

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

S. 1316

To amend the Homeland Security Act of 2002 to authorize the Secretary of Homeland Security to make a declaration of a significant incident, 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 Mr. PETERS (for himself and Mr. PORTMAN)

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 “Cyber Response and
5 Recovery Act of 2021”.

6 **SEC. 2. DECLARATION OF A SIGNIFICANT INCIDENT.**

7 (a) IN GENERAL.—Title XXII of the Homeland Se-
8 curity Act of 2002 (6 U.S.C. 651 et seq.) is amended by
9 adding at the end the following:

1 **“Subtitle C—Declaration of a**
2 **Significant Incident**

3 **“SEC. 2231. SENSE OF CONGRESS.**

4 “It is the sense of Congress that—

5 “(1) the purpose of this subtitle is to authorize
6 the Secretary to declare that a significant incident
7 has occurred and to establish the authorities that
8 are provided under the declaration to respond to and
9 recover from the significant incident; and

10 “(2) the authorities established under this sub-
11 title are intended to enable the Secretary to provide
12 voluntary assistance to non-Federal entities im-
13 pacted by a significant incident.

14 **“SEC. 2232. DEFINITIONS.**

15 “For the purposes of this subtitle:

16 “(1) ASSET RESPONSE ACTIVITY.—The term
17 ‘asset response activity’ means an activity to support
18 an entity impacted by an incident with the response
19 to, remediation of, or recovery from, the incident, in-
20 cluding—

21 “(A) furnishing technical and advisory as-
22 sistance to the entity to protect the assets of
23 the entity, mitigate vulnerabilities, and reduce
24 the related impacts;

1 “(B) assessing potential risks to the crit-
2 ical infrastructure sector or geographic region
3 impacted by the incident, including potential
4 cascading effects of the incident on other crit-
5 ical infrastructure sectors or geographic re-
6 gions;

7 “(C) developing courses of action to miti-
8 gate the risks assessed under subparagraph
9 (B);

10 “(D) facilitating information sharing and
11 operational coordination with entities per-
12 forming threat response activities; and

13 “(E) providing guidance on how best to
14 use Federal resources and capabilities in a
15 timely, effective manner to speed recovery from
16 the incident.

17 “(2) DECLARATION.—The term ‘declaration’
18 means a declaration of the Secretary under section
19 2233(a)(1).

20 “(3) DIRECTOR.—The term ‘Director’ means
21 the Director of the Cybersecurity and Infrastructure
22 Security Agency.

23 “(4) FEDERAL AGENCY.—The term ‘Federal
24 agency’ has the meaning given the term ‘agency’ in
25 section 3502 of title 44, United States Code.

1 “(5) FUND.—The term ‘Fund’ means the
2 Cyber Response and Recovery Fund established
3 under section 2234(a).

4 “(6) INCIDENT.—The term ‘incident’ has the
5 meaning given the term in section 3552 of title 44,
6 United States Code.

7 “(7) RENEWAL.—The term ‘renewal’ means a
8 renewal of a declaration under section 2233(d).

9 “(8) SIGNIFICANT INCIDENT.—The term ‘sig-
10 nificant incident’—

11 “(A) means an incident or a group of re-
12 lated incidents that results, or is likely to re-
13 sult, in demonstrable harm to—

14 “(i) the national security interests,
15 foreign relations, or economy of the United
16 States; or

17 “(ii) the public confidence, civil lib-
18 erties, or public health and safety of the
19 people of the United States; and

20 “(B) does not include an incident or a por-
21 tion of a group of related incidents that occurs
22 on—

23 “(i) a national security system (as de-
24 fined in section 3552 of title 44, United
25 States Code); or

1 “(1) the asset response activities of each Fed-
2 eral agency in response to the specific significant in-
3 cident associated with the declaration; and

4 “(2) with appropriate entities, which may in-
5 clude—

6 “(A) public and private entities and State
7 and local governments with respect to the asset
8 response activities of those entities and govern-
9 ments; and

10 “(B) Federal, State, local, and Tribal law
11 enforcement agencies with respect to investiga-
12 tions and threat response activities of those law
13 enforcement agencies.

14 “(c) DURATION.—Subject to subsection (d), a dec-
15 laration shall terminate upon the earlier of—

16 “(1) a determination by the Secretary that the
17 declaration is no longer necessary; or

18 “(2) the expiration of the 120-day period begin-
19 ning on the date on which the Secretary makes the
20 declaration.

21 “(d) RENEWAL.—The Secretary, without delegation,
22 may renew a declaration as necessary.

23 “(e) PUBLICATION.—

24 “(1) IN GENERAL.—Not later than 72 hours
25 after a declaration or a renewal, the Secretary shall

1 publish the declaration or renewal in the Federal
2 Register.

3 “(2) PROHIBITION.—A declaration or renewal
4 published under paragraph (1) may not include the
5 name of any affected individual or private company.

6 “(f) ADVANCE ACTIONS.—

7 “(1) IN GENERAL.—The Secretary—

8 “(A) shall assess the resources available to
9 respond to a potential declaration; and

10 “(B) may take actions before and while a
11 declaration is in effect to arrange or procure
12 additional resources for asset response activities
13 or technical assistance the Secretary determines
14 necessary, which may include entering into
15 standby contracts with private entities for cy-
16 bersecurity services or incident responders in
17 the event of a declaration.

18 “(2) EXPENDITURE OF FUNDS.—Any expendi-
19 ture made for the purpose of paragraph (1)(B) shall
20 be made from amounts—

21 “(A) available in the Fund; or

22 “(B) otherwise appropriated to the Depart-
23 ment.

1 **“SEC. 2234. CYBER RESPONSE AND RECOVERY FUND.**

2 “(a) IN GENERAL.—There is established a Cyber Re-
3 sponse and Recovery Fund, which shall be available for—

4 “(1) the coordination of activities described in
5 section 2233(b);

6 “(2) response and recovery support for the spe-
7 cific significant incident associated with a declara-
8 tion to Federal, State, local, and Tribal, entities and
9 public and private entities on a reimbursable or non-
10 reimbursable basis, including through asset response
11 activities and technical assistance, such as—

12 “(A) vulnerability assessments and mitiga-
13 tion;

14 “(B) technical incident mitigation;

15 “(C) malware analysis;

16 “(D) analytic support;

17 “(E) threat detection and hunting; and

18 “(F) network protections;

19 “(3) as the Director determines appropriate,
20 grants for, or cooperative agreements with, Federal,
21 State, local, and Tribal public and private entities to
22 respond to, and recover from, the specific significant
23 incident associated with a declaration, such as—

24 “(A) hardware or software to replace, up-
25 date, improve, harden, or enhance the

1 functionality of existing hardware, software, or
2 systems; and

3 “(B) technical contract personnel support;
4 and

5 “(4) advance actions taken by the Secretary
6 under section 2233(f)(1)(B).

7 “(b) DEPOSITS AND EXPENDITURES.—

8 “(1) IN GENERAL.—Amounts shall be deposited
9 into the Fund from—

10 “(A) appropriations to the Fund for activi-
11 ties of the Fund;

12 “(B) reimbursement from Federal agencies
13 for the activities described in paragraphs (1),
14 (2), and (4) of subsection (a); and

15 “(C) any other income incident to activities
16 of the Fund.

17 “(2) EXPENDITURES.—Any expenditure from
18 the Fund shall be made from amounts that are
19 available in the Fund from a deposit described in
20 paragraph (1).

21 “(c) SUPPLEMENT NOT SUPPLANT.—Amounts in the
22 Fund shall be used to supplement, not supplant, other
23 Federal, State, local, or Tribal funding for activities in
24 response to a declaration.

1 **“SEC. 2235. NOTIFICATION AND REPORTING.**

2 “(a) NOTIFICATION.—Upon a declaration or renewal,
3 the Secretary shall immediately notify the National Cyber
4 Director and appropriate congressional committees and in-
5 clude in the notification—

6 “(1) an estimation of the planned duration of
7 the declaration;

8 “(2) with respect to a notification of a declara-
9 tion, the reason for the declaration, including infor-
10 mation relating to the specific significant incident or
11 imminent specific significant incident, including—

12 “(A) the operational or mission impact or
13 anticipated impact of the specific significant in-
14 cident on Federal and non-Federal entities;

15 “(B) if known, the perpetrator of the spe-
16 cific significant incident; and

17 “(C) the scope of the Federal and non-
18 Federal entities impacted or anticipated to be
19 impacted by the specific significant incident;

20 “(3) with respect to a notification of a renewal,
21 the reason for the renewal;

22 “(4) justification as to why available resources,
23 other than the Fund, are insufficient to respond to
24 or mitigate the specific significant incident; and

1 “(5) a description of the coordination activities
2 described in section 2233(b) that the Secretary an-
3 ticipates the Director to perform.

4 “(b) REPORT TO CONGRESS.—Not later than 180
5 days after the date of a declaration or renewal, the Sec-
6 retary shall submit to the appropriate congressional com-
7 mittees a report that includes—

8 “(1) the reason for the declaration or renewal,
9 including information and intelligence relating to the
10 specific significant incident that led to the declara-
11 tion or renewal;

12 “(2) the use of any funds from the Fund for
13 the purpose of responding to the incident or threat
14 described in paragraph (1);

15 “(3) a description of the actions, initiatives, and
16 projects undertaken by the Department and State
17 and local governments and public and private enti-
18 ties in responding to and recovering from the spe-
19 cific significant incident described in paragraph (1);

20 “(4) an accounting of the specific obligations
21 and outlays of the Fund; and

22 “(5) an analysis of—

23 “(A) the impact of the specific significant
24 incident described in paragraph (1) on Federal
25 and non-Federal entities;

1 “(B) the impact of the declaration or re-
2 newal on the response to, and recovery from,
3 the specific significant incident described in
4 paragraph (1); and

5 “(C) the impact of the funds made avail-
6 able from the Fund as a result of the declara-
7 tion or renewal on the recovery from, and re-
8 sponse to, the specific significant incident de-
9 scribed in paragraph (1).

10 “(c) CLASSIFICATION.—Each notification made
11 under subsection (a) and each report submitted under sub-
12 section (b)—

13 “(1) shall be in an unclassified form with ap-
14 propriate markings to indicate information that is
15 exempt from disclosure under section 552 of title 5,
16 United States Code (commonly known as the ‘Free-
17 dom of Information Act’); and

18 “(2) may include a classified annex.

19 “(d) CONSOLIDATED REPORT.—The Secretary shall
20 not be required to submit multiple reports under sub-
21 section (b) for multiple declarations or renewals if the Sec-
22 retary determines that the declarations or renewals sub-
23 stantively relate to the same specific significant incident.

24 “(e) EXEMPTION.—The requirements of subchapter
25 I of chapter 35 of title 44 (commonly known as the ‘Pa-

1 perwork Reduction Act’) shall not apply to the voluntary
2 collection of information by the Department during an in-
3 vestigation of, a response to, or an immediate post-re-
4 sponse review of, the specific significant incident leading
5 to a declaration or renewal.

6 **“SEC. 2236. RULE OF CONSTRUCTION.**

7 “Nothing in this subtitle shall be construed to impair
8 or limit the ability of the Director to carry out the author-
9 ized activities of the Cybersecurity and Infrastructure Se-
10 curity Agency.

11 **“SEC. 2237. AUTHORIZATION OF APPROPRIATIONS.**

12 “There are authorized to be appropriated to the Fund
13 \$20,000,000 for fiscal year 2022, which shall remain
14 available to be expended until September 30, 2028.

15 **“SEC. 2238. SUNSET.**

16 “The authorities granted to the Secretary or the Di-
17 rector under this subtitle shall expire on the date that is
18 7 years after the date of enactment of the Cyber Response
19 and Recovery Act of 2021.”.

20 (b) CLERICAL AMENDMENT.—The table of contents
21 in section 1(b) of the Homeland Security Act of 2002
22 (Public Law 107–296; 116 Stat. 2135) is amended by
23 adding at the end the following:

“Subtitle C—Declaration of a Significant Incident

“Sec. 2231. Sense of Congress.

“Sec. 2232. Definitions.

“Sec. 2233. Declaration.

- “Sec. 2234. Cyber response and recovery fund.
- “Sec. 2235. Notification and reporting.
- “Sec. 2236. Rule of construction.
- “Sec. 2237. Authorization of appropriations.
- “Sec. 2238. Sunset.”.