priate scope for the program;

10 (B) how to attract participants, ensure a
11 diversity of participants, and address any bar-
12 riers to recruitment or retention of members of
13 the Civilian Cybersecurity Reserve;

14 (C) the ethical requirements of the pilot
15 project and the effectiveness of mitigation ef-
16 forts to address any conflict of interest con-
17 cerns; and

18 (D) an evaluation of the eligibility require-
19 ments for the pilot project.

20 (h) EVALUATION.—Not later than 3 years after the
21 pilot project authorized under subsection (b) is established
22 in the Agency, the Comptroller General of the United
23 States shall—

24 (1) conduct a study evaluating the pilot project
25 at the Agency; and

1 (2) submit to Congress—

2 (A) a report on the results of the study;

3 and

4 (B) a recommendation with respect to

5 whether the pilot project should be modified,

6 extended in duration, or established as a per-

7 manent program.

8 (i) SUNSET.—The pilot project authorized under this
9 section shall terminate on the date that is 4 years after
10 the date on which the pilot project is established, except
11 that an activated member of the Civilian Cybersecurity
12 Reserve who was appointed to and is serving in a tem-
13 porary position under this section as of the day before that
14 termination date may continue to serve until the end of
15 the appointment.

16 (j) NO ADDITIONAL FUNDS.—No additional funds
17 are authorized to be appropriated for the purpose of car-
18 rying out this Act.