

112TH CONGRESS
1ST SESSION

S. 1025

To amend title 10, United States Code, to enhance the national defense through empowerment of the National Guard, enhancement of the functions of the National Guard Bureau, and improvement of Federal-State military coordination in domestic emergency response, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 19, 2011

Mr. LEAHY (for himself and Mr. GRAHAM) 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 enhance the national defense through empowerment of the National Guard, enhancement of the functions of the National Guard Bureau, and improvement of Federal-State military coordination in domestic emergency response, 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 “National Guard Em-
5 powerment and State-National Defense Integration Act of
6 2011”.

1 **SEC. 2. REESTABLISHMENT OF POSITION OF VICE CHIEF**
 2 **OF THE NATIONAL GUARD BUREAU AND TER-**
 3 **MINATION OF POSITION OF DIRECTOR OF**
 4 **THE JOINT STAFF OF THE NATIONAL GUARD**
 5 **BUREAU.**

6 (a) REESTABLISHMENT AND TERMINATION OF POSI-
 7 TIONS.—Section 10505 of title 10, United States Code,
 8 is amended to read as follows:

9 **“§ 10505. Vice Chief of the National Guard Bureau**

10 “(a) APPOINTMENT.—(1) There is a Vice Chief of the
 11 National Guard Bureau, selected by the Secretary of De-
 12 fense from officers of the Army National Guard of the
 13 United States or the Air National Guard of the United
 14 States who—

15 “(A) are recommended for such appointment by
 16 their respective Governors or, in the case of the Dis-
 17 trict of Columbia, the commanding general of the
 18 District of Columbia National Guard;

19 “(B) have had at least 10 years of federally rec-
 20 ognized service in an active status in the National
 21 Guard; and

22 “(C) are in a grade above the grade of colonel.

23 “(2) The Chief and Vice Chief of the National Guard
 24 Bureau may not both be members of the Army or of the
 25 Air Force.

1 “(3)(A) Except as provided in subparagraph (B), an
2 officer appointed as Vice Chief of the National Guard Bu-
3 reau serves for a term of four years, but may be removed
4 from office at any time for cause.

5 “(B) The term of the Vice Chief of the National
6 Guard Bureau shall end within a reasonable time (as de-
7 termined by the Secretary of Defense) following the ap-
8 pointment of a Chief of the National Guard Bureau who
9 is a member of the same armed force as the Vice Chief.

10 “(b) DUTIES.—The Vice Chief of the National Guard
11 Bureau performs such duties as may be prescribed by the
12 Chief of the National Guard Bureau.

13 “(c) GRADE.—The Vice Chief of the National Guard
14 Bureau shall be appointed to serve in the grade of lieuten-
15 ant general.

16 “(d) FUNCTIONS AS ACTING CHIEF.—When there is
17 a vacancy in the office of the Chief of the National Guard
18 Bureau or in the absence or disability of the Chief, the
19 Vice Chief of the National Guard Bureau acts as Chief
20 and performs the duties of the Chief until a successor is
21 appointed or the absence of disability ceases.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Section 10502 of such title is amended by
24 striking subsection (e).

1 **SEC. 3. MEMBERSHIP OF THE CHIEF OF THE NATIONAL**
 2 **GUARD BUREAU ON THE JOINT CHIEFS OF**
 3 **STAFF.**

4 (a) MEMBERSHIP ON JOINT CHIEFS OF STAFF.—
 5 Section 151(a) of title 10, United States Code, is amended
 6 by adding at the end the following new paragraph:

7 “(7) The Chief of the National Guard Bu-
 8 reau.”.

9 (b) CONFORMING AMENDMENTS.—Section 10502 of
 10 such title, as amended by section 2(b)(1) of this Act, is
 11 further amended—

12 (1) by redesignating subsection (d) as sub-
 13 section (e); and

14 (2) by inserting after subsection (c) the fol-
 15 lowing new subsection (d):

16 “(d) MEMBER OF JOINT CHIEFS OF STAFF.—The
 17 Chief of the National Guard Bureau shall perform the du-
 18 ties prescribed for him or her as a member of the Joint
 19 Chiefs of Staff under section 151 of this title.”.

20 **SEC. 4. CONTINUATION AS A PERMANENT PROGRAM AND**
 21 **ENHANCEMENT OF ACTIVITIES OF TASK**
 22 **FORCE FOR EMERGENCY READINESS PILOT**
 23 **PROGRAM OF THE FEDERAL EMERGENCY**
 24 **MANAGEMENT AGENCY.**

25 (a) CONTINUATION.—

1 (1) CONTINUATION AS PERMANENT PRO-
2 GRAM.—The Administrator of the Federal Emer-
3 gency Management Agency shall continue the Task
4 Force for Emergency Readiness (TFER) pilot pro-
5 gram of the Federal Emergency Management Agen-
6 cy as a permanent program of the Agency.

7 (2) LIMITATION ON TERMINATION.—The Ad-
8 ministrator may not terminate the Task Force for
9 Emergency Readiness program, as so continued,
10 until authorized or required to terminate the pro-
11 gram by law.

12 (b) EXPANSION OF PROGRAM SCOPE.—As part of the
13 continuation of the Task Force for Emergency Readiness
14 program pursuant to subsection (a), the Administrator
15 shall carry out the program in at least five States in addi-
16 tion to the five States in which the program is carried
17 out as of the date of the enactment of this Act.

18 (c) ADDITIONAL FEMA ACTIVITIES.—As part of the
19 continuation of the Task Force for Emergency Readiness
20 program pursuant to subsection (a), the Administrator
21 shall—

22 (1) establish guidelines and standards to be
23 used by the States in strengthening the planning
24 and planning capacities of the States with respect to
25 responses to catastrophic disaster emergencies; and

1 (2) develop a methodology for implementing the
2 Task Force for Emergency Readiness that includes
3 goals and standards for assessing the performance
4 of the Task Force.

5 (d) NATIONAL GUARD BUREAU ACTIVITIES.—As
6 part of the continuation of the Task Force for Emergency
7 Readiness program pursuant to subsection (a), the Chief
8 of the National Guard Bureau shall—

9 (1) assist the Administrator in the establish-
10 ment of the guidelines and standards, implementa-
11 tion methodology, and performance goals and stand-
12 ards required by subsection (c);

13 (2) in coordination with the Administrator—

14 (A) identify, using catastrophic disaster re-
15 sponse plans for each State developed under the
16 program, any gaps in State civilian and military
17 response capabilities that Federal military capa-
18 bilities are unprepared to fill; and

19 (B) notify the Secretary of Defense, the
20 Commander of the United States Northern
21 Command, and the Commander of the United
22 States Pacific Command of any gaps in capa-
23 bilities identified under subparagraph (A); and

24 (3) acting through and in coordination with the
25 Adjutants General of the States, assist the States in

1 the development of State plans on responses to cata-
2 strophic disaster emergencies.

3 (e) ANNUAL REPORTS.—The Administrator and the
4 Chief of the National Guard Bureau shall jointly submit
5 to the appropriate committees of Congress each year a re-
6 port on activities under the Task Force for Emergency
7 Readiness program during the preceding year. Each re-
8 port shall include a description of the activities under the
9 program during the preceding year and a current assess-
10 ment of the effectiveness of the program in meeting its
11 purposes.

12 (f) APPROPRIATE COMMITTEES OF CONGRESS DE-
13 FINED.—In this section, the term “appropriate commit-
14 tees of Congress” means—

15 (1) the Committee on Armed Services and the
16 Committee on Homeland Security and Governmental
17 Affairs of the Senate; and

18 (2) the Committee on Armed Services and the
19 Committee on Homeland Security of the House of
20 Representatives.

1 **SEC. 5. MEMORANDUM OF UNDERSTANDING BETWEEN DE-**
2 **PARTMENT OF DEFENSE AND DEPARTMENT**
3 **OF HOMELAND SECURITY ON UNITY OF EF-**
4 **FORT IN RESPONSE OF MILITARY FORCES TO**
5 **DOMESTIC EMERGENCIES.**

6 (a) MEMORANDUM OF UNDERSTANDING RE-
7 QUIRED.—

8 (1) IN GENERAL.—Not later than 180 days
9 after the date of the enactment of this Act, the Sec-
10 retary of Defense and the Secretary of Homeland
11 Security shall enter into a memorandum of under-
12 standing on coordination between the Department of
13 Defense and the Department of Homeland Security,
14 and between the Departments and the States, in the
15 use of military forces in response to domestic emer-
16 gencies.

17 (2) PURPOSE.—The purpose of the memo-
18 randum is to ensure, to the maximum extent prac-
19 ticable, a unity of effort within the Federal Govern-
20 ment, and between the Federal Government and the
21 States, regarding the use of military forces in re-
22 sponse to domestic emergencies.

23 (b) CONSULTATION WITH THE STATES.—In entering
24 into the memorandum of understanding required by sub-
25 section (a), the Secretary of Defense and the Secretary
26 of Homeland Security shall jointly consult with the Coun-

1 cil of Governors established by Executive Order No. 13528
2 for purposes of coordinating plans under the memorandum
3 of understanding with the plans of the States for the use
4 of military forces of the States in response to domestic
5 emergencies.

6 (c) SUBMITTAL TO CONGRESS.—Upon entry into the
7 memorandum of understanding required by subsection (a),
8 the Secretary of Defense and the Secretary of Homeland
9 Security shall jointly submit to the appropriate commit-
10 tees of Congress a report on the memorandum of under-
11 standing. The report shall include the following:

12 (1) The memorandum of understanding.

13 (2) A comprehensive description of the manner
14 in which the mechanisms set forth in the memo-
15 randum of understanding will ensure a unity of ef-
16 fort within the Federal Government, and between
17 the Federal Government and the State or States
18 concerned, regarding the use of military forces in re-
19 sponse to domestic emergencies, including, in par-
20 ticular, the manner in which such mechanisms will
21 ensure a unity of such effort between the Federal
22 Government and the States in the use of such forces
23 in such response.

24 (3) Such other matters as the Secretaries joint-
25 ly consider appropriate.

1 (d) APPROPRIATE COMMITTEES OF CONGRESS DE-
2 FINED.—In this section, the term “appropriated commit-
3 tees of Congress” means—

4 (1) the Committees on Armed Services, Home-
5 land Security and Governmental Affairs, and Appro-
6 priations of the Senate; and

7 (2) the Committees on Armed Services, Home-
8 land Security, and Appropriations of the House of
9 Representatives.

10 **SEC. 6. REPORT ON COMPARATIVE ANALYSIS OF COSTS OF**
11 **COMPARABLE UNITS OF THE RESERVE COM-**
12 **ONENTS AND THE REGULAR COMPONENTS**
13 **OF THE ARMED FORCES.**

14 (a) REPORT REQUIRED.—

15 (1) IN GENERAL.—Not later than 180 days
16 after the date of the enactment of this Act, the Sec-
17 retary of Defense shall submit to the congressional
18 defense committees a report setting forth a com-
19 parative analysis of the costs of units of the regular
20 components of the Armed Forces with the costs of
21 similar units of the reserve components of the
22 Armed Forces. The analysis shall include a separate
23 comparison of the costs of units in the aggregate
24 and of the costs of units solely when on active duty.

1 (2) SIMILAR UNITS.—For purposes of this sub-
2 section, units of the regular components and reserve
3 components shall be treated as similar if such units
4 have the same general structure, personnel, or func-
5 tion, or are substantially composed of personnel hav-
6 ing identical or similar military occupational special-
7 ties (MOS).

8 (b) ASSESSMENT OF INCREASED RESERVE COMPO-
9 NENT PRESENCE IN TOTAL FORCE STRUCTURE.—The
10 Secretary shall include in the report required by sub-
11 section (a) an assessment of the advisability of increasing
12 the number of units and members of the reserve compo-
13 nents of the Armed Forces within the total force structure
14 of the Armed Forces. The assessment shall take into ac-
15 count the comparative analysis conducted for purposes of
16 subsection (a) and such other matters as the Secretary
17 considers appropriate for purposes of the assessment.

18 (c) COMPTROLLER GENERAL REPORT.—Not later
19 than 180 days after the date of the submittal of the report
20 required by subsection (a), the Comptroller General of the
21 United States shall submit to the congressional defense
22 committees a report setting forth a review of such report
23 by the Comptroller General. The report of the Comptroller
24 General shall include an assessment of the comparative
25 analysis contained in the report required by subsection (a)

1 and of the assessment of the Secretary pursuant to sub-
2 section (b).

3 (d) CONGRESSIONAL DEFENSE COMMITTEES DE-
4 FINED.—In this section, the term “congressional defense
5 committees” has the meaning given that term in section
6 101(a)(16) of title 10, United States Code.

7 **SEC. 7. DISPLAY OF PROCUREMENT OF EQUIPMENT FOR**
8 **THE RESERVE COMPONENTS OF THE ARMED**
9 **FORCES UNDER ESTIMATED EXPENDITURES**
10 **FOR PROCUREMENT IN FUTURE-YEARS DE-**
11 **FENSE PROGRAMS.**

12 Each future-years defense program submitted to
13 Congress under section 221 of title 10, United States
14 Code, shall, in setting forth estimated expenditures and
15 item quantities for procurement for the Armed Forces for
16 the fiscal years covered by such program, display sepa-
17 rately under such estimated expenditures and item quan-
18 tities the estimated expenditures for each such fiscal year
19 for equipment for each reserve component of the Armed
20 Forces that will receive items in any fiscal year covered
21 by such program.

22 **SEC. 8. FISCAL YEAR 2012 FUNDING FOR THE NATIONAL**
23 **GUARD FOR CERTAIN DOMESTIC ACTIVITIES.**

24 (a) CONTINUITY OF OPERATIONS, CONTINUITY OF
25 GOVERNMENT, AND CONSEQUENCE MANAGEMENT.—

1 (1) AUTHORIZATION OF APPROPRIATIONS.—

2 There is hereby authorized to be appropriated for
3 fiscal year 2012 for the Department of Defense
4 amounts as follows:

5 (A) For National Guard Personnel, Army,
6 \$11,000,000.

7 (B) For National Guard Personnel, Air
8 Force, \$3,500,000.

9 (C) For Operation and Maintenance, Army
10 National Guard, \$11,000,000.

11 (2) AVAILABILITY.—The amounts authorized to
12 be appropriated by paragraph (1) shall be available
13 to the Army National Guard and the Air National
14 Guard, as applicable, for costs of personnel in train-
15 ing and operations with respect to continuity of op-
16 erations, continuity of government, and consequence
17 management in connection with response to terrorist
18 and other attacks on the United States homeland
19 and natural and man-made catastrophes in the
20 United States.

21 (b) DOMESTIC OPERATIONS.—

22 (1) AUTHORIZATION OF APPROPRIATIONS.—

23 There is hereby authorized to be appropriated for
24 fiscal year 2012 for the Department of Defense,

1 \$300,000,000 for Operation and Maintenance, De-
2 fense-wide.

3 (2) AVAILABILITY.—The amount authorized to
4 be appropriated by paragraph (1) shall be available
5 for the Army National Guard and the Air National
6 Guard for emergency preparedness and response ac-
7 tivities of the National Guard while in State status
8 under title 32, United States Code.

9 (3) TRANSFER.—Amounts under the amount
10 authorized to be appropriated by paragraph (1) shall
11 be available for transfer to accounts for National
12 Guard Personnel, Army, and National Guard Per-
13 sonnel, Air Force, for purposes of the pay and allow-
14 ances of members of the National Guard in con-
15 ducting activities described in paragraph (2).

16 (c) JOINT OPERATIONS COORDINATION CENTERS.—

17 (1) AUTHORIZATION OF APPROPRIATIONS.—
18 There is hereby authorized to be appropriated for
19 fiscal year 2012 for the Department of Defense
20 amounts as follows:

21 (A) For National Guard Personnel, Army,
22 \$28,000,000.

23 (B) For National Guard Personnel, Air
24 Force, \$7,000,000.

1 port of civil authorities in the United States by the Armed
2 Forces.

3 (b) DISCHARGE OF RESPONSIBILITY.—In dis-
4 charging the responsibility set forth in subsection (a), the
5 Commander of the United States Northern Command and
6 the Commander of the United States Pacific Command
7 shall each—

8 (1) in consultation with and acting through the
9 Chief of the National Guard Bureau and the Joint
10 Force Headquarters of the National Guard of the
11 State or States concerned, assist the States in the
12 employment of the National Guard under State con-
13 trol, including National Guard operations conducted
14 in State active duty or under title 32, United States
15 Code; and

16 (2) facilitate the deployment of the Armed
17 Forces on active duty under title 10, United States
18 Code, as necessary to augment and support the Na-
19 tional Guard in its support of civil authorities when
20 National Guard operations are conducted under
21 State control, whether in State active duty or under
22 title 32, United States Code.

23 (c) MEMORANDUM OF UNDERSTANDING.—

24 (1) MEMORANDUM REQUIRED.—Not later than
25 180 days after the date of the enactment of this Act,

1 the Commander of the United States Northern Com-
2 mand, the Commander of the United States Pacific
3 Command, and the Chief of the National Guard Bu-
4 reau shall, with the approval of the Secretary of De-
5 fense, jointly enter into a memorandum of under-
6 standing setting forth the operational relationships,
7 and individual roles and responsibilities, during re-
8 sponses to domestic emergencies among the United
9 States Northern Command, the United States Pa-
10 cific Command, and the National Guard Bureau.

11 (2) MODIFICATION.—The Commander of the
12 United States Northern Command, the Commander
13 of the United States Pacific Command, and the
14 Chief of the National Guard Bureau may from time
15 to time modify the memorandum of understanding
16 under this subsection to address changes in cir-
17 cumstances and for such other purposes as the Com-
18 mander of the United States Northern Command,
19 the Commander of the United States Pacific Com-
20 mand, and the Chief of the National Guard Bureau
21 jointly consider appropriate. Each such modification
22 shall be subject to the approval of the Secretary of
23 Defense.

24 (d) AUTHORITY TO MODIFY ASSIGNMENT OF COM-
25 MAND RESPONSIBILITY.—Nothing in this section shall be

1 construed as altering or limiting the power of the Presi-
2 dent or the Secretary of Defense to modify the Unified
3 Command Plan in order to assign all or part of the respon-
4 sibility described in subsection (a) to a combatant com-
5 mand other than the United States Northern Command
6 or the United States Pacific Command.

7 (e) REGULATIONS.—The Secretary of Defense shall
8 prescribe regulations for purposes of aiding the expedi-
9 tious implementation of the authorities and responsibilities
10 in this section.

11 **SEC. 10. REQUIREMENTS RELATING TO NATIONAL GUARD**
12 **OFFICERS IN CERTAIN COMMAND POSITIONS.**

13 (a) COMMANDER OF ARMY NORTH COMMAND.—The
14 officer serving in the position of Commander, Army North
15 Command, shall be an officer in the Army National Guard
16 of the United States.

17 (b) COMMANDER OF AIR FORCE NORTH COM-
18 MAND.—The officer serving in the position of Commander,
19 Air Force North Command, shall be an officer in the Air
20 National Guard of the United States.

21 (c) SENSE OF CONGRESS.—It is the sense of Con-
22 gress that, in assigning officers to the command positions
23 specified in subsections (a) and (b), the President should
24 afford a preference in assigning officers in the Army Na-
25 tional Guard of the United States or Air National Guard

1 of the United States, as applicable, who have served as
2 the adjutant general of a State.

3 **SEC. 11. AVAILABILITY OF FUNDS UNDER STATE PARTNER-**
4 **SHIP PROGRAM FOR ADDITIONAL NATIONAL**
5 **GUARD CONTACTS ON MATTERS WITHIN THE**
6 **CORE COMPETENCIES OF THE NATIONAL**
7 **GUARD.**

8 (a) IN GENERAL.—The Secretary of Defense shall,
9 in consultation with the Secretary of State, modify the
10 regulations prescribed pursuant to section 1210 of the Na-
11 tional Defense Authorization Act for Fiscal Year 2010
12 (Public Law 111–84; 123 Stat. 2517; 32 U.S.C. 107 note)
13 to provide for the use of funds available pursuant to such
14 regulations for contacts between members of the National
15 Guard and civilian personnel of foreign governments out-
16 side the ministry of defense on matters within the core
17 competencies of the National Guard such as the following:

- 18 (1) Disaster response and mitigation.
19 (2) Defense support to civilian authorities.
20 (3) Consequence management and installation
21 protection.
22 (4) Chemical, biological, radiological, or nuclear
23 event (CBRNE) response.
24 (5) Border and port security and cooperation
25 with civilian law enforcement.

1 (6) Search and rescue.

2 (7) Medical matters.

3 (8) Counterdrug and counternarcotics activities.

4 (9) Public affairs.

5 (10) Employer and family support of reserve
6 forces.

7 (11) Such other matters within the core com-
8 petencies of the National Guard and suitable for
9 contacts under the State Partnership Program as
10 the Secretary of Defense shall specify.

11 (b) FUNDING FOR FISCAL YEAR 2012.—There is
12 hereby authorized to be appropriated for fiscal year 2012
13 for the Department of Defense for the National Guard,
14 \$50,000,000 to be available for contacts under the State
15 Partnership Program authorized pursuant to the modi-
16 fication of regulations required by subsection (a).

○