[Discussion Draft]

AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO H.R. 5239

OFFERED BY M__. _____

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Cyber Sense Act of
3 2018".

4 **SEC. 2. CYBER SENSE.**

5 (a) IN GENERAL.—The Secretary of Energy shall es-
6 tablish a voluntary Cyber Sense program to test the cyber-
7 security of products and technologies intended for use in
8 the bulk-power system, as defined in section 215(a) of the
9 Federal Power Act (16 U.S.C. 824o(a)).

10 (b) PROGRAM REQUIREMENTS.—In carrying out sub-
11 section (a), the Secretary of Energy shall—

12 (1) establish a testing process under the Cyber
13 Sense program to test the cybersecurity of products
14 and technologies intended for use in the bulk-power
15 system, including products relating to industrial con-
16 trol systems and operational technologies, such as
17 supervisory control and data acquisition systems;

1   (2) for products and technologies tested under

2   the Cyber Sense program, establish and maintain cy-

3   bersecurity vulnerability reporting processes and a

4   related database;

5   (3) provide technical assistance to electric utili-

6   ties, product manufacturers, and other electricity

7   sector stakeholders to develop solutions to mitigate

8   identified cybersecurity vulnerabilities in products

9   and technologies tested under the Cyber Sense pro-

10   gram;

11   (4) biennially review products and technologies

12   tested under the Cyber Sense program for cyberse-

13   curity vulnerabilities and provide analysis with re-

14   spect to how such products and technologies respond

15   to and mitigate cyber threats;

16   (5) develop guidance, that is informed by anal-

17   ysis and testing results under the Cyber Sense pro-

18   gram, for electric utilities for procurement of prod-

19   ucts and technologies;

20   (6) provide reasonable notice to the public, and

21   solicit comments from the public, prior to estab-

22   lishing or revising the testing process under the

23   Cyber Sense program;

24   (7) oversee testing of products and technologies

25   under the Cyber Sense program; and

1   (8) consider incentives to encourage the use of

2   analysis and results of testing under the Cyber

3   Sense program in the design of products and tech-

4   nologies for use in the bulk-power system.

5   (c) DISCLOSURE OF INFORMATION.—Any cybersecu-

6 rity vulnerability reported pursuant to a process estab-

7 lished under subsection (b)(2), the disclosure of which the

8 Secretary of Energy reasonably foresees would cause harm

9 to critical electric infrastructure (as defined in section

10 215A of the Federal Power Act), shall be deemed to be

11 critical electric infrastructure information for purposes of

12 section 215A(d) of the Federal Power Act.

13   (d) FEDERAL GOVERNMENT LIABILITY.—Nothing in

14 this section shall be construed to authorize the commence-

15 ment of an action against the United States Government

16 with respect to the testing of a product or technology

17 under the Cyber Sense program.

Amend the title so as to read: "A bill to require the Secretary of Energy to establish a voluntary Cyber Sense program to test the cybersecurity of products and technologies intended for use in the bulk-power system, and for other purposes.".

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