

Calendar No. 520

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
116-259 }

A BILL TO IMPROVE PROVISIONS OF LAW
RELATING TO SEXUAL HARASSMENT AND
ASSAULT PREVENTION AT THE NATIONAL
OCEANIC AND ATMOSPHERIC ADMINIS-
TRATION, AND FOR OTHER PURPOSES

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2782



AUGUST 13, 2020.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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A BILL TO IMPROVE PROVISIONS OF LAW RELATING TO SEXUAL HARASSMENT AND ASSAULT PREVENTION AT THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINIS- TRATION, AND FOR OTHER PURPOSES

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AUGUST 13, 2020.—Ordered to be printed
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Mr. WICKER, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 2782]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2782) to improve provisions of law relating to sexual harassment and assault prevention at the National Oceanic and Atmospheric Administration, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 2782, as reported, is to improve provisions of law relating to sexual harassment and assault prevention at the National Oceanic and Atmospheric Administration (NOAA).

BACKGROUND AND NEEDS

Following allegations from several whistleblowers to the Committee, on December 23, 2016, the National Defense Authorization Act for Fiscal Year 2017¹ was enacted, requiring that NOAA develop a policy to prevent and respond to sexual assault and sexual harassment in the workplace. The legislation also required that the Secretary of Commerce report annually on incidences of sexual as-

¹Public Law 114-328.

sault and sexual harassment to the Committees with oversight jurisdiction in the House and the Senate.

NOAA launched a sexual assault and sexual harassment helpline, operated by the Rape, Abuse, and Incest National Network (RAINN), the Nation’s largest anti-sexual violence organization. In February 2018, NOAA published the Sexual Assault and Sexual Harassment Prevention and Response Policy (NOAA SASH Policy)² as directed by Congress. NOAA was directed to develop a comprehensive policy on the prevention of and response to sexual assault and sexual harassment involving employees of NOAA, members of the NOAA Corps, and individuals who work with or conduct business on behalf of NOAA. In August 2018, NOAA hired a workplace violence prevention and response manager.

In June 2019, NOAA issued its first mandatory annual report on incidences of sexual assault and sexual harassment.³ From the report, “In 2018, the SASH Helpline received 3,377 contacts, including website views, 114 phone calls, 62 text conversations, 54 application downloads, and 40 online chats.”⁴ NOAA also was made aware of 22 sexual assault allegations and 52 allegations of sexual harassment involving employees, members of the NOAA Corps, or individuals who worked for or conducted business on behalf of NOAA.⁵ The report concludes by focusing on the need for additional funding and more time to combat sexual assault and harassment at NOAA.⁶ The next annual report was due to the Committee no later than January 15, 2020. The Committee commends NOAA on its commitment to implementing the National Defense Authorization Act for Fiscal Year 2017, and S. 2782 aims to support continued progress in combating sexual assault and sexual harassment at NOAA.

When the legislative framework for the NOAA SASH Policy was established,⁷ it allowed victims to confidentially report assaults. This has led to unintended consequences. For example, confidential complaints cannot be included in NOAA reports on sexual assault and harassment. This bill would change the word “confidentially” to “anonymously” and improve the investigation of and reporting on sexual assault and harassment at NOAA. Notably, this change would not grant any new authority to take personnel action against an individual based solely on an anonymous report, but would instead allow the agency to more fully investigate allegations while still protecting complainants.

The bill would also require that NOAA investigate every allegation, and to begin investigation promptly. These provisions support both an individual accused of assault or harassment by initiating an investigation promptly in case there is exculpatory evidence, and they also support survivors of assault or harassment by ensuring their allegations are taken seriously.

² Enshrined in NOAA Administrative Order 202–1106: NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy, issued Feb. 26, 2018 (https://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_202/202-1106.html) (accessed Apr. 15, 2020).

³ National Oceanic and Atmospheric Administration, *Report to Congress, National Oceanic and Atmospheric Administration Annual Sexual Assault Report*, Jun. 12, 2019 (<https://www.cantwell.senate.gov/imo/media/doc/NOAA%20SASH%20Report%202019.pdf>) (accessed Apr. 15, 2020).

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Public Law 114–328.

Finally, the bill would require that if there is evidence that a crime has occurred, the Secretary of Commerce must refer that evidence to law enforcement. NOAA's mission is one that demands expertise in oceanic and atmospheric science, policy, and management. Law enforcement is best-equipped to investigate instances of assault, and NOAA should refer crimes as appropriate.

SUMMARY OF PROVISIONS

S. 2782, a bill to improve provisions of law relating to sexual harassment and assault prevention at NOAA, and for other purposes, would replace the word "confidentially" with "anonymously" with regard to sexual assault and harassment reports, fixing a provision that restricted NOAA's ability to accurately compile reports of sexual assault and harassment. It would also require reporting and investigation of sexual harassment in a reasonable timeline, and if an investigation has not commenced within 48 hours of a report, would require congressional notification. The bill would also require that if there is evidence of a crime, the Secretary of Commerce would be required to refer it to law enforcement.

LEGISLATIVE HISTORY

S. 2782 was introduced on November 5, 2019, by Senator Cantwell and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On November 13, 2019, the Committee met in open Executive Session and, by voice vote, ordered S. 2782 reported favorably without amendment. NOAA's framework for Sexual Assault and Sexual Harassment Prevention and Response Policy was codified in the National Defense Authorization Act for Fiscal Year 2017.⁸

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

⁸Id.

S. 2782, a bill to improve provisions of law relating to sexual harassment and assault prevention at the National Oceanic and Atmospheric Administration, and for other purposes			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 13, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 2782 would require the National Oceanic and Atmospheric Administration (NOAA) to allow anonymous reporting of incidents of sexual harassment and sexual assault involving NOAA employees. The bill also would require that an investigation into any such reports begin within 48 hours of the incident being reported and that any evidence of a crime be referred to law enforcement officials.

Using information about NOAA's current sexual assault and sexual harassment policy, CBO estimates that implementing S. 2782 would cost less than \$500,000 over the 2020–2024 period. Any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 2782, as reported, would not create any new programs or impose any new regulatory requirements, and therefore would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

S. 2782 is not expected to have a negative impact on the Nation's economy.

PRIVACY

S. 2782, as reported, would increase the personal privacy of individuals by allowing victims of sexual harassment and assault to report these actions anonymously.

PAPERWORK

S. 2782 would not increase paperwork requirements for private individuals and businesses. The bill would require the Secretary of Commerce to initiate an investigation of sexual assault or harassment of NOAA personnel within 48 hours of receipt of a report. The bill would also require the Secretary of Commerce to refer cases where there is evidence of a crime to appropriate law enforcement entities.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Improvements relating to sexual harassment and assault prevention at the National Oceanic and Atmospheric Administration.

This section would replace the word “confidentially” with “anonymously” in title XXXV of the National Defense Authorization Act for Fiscal Year 2017. This section would also require the Secretary of Commerce to investigate any allegation of sexual harassment or sexual assault reported in NOAA. If an investigation has not commenced within 48 hours, the section would require Congress to be notified. This section would also require the Secretary of Commerce to refer the crime to the appropriate law enforcement authority in the event that there is evidence the crime has been committed.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2017

* * * * *

[Pub. L. 114-328; 33 U.S.C. 894 et seq.]

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

*	*	*	*	*	*	*
TITLE XXXV—MARITIME MATTERS						
*	*	*	*	*	*	*
SUBTITLE C—SEXUAL HARASSMENT AND ASSAULT PREVENTION AT THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION						
Sec. 3541.	Actions to address sexual harassment at National Oceanic and Atmospheric Administration.					
Sec. 3542.	Actions to address sexual assault at National Oceanic and Atmospheric Administration.					
Sec. 3543.	Rights of the victim of a sexual assault.					
Sec. 3544.	Change of station.					
Sec. 3545.	Applicability of policies to crews of vessels secured by National Oceanic and Atmospheric Administration under contract.					
[Sec. 3546.	Annual report on sexual assaults in the National Oceanic and Atmospheric Administration.]					
[Sec. 3547.	Sexual assault defined.]					
Sec. 3546.	<i>Investigation requirement.</i>					
Sec. 3547.	<i>Criminal referral.</i>					
Sec. 3548.	<i>Annual report on sexual assaults in the National Oceanic and Atmospheric Administration.</i>					
Sec. 3549.	<i>Sexual assault defined.</i>					
*	*	*	*	*	*	*

TITLE XXXV—MARITIME MATTERS

* * * * *

Subtitle C—Sexual Harassment and Assault Prevention at the National Oceanic and Atmospheric Administration

SEC. 3541. ACTIONS TO ADDRESS SEXUAL HARASSMENT AT NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

(a) REQUIRED POLICY.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Commerce shall, acting through the Under Secretary for Oceans and Atmosphere, develop a policy on the prevention of and response to sexual harassment involving employees of the National Oceanic and Atmospheric Administration, members of the commissioned officer corps of the Administration, and individuals who work with or conduct business on behalf of the Administration.

(b) MATTERS TO BE SPECIFIED IN POLICY.—The policy developed under subsection (a) shall include—

- (1) establishment of a program to promote awareness of the incidence of sexual harassment;
- (2) clear procedures an individual should follow in the case of an occurrence of sexual harassment, including—
 - (A) a specification of the person or persons to whom an alleged occurrence of sexual harassment should be reported by an individual and options for confidential reporting, including—

- (i) options and contact information for after-hours contact; and
- (ii) a procedure for obtaining assistance and reporting sexual harassment while working in a remote scientific field camp, at sea, or in another field status; and
- (B) a specification of any other person whom the victim should contact;
- (3) establishment of a mechanism by which—
 - (A) questions regarding sexual harassment can be confidentially asked and confidentially answered; and
 - (B) incidents of sexual harassment can be [confidentially] *anonymously* reported; and
- (4) a prohibition on retaliation and consequences for retaliatory actions.
- (c) * * *

SEC. 3542. ACTIONS TO ADDRESS SEXUAL ASSAULT AT NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

(a) **COMPREHENSIVE POLICY ON PREVENTION OF AND RESPONSE TO SEXUAL ASSAULTS.**—Not later than 1 year after the date of the enactment of this Act, the Secretary of Commerce shall, acting through the Under Secretary for Oceans and Atmosphere, develop a comprehensive policy on the prevention of and response to sexual assaults involving employees of the National Oceanic and Atmospheric Administration, members of the commissioned officer corps of the Administration, and individuals who work with or conduct business on behalf of the Administration.

(b) **ELEMENTS OF COMPREHENSIVE POLICY.**—The comprehensive policy developed under subsection (a) shall, at minimum, address the following matters:

- (1) Prevention measures.
- (2) Education and training on prevention and response.
- (3) A list of support resources an individual may use in the occurrence of sexual assault, including—
 - (A) options and contact information for after-hours contact; and
 - (B) a procedure for obtaining assistance and reporting sexual assault while working in a remote scientific field camp, at sea, or in another field status.
- (4) Easy and ready availability of information described in paragraph (3).
- (5) Establishing a mechanism by which—
 - (A) questions regarding sexual assault can be confidentially asked and confidentially answered; and
 - (B) incidents of sexual assault can be [confidentially] *anonymously* reported.
- (6) * * *

SEC. 3543. * * *

SEC. 3544. * * *

SEC. 3545. * * *

SEC. 3546. INVESTIGATION REQUIREMENT.

(a) **REQUIREMENT TO INVESTIGATE.**—

(1) *IN GENERAL.*—The Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, shall ensure

that each allegation of sexual assault reported under section 3541 and each allegation of sexual harassment reported under section 3542 is investigated thoroughly and promptly.

(2) SENSE OF CONGRESS ON COMMENCEMENT OF INVESTIGATION.—It is the sense of Congress that the Secretary should ensure that an investigation of an alleged sexual assault reported under section 3541 or sexual harassment reported under section 3542 commences not later than 48 hours after the time at which the allegation was reported.

(b) NOTIFICATION OF DELAY.—In any case in which the time between the reporting of an alleged sexual assault or sexual harassment under section 3541 or 3542, respectively, and commencement of an investigation of the allegation exceeds 48 hours, the Secretary shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives of the delay.

SEC. 3547. CRIMINAL REFERRAL.

If the Secretary of Commerce finds, pursuant to an investigation under section 3546, evidence that a crime may have been committed, the Secretary shall refer the matter to the appropriate law enforcement authorities, including the appropriate United States Attorney.

SEC. [3546.] 3548. ANNUAL REPORT ON SEXUAL ASSAULTS IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

(a) * * *

SEC. [3547.] 3549. SEXUAL ASSAULT DEFINED.

In this subtitle, the term “sexual assault” shall have the meaning given such term in section 4002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

* * * * *