

Calendar No. 194

112TH CONGRESS
1ST SESSION**S. 473**

To extend the chemical facility security program of the Department of Homeland Security, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2011

Ms. COLLINS (for herself, Mr. PRYOR, Mr. PORTMAN, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

OCTOBER 17, 2011

Reported by Mr. LIEBERMAN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To extend the chemical facility security program of the Department of Homeland Security, 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 “Continuing Chemical
5 Facilities Antiterrorism Security Act of 2011”.

1 **SEC. 2. EXTENSION OF CHEMICAL FACILITIES**
 2 **ANTITERRORISM SECURITY PROGRAM.**

3 (a) IN GENERAL.—Section 550(b) of the Department
 4 of Homeland Security Appropriations Act, 2007 (6 U.S.C.
 5 121 note) is amended by striking “~~October 4, 2010~~ *Octo-*
 6 *ber 4, 2011*” and inserting “October 4, 2014”.

7 (b) CHEMICAL FACILITY SECURITY ENHANCE-
 8 MENTS.—

9 (1) IN GENERAL.—The Homeland Security Act
 10 of 2002 (6 U.S.C. 101 et seq.) is amended by add-
 11 ing at the end the following:

12 **“TITLE XXI—CHEMICAL**
 13 **FACILITY SECURITY**

14 **“SEC. 2101. DEFINITIONS.**

15 “In this title—

16 “(1) the term ‘Board’ means the Chemical Fa-
 17 cility Security Advisory Board established under sec-
 18 tion 2105(a);

19 “(2) the term ‘Chemical Facility Anti-Ter-
 20 rorism Standards’ means the interim final regula-
 21 tions issued by the Secretary under section 550 of
 22 the Department of Homeland Security Appropria-
 23 tions Act, 2007 (6 U.S.C. 121 note); and

24 “(3) the term ‘covered chemical facility’ means
 25 a chemical facility subject to the Chemical Facility
 26 Anti-Terrorism Standards.

1 **“SEC. 2102. CHEMICAL SECURITY TRAINING PROGRAM.**

2 “(a) ESTABLISHMENT.—Acting through the Admin-
3 istrator of the Federal Emergency Management Agency
4 and in coordination with the Under Secretary for National
5 Protection and Programs, the Secretary shall establish a
6 voluntary chemical security training program (referred to
7 in this section as the ‘training program’) for the purpose
8 of enhancing the capabilities of covered chemical facilities
9 to prevent, prepare for, respond to, mitigate against, and
10 recover from threatened or actual acts of terrorism, nat-
11 ural disasters, and other man-made disasters.

12 “(b) REQUIREMENTS.—The training program shall
13 provide validated voluntary training that—

14 “(1) reaches multiple disciplines, including Fed-
15 eral, State, and local government officials, commer-
16 cial personnel and management, and governmental
17 and nongovernmental emergency response providers;

18 “(2) provides training at the awareness, per-
19 formance, and management and planning levels;

20 “(3) uses multiple training mediums and meth-
21 ods;

22 “(4) is coordinated with training provided by
23 government training facilities, academic institutions,
24 private organizations, and other entities that provide
25 specialized, state-of-the-art training for govern-

1 mental and nongovernmental emergency responder
2 providers or commercial personnel and management;

3 “(5) uses, as appropriate, government training
4 facilities, courses provided by community colleges,
5 public safety academies, State and private univer-
6 sities, and other facilities;

7 “(6) is consistent with, and supports implemen-
8 tation of, the National Incident Management Sys-
9 tem, the National Response Framework, the Na-
10 tional Infrastructure Protection Plan, the National
11 Preparedness Guidance, the National Preparedness
12 Goal, the National Maritime Transportation Security
13 Plan, and other such national initiatives, and any
14 successors thereto;

15 “(7) is evaluated against clear and consistent
16 performance measures;

17 “(8) addresses security requirements under
18 chemical facility security plans; and

19 “(9) educates, trains, and involves individuals
20 in neighborhoods around chemical facilities on how
21 to observe and report security risks.

22 **“SEC. 2103. CHEMICAL SECURITY EXERCISE PROGRAM.**

23 “(a) IN GENERAL.—Acting through the Adminis-
24 trator of the Federal Emergency Management Agency and
25 in coordination with Under Secretary for National Protec-

1 tion and Programs, the Secretary shall develop a voluntary
2 chemical security exercise program (referred to in this sec-
3 tion as the ‘exercise program’) for the purpose of offering
4 voluntary testing and evaluation of the capabilities of the
5 Federal Government, State governments, commercial per-
6 sonnel and management, governmental and nongovern-
7 mental emergency response providers, the private sector,
8 or any other organization or entity, as the Secretary deter-
9 mines to be appropriate, to prevent, prepare for, mitigate
10 against, respond to, and recover from acts of terrorism,
11 natural disasters, and other emergencies at covered chem-
12 ical facilities.

13 “(b) REQUIREMENTS.—Under the exercise program,
14 the Secretary shall conduct, on a periodic basis, voluntary
15 joint security exercises at chemical facilities that are—

16 “(1) scaled and tailored to the needs of each
17 chemical facility;

18 “(2) for the highest risk chemical facilities, as
19 determined by the Secretary, live training exercises;

20 “(3) as realistic as practicable and based on
21 current risk assessments, including credible threats,
22 vulnerabilities, and consequences;

23 “(4) consistent with the National Incident Man-
24 agement System, the National Response Framework,
25 the National Infrastructure Protection Plan, the Na-

1 tional Preparedness Guidance, the National Pre-
2 paredness Goal, the National Maritime Transpor-
3 tation Security Plan, and other such national initia-
4 tives, and any successors thereto;

5 “(5) evaluated against clear and consistent per-
6 formance measures;

7 “(6) assessed to learn best practices, which
8 shall be shared with appropriate Federal, State, and
9 local officials, commercial personnel and manage-
10 ment, governmental and nongovernmental emergency
11 response providers, and the private sector;

12 “(7) followed by remedial action in response to
13 lessons learned; and

14 “(8) designed to assist State and local govern-
15 ments and chemical facilities in designing, imple-
16 menting, and evaluating exercises that—

17 “(A) conform to the requirements of this
18 paragraph; and

19 “(B) are consistent with any applicable
20 Buffer Zone Protection Plan, State homeland
21 security plan, or urban area homeland security
22 plan.

1 **“SEC. 2104. VOLUNTARY TECHNICAL ASSISTANCE PRO-**
2 **GRAM.**

3 “(a) ESTABLISHMENT.—The Secretary, acting
4 through the Assistant Secretary for Infrastructure Protec-
5 tion, in coordination with the Under Secretary for Science
6 and Technology, and in consultation with the Board, shall
7 establish a voluntary technical assistance program under
8 which, upon request by the owner or operator of a covered
9 chemical facility, and subject to the availability of re-
10 sources at the Department, the Secretary may provide
11 nonbinding assistance or recommendations to the owner
12 or operator to—

13 “(1) reduce the risk or consequences associated
14 with a successful act of terrorism against a covered
15 chemical facility, including the reduction of risk or
16 consequences—

17 “(A) sufficient to decrease the risk-based
18 tier assigned to the covered chemical facility
19 under the Chemical Facility Anti-Terrorism
20 Standards; or

21 “(B) such that the covered chemical facil-
22 ity no longer presents a high level of security
23 risk; or

24 “(2) aid in compliance with the risk-based per-
25 formance standards applicable to the covered chem-

1 ical facility under the Chemical Facility Anti-Ter-
2 rorism Standards.

3 “(b) VOLUNTARY NATURE OF ASSISTANCE.—

4 “(1) IN GENERAL.—The decision to—

5 “(A) participate in the voluntary technical
6 assistance program under this section; or

7 “(B) implement any assistance or rec-
8 ommendations provided by the Secretary under
9 this section,

10 shall be at the sole discretion of the owner or oper-
11 ator of a covered chemical facility.

12 “(2) NO REQUIRED ASSESSMENT.—The Sec-
13 retary may not require the owner or operator of a
14 covered chemical facility to—

15 “(A) consider any assistance or rec-
16 ommendation provided under this section as
17 part of a security vulnerability assessment
18 under the Chemical Facility Anti-Terrorism
19 Standards; or

20 “(B) assess, directly or indirectly, the
21 costs, benefits, economic or technical feasibility,
22 or practicality of implementing any assistance
23 or recommendation provided under this section.

24 “(3) SITE SECURITY PLAN REVIEW.—If the site
25 security plan for a covered chemical facility satisfies

1 the risk-based performance standards applicable to
2 the covered chemical facility under the Chemical Fa-
3 cility Anti-Terrorism Standards, the Secretary may
4 not disapprove the site security plan based on—

5 “(A) a decision by the owner or operator
6 of a covered chemical facility not to—

7 “(i) participate in the voluntary tech-
8 nical assistance program under this sec-
9 tion; or

10 “(ii) implement assistance or a rec-
11 ommendation provided by the Secretary
12 under this section; or

13 “(B) the presence or absence of a par-
14 ticular security measure.

15 “(4) EFFECT ON TIERING.—At the request of
16 the owner or operator of a covered chemical facility,
17 the Secretary shall advise the owner or operator of
18 the overall effect that implementing all categories of
19 assistance or recommendations provided by the Sec-
20 retary under this section would have on the deter-
21 mination by the Secretary—

22 “(A) of the placement of the covered chem-
23 ical facility in a risk-based tier under the Chem-
24 ical Facility Anti-Terrorism Standards; or

1 “(B) regarding whether the covered chem-
2 ical facility would no longer present a high level
3 of security risk.

4 “(5) CIVIL LIABILITY.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), no action, or failure to act, by the
7 owner or operator of a covered chemical facility
8 relating to assistance or a recommendation pro-
9 vided by the Secretary under this section shall
10 be interpreted, construed, implied, or applied to
11 create any liability or cause of action for com-
12 pensation for bodily injury, any other injury, or
13 property damage to any person that may result
14 from an act of terrorism or incident at the cov-
15 ered chemical facility.

16 “(B) ADDITIONAL OR INTERVENING ACTS
17 OR OMISSIONS.—Subparagraph (A) shall not
18 apply to any injury or damage caused by any
19 additional or intervening act or omission of the
20 owner or operator of a covered chemical facility.

21 “(C) RULE OF CONSTRUCTION.—Except as
22 provided in this section, nothing in subpara-
23 graph (A) shall be construed to abrogate or
24 limit any right, remedy, or authority that the
25 Federal Government, any State or local govern-

1 ment, or any entity or agency of the Federal
2 Government or a State or local government may
3 possess under any other provision of law.

4 “(c) BEST PRACTICES.—Subject to subsection (d),
5 the Secretary shall develop a repository for information
6 and data on best practices and cost-effective technologies
7 for implementing the Chemical Facility Anti-Terrorism
8 Standards and the voluntary technical assistance program
9 under this section.

10 “(d) INFORMATION PROTECTION.—Any information
11 obtained by the Secretary under the voluntary technical
12 assistance program under this section or for purposes of
13 subsection (c) shall—

14 “(1) to the extent that the information may re-
15 veal vulnerabilities or other details of the security
16 capabilities of a covered chemical facility that may
17 be exploited by terrorists, be protected as chemical-
18 terrorism vulnerability information under the Chem-
19 ical Facility Anti-Terrorism Standards; and

20 “(2) to the extent that the information may re-
21 veal trade secrets or commercial or financial infor-
22 mation that is not customarily in the public domain,
23 be protected as though the information was volun-
24 tarily shared critical infrastructure information
25 under section 214, except that the requirement

1 under section 214 that the information be volun-
2 tarily submitted, including the requirement for an
3 express statement specified in section 214(a)(2),
4 shall not apply to information obtained under this
5 section.

6 “(e) REPORT ON LESSONS LEARNED.—Not later
7 than October 4, 2013, the Secretary, in coordination with
8 the Board, shall submit to the Committee on Homeland
9 Security and Governmental Affairs of the Senate and the
10 Committee on Homeland Security of the House of Rep-
11 resentatives a report regarding lessons learned from the
12 voluntary technical assistance program under this section.

13 “(f) AVAILABILITY OF APPROPRIATIONS.—Of the
14 amounts made available for the Chemical Facility Anti-
15 Terrorism Standards for each of fiscal years ~~2011~~ 2012
16 through ~~2015~~ 2014, not less than \$5,000,000 shall be
17 made available for the provision of voluntary technical as-
18 sistance under this section.

19 **“SEC. 2105. CHEMICAL FACILITY SECURITY ADVISORY**
20 **BOARD.**

21 “(a) ESTABLISHMENT.—Not later than 90 days after
22 the date of enactment of this section, the Secretary shall
23 establish under section 871 a Chemical Facility Security
24 Advisory Board.

1 “(b) RESPONSIBILITIES.—The Board shall advise the
2 Secretary on the implementation of the Chemical Facility
3 Anti-Terrorism Standards, including regarding the imple-
4 mentation of the voluntary technical assistance program
5 under ~~section 2103~~ *section 2104*.

6 “(c) MEMBERSHIP.—There shall be 9 members of the
7 Board, who shall be appointed by the Secretary and shall
8 represent a geographic and substantive cross-section of
9 the United States, including—

10 “(1) not less than 5 owners or operators of cov-
11 ered chemical facilities;

12 “(2) not less than 2 employees of covered chem-
13 ical facilities with direct responsibility for process
14 design and engineering, production and operations,
15 or chemical process security; and

16 “(3) not less than 2 other experts in the fields
17 of chemistry, security, process design and engineer-
18 ing, process controls and instrumentation, environ-
19 mental health and safety, maintenance, production
20 and operations, or chemical process security.

21 “(d) TERM.—The members of the Board shall be ap-
22 pointed for such terms as the Secretary may determine.

23 “(e) APPLICABILITY OF FEDERAL ADVISORY COM-
24 MITTEE ACT.—Notwithstanding section 871(a), except as

1 provided in subsection (f), the Federal Advisory Com-
 2 mittee Act (5 U.S.C. App.) shall apply to the Board.

3 “(f) EXEMPTION FROM TERMINATION REQUIRE-
 4 MENTS.—Section 14 of the Federal Advisory Committee
 5 Act (5 U.S.C. App.) and section 871(b) shall not apply
 6 to the Board.

7 **“SEC. 2106. AUTHORIZATION OF APPROPRIATIONS.**

8 “There are authorized to be appropriated to the Sec-
 9 retary such sums as are necessary to carry out this title.”.

10 (2) TABLE OF CONTENTS.—The table of con-
 11 tents in section 1(b) of the Homeland Security Act
 12 of 2002 (6 U.S.C. 101 et seq.) is amended by insert-
 13 ing after the item relating to section 2022 the fol-
 14 lowing:

“TITLE XXI—CHEMICAL FACILITY SECURITY

“Sec. 2101. Definitions.

“Sec. 2102. Chemical security training program.

“Sec. 2103. Chemical security exercise program.

“Sec. 2104. Voluntary technical assistance program.

“Sec. 2105. Chemical Facility Security Advisory Board.

“Sec. 2106. Authorization of appropriations.”.

15 (3) *SUNSET.*—*Effective on the date on which au-*
 16 *thority terminates under section 550(b) of the Depart-*
 17 *ment of Homeland Security Appropriations Act, 2007*
 18 *(6 U.S.C. 121 note), the Homeland Security Act of*
 19 *2002 (6 U.S.C. 101 et seq.) is amended—*
 20 *(A) by striking title XXI; and*

1 *(B) in the table of contents in section 1(b),*
2 *by striking the items relating to title XXI and*
3 *sections 2101 through 2106.*

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1ST Session

S. 473

A BILL

To extend the chemical facility security program of the Department of Homeland Security, and for other purposes.

OCTOBER 17, 2011

Reported with amendments