

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

S. 79

To provide for the establishment of a pilot program to identify security vulnerabilities of certain entities in the energy sector.

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 _____

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 “Securing Energy Infra-

5 structure Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) APPROPRIATE COMMITTEE OF CONGRESS.—

9 The term “appropriate committee of Congress”

10 means—

1 (A) the Select Committee on Intelligence,
2 the Committee on Homeland Security and Gov-
3 ernmental Affairs, and the Committee on En-
4 ergy and Natural Resources of the Senate; and

5 (B) the Permanent Select Committee on
6 Intelligence, the Committee on Homeland Secu-
7 rity, and the Committee on Energy and Com-
8 merce of the House of Representatives.

9 (2) COVERED ENTITY.—The term “covered en-
10 tity” means an entity identified pursuant to section
11 9(a) of Executive Order 13636 of February 12,
12 2013 (78 Fed. Reg. 11742), relating to identifica-
13 tion of critical infrastructure where a cybersecurity
14 incident could reasonably result in catastrophic re-
15 gional or national effects on public health or safety,
16 economic security, or national security.

17 (3) EXPLOIT.—The term “exploit” means a
18 software tool designed to take advantage of a secu-
19 rity vulnerability.

20 (4) INDUSTRIAL CONTROL SYSTEM.—

21 (A) IN GENERAL.—The term “industrial
22 control system” means an operational tech-
23 nology used to measure, control, or manage in-
24 dustrial functions.

1 (B) INCLUSIONS.—The term “industrial
2 control system” includes supervisory control
3 and data acquisition systems, distributed con-
4 trol systems, and programmable logic or embed-
5 ded controllers.

6 (5) NATIONAL LABORATORY.—The term “Na-
7 tional Laboratory” has the meaning given the term
8 in section 2 of the Energy Policy Act of 2005 (42
9 U.S.C. 15801).

10 (6) PROGRAM.—The term “Program” means
11 the pilot program established under section 3.

12 (7) SECRETARY.—The term “Secretary” means
13 the Secretary of Energy.

14 (8) SECURITY VULNERABILITY.—The term “se-
15 curity vulnerability” means any attribute of hard-
16 ware, software, process, or procedure that could en-
17 able or facilitate the defeat of a security control.

18 **SEC. 3. PILOT PROGRAM FOR SECURING ENERGY INFRA-**
19 **STRUCTURE.**

20 Not later than 180 days after the date of enactment
21 of this Act, the Secretary shall establish a 2-year control
22 systems implementation pilot program within the National
23 Laboratories for the purposes of—

24 (1) partnering with covered entities in the en-
25 ergy sector (including critical component manufac-

1 turers in the supply chain) that voluntarily partici-
2 pate in the Program to identify new classes of secu-
3 rity vulnerabilities of the covered entities; and

4 (2) evaluating technology and standards, in
5 partnership with covered entities, to isolate and de-
6 fend industrial control systems of covered entities
7 from security vulnerabilities and exploits in the most
8 critical systems of the covered entities, including—

9 (A) analog and nondigital control systems;

10 (B) purpose-built control systems; and

11 (C) physical controls.

12 **SEC. 4. WORKING GROUP TO EVALUATE PROGRAM STAND-**
13 **ARDS AND DEVELOP STRATEGY.**

14 (a) ESTABLISHMENT.—The Secretary shall establish
15 a working group—

16 (1) to evaluate the technology and standards
17 used in the Program under section 3(2); and

18 (2) to develop a national cyber-informed engi-
19 neering strategy to isolate and defend covered enti-
20 ties from security vulnerabilities and exploits in the
21 most critical systems of the covered entities.

22 (b) MEMBERSHIP.—The working group established
23 under subsection (a) shall be composed of not fewer than
24 10 members, to be appointed by the Secretary, at least
25 1 member of which shall represent each of the following:

1 (1) The Department of Energy.

2 (2) The energy industry, including electric utili-
3 ties and manufacturers recommended by the Energy
4 Sector coordinating councils.

5 (3)(A) The Department of Homeland Security;
6 or

7 (B) the Industrial Control Systems Cyber
8 Emergency Response Team.

9 (4) The North American Electric Reliability
10 Corporation.

11 (5) The Nuclear Regulatory Commission.

12 (6)(A) The Office of the Director of National
13 Intelligence; or

14 (B) the intelligence community (as defined in
15 section 3 of the National Security Act of 1947 (50
16 U.S.C. 3003)).

17 (7)(A) The Department of Defense; or

18 (B) the Assistant Secretary of Defense for
19 Homeland Security and America's Security Affairs.

20 (8) A State or regional energy agency.

21 (9) A national research body or academic insti-
22 tution.

23 (10) The National Laboratories.

1 **SEC. 5. REPORTS ON THE PROGRAM.**

2 (a) INTERIM REPORT.—Not later than 180 days
3 after the date on which funds are first disbursed under
4 the Program, the Secretary shall submit to the appro-
5 priate committees of Congress an interim report that—

6 (1) describes the results of the Program;

7 (2) includes an analysis of the feasibility of
8 each method studied under the Program; and

9 (3) describes the results of the evaluations con-
10 ducted by the working group established under sec-
11 tion 4(a).

12 (b) FINAL REPORT.—Not later than 2 years after the
13 date on which funds are first disbursed under the Pro-
14 gram, the Secretary shall submit to the appropriate com-
15 mittees of Congress a final report that—

16 (1) describes the results of the Program;

17 (2) includes an analysis of the feasibility of
18 each method studied under the Program; and

19 (3) describes the results of the evaluations con-
20 ducted by the working group established under sec-
21 tion 4(a).

22 **SEC. 6. EXEMPTION FROM DISCLOSURE.**

23 Information shared by or with the Federal Govern-
24 ment or a State, Tribal, or local government under this
25 Act shall be—

1 (1) deemed to be voluntarily shared informa-
2 tion;

3 (2) exempt from disclosure under section 552 of
4 title 5, United States Code, or any provision of any
5 State, Tribal, or local freedom of information law,
6 open government law, open meetings law, open
7 records law, sunshine law, or similar law requiring
8 the disclosure of information or records; and

9 (3) withheld from the public, without discretion,
10 under section 552(b)(3) of title 5, United States
11 Code, or any provision of a State, Tribal, or local
12 law requiring the disclosure of information or
13 records.

14 **SEC. 7. PROTECTION FROM LIABILITY.**

15 (a) IN GENERAL.—A cause of action against a cov-
16 ered entity for engaging in the voluntary activities author-
17 ized under section 3—

18 (1) shall not lie or be maintained in any court;

19 and

20 (2) shall be promptly dismissed by the applica-
21 ble court.

22 (b) VOLUNTARY ACTIVITIES.—Nothing in this Act
23 subjects any covered entity to liability for not engaging
24 in the voluntary activities authorized under section 3.

1 **SEC. 8. NO NEW REGULATORY AUTHORITY FOR FEDERAL**
2 **AGENCIES.**

3 Nothing in this Act authorizes the Secretary or the
4 head of any other department or agency of the Federal
5 Government to issue new regulations.

6 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) **PILOT PROGRAM.**—There is authorized to be ap-
8 propriated \$10,000,000 to carry out section 3.

9 (b) **WORKING GROUP AND REPORT.**—There is au-
10 thorized to be appropriated \$1,500,000 to carry out sec-
11 tions 4 and 5.

12 (c) **AVAILABILITY.**—Amounts made available under
13 subsections (a) and (b) shall remain available until ex-
14 pended.