

115TH CONGRESS  
2D SESSION

# H. R. 6663

To protect the administration of Federal elections against cybersecurity threats.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 10, 2018

Mr. THOMAS J. ROONEY of Florida (for himself, Mr. HIMES, Ms. SEWELL of Alabama, and Mr. GOWDY) introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Committees on Oversight and Government Reform, and Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To protect the administration of Federal elections against cybersecurity threats.

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 “Secure Elections Act”.

5 **SEC. 2. SENSE OF CONGRESS.**

6 It is the sense of Congress that—

7 (1) the States conduct elections and should  
8 maintain control of and responsibility for them;

1           (2) it is important to maintain State leadership  
2       in election administration;

3           (3) free and fair elections are central to our de-  
4       mocracy;

5           (4) protecting our elections is a national secu-  
6       rity priority; and

7           (5) an attack on our election systems by a for-  
8       eign power is a hostile act and should be met with  
9       appropriate retaliatory actions, including immediate  
10      and severe sanctions.

11 **SEC. 3. DEFINITIONS.**

12      In this Act:

13           (1) **ADVISORY PANEL.**—The term “Advisory  
14      Panel” means the advisory panel of independent ex-  
15      perts on election cybersecurity established under sec-  
16      tion 5(a)(1).

17           (2) **APPROPRIATE CONGRESSIONAL COMMIT-**  
18      **TEES.**—The term “appropriate congressional com-  
19      mittees” means—

20           (A) the Committee on Rules and Adminis-  
21      tration, the Committee on Armed Services, the  
22      Committee on Homeland Security and Govern-  
23      mental Affairs, the Committee on Appropria-  
24      tions, the Select Committee on Intelligence, the

1 majority leader, and the minority leader of the  
2 Senate; and

3 (B) the Committee on House Administra-  
4 tion, the Committee on Armed Services, the  
5 Committee on Homeland Security, the Com-  
6 mittee on Appropriations, the Permanent Select  
7 Committee on Intelligence, the Speaker, and the  
8 minority leader of the House of Representa-  
9 tives.

10 (3) APPROPRIATE FEDERAL ENTITIES.—The  
11 term “appropriate Federal entities” means—

12 (A) the Department of Commerce, includ-  
13 ing the National Institute of Standards and  
14 Technology;

15 (B) the Department of Defense;

16 (C) the Department, including the compo-  
17 nent of the Department that reports to the  
18 Under Secretary responsible for overseeing crit-  
19 ical infrastructure protection, cybersecurity, and  
20 other related programs of the Department;

21 (D) the Department of Justice, including  
22 the Federal Bureau of Investigation;

23 (E) the Commission; and

24 (F) the Office of the Director of National  
25 Intelligence, the National Security Agency, and

1           such other elements of the intelligence commu-  
2           nity (as defined in section 3 of the National Se-  
3           curity Act of 1947 (50 U.S.C. 3003)) as the  
4           Director of National Intelligence determines are  
5           appropriate.

6           (4) CHAIRMAN.—The term “Chairman” means  
7           the Chairman of the Election Assistance Commis-  
8           sion.

9           (5) COMMISSION.—The term “Commission”  
10          means the Election Assistance Commission.

11          (6) DEPARTMENT.—The term “Department”  
12          means the Department of Homeland Security.

13          (7) ELECTION AGENCY.—The term “election  
14          agency” means any component of a State or any  
15          component of a county, municipality, or other sub-  
16          division of a State that is responsible for admin-  
17          istering Federal elections.

18          (8) ELECTION CYBERSECURITY INCIDENT.—  
19          The term “election cybersecurity incident” means  
20          any incident involving an election system.

21          (9) ELECTION CYBERSECURITY THREAT.—The  
22          term “election cybersecurity threat” means any cy-  
23          bersecurity threat (as defined in section 102 of the  
24          Cybersecurity Information Sharing Act of 2015 (6  
25          U.S.C. 1501)) to an election system.

1           (10) ELECTION CYBERSECURITY VULNER-  
2 ABILITY.—The term “election cybersecurity vulner-  
3 ability” means any security vulnerability (as defined  
4 in section 102 of the Cybersecurity Information  
5 Sharing Act of 2015 (6 U.S.C. 1501)) that affects  
6 an election system.

7           (11) ELECTION SERVICE PROVIDER.—The term  
8 “election service provider” means any person pro-  
9 viding, supporting, or maintaining an election sys-  
10 tem on behalf of an election agency, such as a con-  
11 tractor or vendor.

12           (12) ELECTION SYSTEM.—The term “election  
13 system” means a voting system, an election manage-  
14 ment system, a voter registration website or data-  
15 base, an electronic pollbook, a system for tabulating  
16 or reporting election results, an election agency com-  
17 munications system, or any other information sys-  
18 tem (as defined in section 3502 of title 44, United  
19 States Code) that the Secretary identifies as central  
20 to the management, support, or administration of a  
21 Federal election.

22           (13) FEDERAL ELECTION.—The term “Federal  
23 election” means any election (as defined in section  
24 301(1) of the Federal Election Campaign Act of  
25 1971 (52 U.S.C. 30101(1))) for Federal office (as

1 defined in section 301(3) of the Federal Election  
2 Campaign Act of 1971 (52 U.S.C. 30101(3))).

3 (14) FEDERAL ENTITY.—The term “Federal  
4 entity” means any agency (as defined in section 551  
5 of title 5, United States Code).

6 (15) INCIDENT.—The term “incident” has the  
7 meaning given the term in section 227(a) of the  
8 Homeland Security Act of 2002 (6 U.S.C. 148(a)).

9 (16) SECRETARY.—The term “Secretary”  
10 means the Secretary of Homeland Security.

11 (17) STATE.—The term “State” means each of  
12 the several States of the United States, the District  
13 of Columbia, the Commonwealth of Puerto Rico,  
14 Guam, American Samoa, the Commonwealth of  
15 Northern Mariana Islands, and the United States  
16 Virgin Islands.

17 (18) STATE ELECTION OFFICIAL.—The term  
18 “State election official” means—

19 (A) the chief State election official of a  
20 State designated under section 10 of the Na-  
21 tional Voter Registration Act of 1993 (52  
22 U.S.C. 20509); or

23 (B) in the Commonwealth of Puerto Rico,  
24 Guam, American Samoa, the Commonwealth of  
25 Northern Mariana Islands, and the United

1 States Virgin Islands, a chief State election of-  
2 ficial designated by the State for purposes of  
3 this Act.

4 (19) STATE LAW ENFORCEMENT OFFICER.—

5 The term “State law enforcement officer” means the  
6 head of a State law enforcement agency, such as an  
7 attorney general.

8 (20) VOTING SYSTEM.—The term “voting sys-  
9 tem” has the meaning given the term in section  
10 301(b) of the Help America Vote Act of 2002 (52  
11 U.S.C. 21081(b)).

12 **SEC. 4. INFORMATION SHARING.**

13 (a) DESIGNATION OF RESPONSIBLE FEDERAL ENTI-  
14 TY.—The Secretary shall have primary responsibility with-  
15 in the Federal Government for sharing information about  
16 election cybersecurity incidents, threats, and vulnerabili-  
17 ties with Federal entities and with election agencies.

18 (b) PRESUMPTION OF FEDERAL INFORMATION  
19 SHARING TO THE DEPARTMENT.—If a Federal entity re-  
20 ceives information about an election cybersecurity inci-  
21 dent, threat, or vulnerability, the Federal entity shall  
22 promptly share that information with the Department, un-  
23 less the head of the entity (or a Senate-confirmed official  
24 designated by the head) makes a specific determination

1 in writing that there is good cause to withhold the par-  
2 ticular information.

3 (c) PRESUMPTION OF FEDERAL AND STATE INFOR-  
4 MATION SHARING FROM THE DEPARTMENT.—If the De-  
5 partment receives information about an election cyberse-  
6 curity incident, threat, or vulnerability, the Department  
7 shall promptly share that information with—

8 (1) the appropriate Federal entities;

9 (2) all State election agencies;

10 (3) to the maximum extent practicable, all elec-  
11 tion agencies that have requested ongoing updates  
12 on election cybersecurity incidents, threats, or  
13 vulnerabilities; and

14 (4) to the maximum extent practicable, all elec-  
15 tion agencies that may be affected by the risks asso-  
16 ciated with the particular election cybersecurity inci-  
17 dent, threat, or vulnerability.

18 (d) TECHNICAL RESOURCES FOR ELECTION AGEN-  
19 CIES.—In sharing information about election cybersecu-  
20 rity incidents, threats, and vulnerabilities with election  
21 agencies under this section, the Department shall, to the  
22 maximum extent practicable—

23 (1) provide cyber threat indicators and defen-  
24 sive measures (as such terms are defined in section  
25 102 of the Cybersecurity Information Sharing Act of

1       2015 (6 U.S.C. 1501)), such as recommended tech-  
2       nical instructions, that assist with preventing, miti-  
3       gating, and detecting threats or vulnerabilities;

4           (2) identify resources available for protecting  
5       against, detecting, responding to, and recovering  
6       from associated risks, including technical capabilities  
7       of the Department; and

8           (3) provide guidance about further sharing of  
9       the information.

10       (e) DECLASSIFICATION REVIEW.—If the Department  
11       receives classified information about an election cybersecu-  
12       rity incident, threat, or vulnerability—

13           (1) the Secretary shall promptly submit a re-  
14       quest for expedited declassification review to the  
15       head of a Federal entity with authority to conduct  
16       the review, consistent with Executive Order 13526  
17       or any successor order, unless the Secretary deter-  
18       mines that such a request would be inappropriate;  
19       and

20           (2) the head of the Federal entity described in  
21       paragraph (1) shall promptly conduct the review.

22       (f) ROLE OF NON-FEDERAL ENTITIES.—The De-  
23       partment may share information about election cybersecu-  
24       rity incidents, threats, and vulnerabilities through a non-  
25       Federal entity.

1 (g) PROTECTION OF PERSONAL AND CONFIDENTIAL  
2 INFORMATION.—

3 (1) IN GENERAL.—If a Federal entity shares  
4 information relating to an election cybersecurity inci-  
5 dent, threat, or vulnerability, the Federal entity  
6 shall, within Federal information systems (as de-  
7 fined in section 3502 of title 44, United States  
8 Code) of the entity—

9 (A) minimize the acquisition, use, and dis-  
10 closure of personal information of voters, except  
11 as necessary to identify, protect against, detect,  
12 respond to, or recover from election cybersecu-  
13 rity incidents, threats, and vulnerabilities;

14 (B) notwithstanding any other provision of  
15 law, prohibit the retention of personal informa-  
16 tion of voters, such as—

17 (i) voter registration information, in-  
18 cluding physical address, email address,  
19 and telephone number;

20 (ii) political party affiliation or reg-  
21 istration information; and

22 (iii) voter history, including registra-  
23 tion status or election participation; and

24 (C) protect confidential Federal and State  
25 information from unauthorized disclosure.

1           (2) EXEMPTION FROM DISCLOSURE.—Informa-  
2           tion relating to an election cybersecurity incident,  
3           threat, or vulnerability, such as personally identifi-  
4           able information of reporting persons or individuals  
5           affected by such incident, threat, or vulnerability,  
6           shared by or with the Federal Government shall  
7           be—

8                   (A) deemed voluntarily shared information  
9                   and exempt from disclosure under section 552  
10                  of title 5, United States Code, and any State,  
11                  tribal, or local provision of law requiring disclo-  
12                  sure of information or records; and

13                  (B) withheld, without discretion, from the  
14                  public under section 552(b)(3)(B) of title 5,  
15                  United States Code, and any State, tribal, or  
16                  local provision of law requiring disclosure of in-  
17                  formation or records.

18           (h) DUTY TO ASSESS POSSIBLE CYBERSECURITY IN-  
19           CIDENTS.—

20                  (1) ELECTION AGENCIES.—If an election agen-  
21                  cy becomes aware of the possibility of an election cy-  
22                  bersecurity incident, the election agency shall  
23                  promptly assess whether an election cybersecurity in-  
24                  cident occurred and notify the State election official.

1           (2) ELECTION SERVICE PROVIDERS.—If an  
2       election service provider becomes aware of the possi-  
3       bility of an election cybersecurity incident, the elec-  
4       tion service provider shall promptly assess whether  
5       an election cybersecurity incident occurred and no-  
6       tify the relevant election agencies consistent with  
7       subsection (j).

8       (i) INFORMATION SHARING ABOUT CYBERSECURITY  
9       INCIDENTS BY ELECTION AGENCIES.—If an election  
10      agency has reason to believe that an election cybersecurity  
11      incident has occurred with respect to an election system  
12      owned, operated, or maintained by or on behalf of the elec-  
13      tion agency, the election agency shall, in the most expe-  
14      dient time possible and without unreasonable delay, pro-  
15      vide notification of the election cybersecurity incident to  
16      the Department.

17      (j) INFORMATION SHARING ABOUT CYBERSECURITY  
18      INCIDENTS BY ELECTION SERVICE PROVIDERS.—If an  
19      election service provider has reason to believe that an elec-  
20      tion cybersecurity incident may have occurred, or that an  
21      incident related to the role of the provider as an election  
22      service provider may have occurred, the election service  
23      provider shall—

1           (1) notify the relevant election agencies in the  
2           most expedient time possible and without unreason-  
3           able delay; and

4           (2) cooperate with the election agencies in pro-  
5           viding the notifications required under subsections  
6           (h)(1) and (i).

7           (k) CONTENT OF NOTIFICATION BY ELECTION  
8           AGENCIES.—The notifications required under subsections  
9           (h)(1) and (i)—

10           (1) shall include an initial assessment of—

11                   (A) the date, time, and duration of the  
12                   election cybersecurity incident;

13                   (B) the circumstances of the election cy-  
14                   bersecurity incident, including the specific elec-  
15                   tion systems believed to have been accessed and  
16                   information acquired; and

17                   (C) planned and implemented technical  
18                   measures to respond to and recover from the  
19                   incident; and

20           (2) shall be updated with additional material in-  
21           formation, including technical data, as it becomes  
22           available.

23           (l) SECURITY CLEARANCE.—Not later than 30 days  
24           after the date of enactment of this Act, the Secretary—

1           (1) shall establish an expedited process for pro-  
2       viding appropriate security clearance to State elec-  
3       tion officials and designated technical personnel em-  
4       ployed by State election agencies;

5           (2) shall establish an expedited process for pro-  
6       viding appropriate security clearance to members of  
7       the Commission and designated technical personnel  
8       employed by the Commission; and

9           (3) shall establish a process for providing ap-  
10      propriate security clearance to personnel at other  
11      election agencies.

12       (m) PROTECTION FROM LIABILITY.—Nothing in this  
13      Act may be construed to provide a cause of action against  
14      a State, unit of local government, or an election service  
15      provider.

16       (n) ASSESSMENT OF INTER-STATE INFORMATION  
17      SHARING ABOUT ELECTION CYBERSECURITY.—

18           (1) IN GENERAL.—The Secretary and the  
19      Chairman, in coordination with the heads of the ap-  
20      propriate Federal entities and appropriate officials  
21      of State and local governments, shall conduct an as-  
22      sessment of—

23           (A) the structure and functioning of the  
24      Multi-State Information Sharing and Analysis

1 Center for purposes of election cybersecurity;  
2 and

3 (B) other mechanisms for inter-state infor-  
4 mation sharing about election cybersecurity.

5 (2) COMMENT FROM ELECTION AGENCIES.—In  
6 carrying out the assessment required under para-  
7 graph (1), the Secretary and the Chairman shall so-  
8 licit and consider comments from all State election  
9 agencies.

10 (3) DISTRIBUTION.—The Secretary and the  
11 Chairman shall jointly issue the assessment required  
12 under paragraph (1) to—

13 (A) all election agencies known to the De-  
14 partment and the Commission; and

15 (B) the appropriate congressional commit-  
16 tees.

17 (o) CONGRESSIONAL NOTIFICATION.—

18 (1) IN GENERAL.—If an appropriate Federal  
19 entity has reason to believe that a significant elec-  
20 tion cybersecurity incident has occurred, the entity  
21 shall—

22 (A) not later than 7 calendar days after  
23 the date on which there is a reasonable basis to  
24 conclude that the significant incident has oc-

1 curred, provide notification of the incident to  
2 the appropriate congressional committees; and

3 (B) update the initial notification under  
4 paragraph (1) within a reasonable period of  
5 time after additional information relating to the  
6 incident is discovered.

7 (2) REPORTING THRESHOLD.—The Secretary  
8 shall—

9 (A) promulgate a uniform definition of a  
10 “significant election cybersecurity incident”;  
11 and

12 (B) shall submit the definition promul-  
13 gated under subparagraph (A) to the appro-  
14 priate congressional committees.

15 **SEC. 5. ADVISORY PANEL AND GUIDELINES.**

16 (a) ADVISORY PANEL.—

17 (1) IN GENERAL.—The Commission shall estab-  
18 lish an advisory panel of independent experts on  
19 election cybersecurity.

20 (2) MEMBERSHIP.—The Advisory Panel shall  
21 consist of not less than 9 members, of whom—

22 (A) one shall be appointed by the Chair-  
23 man, in consultation with the Secretary and the  
24 Director of the National Institute of Standards

1 and Technology, and shall be designated as the  
2 Chairman of the advisory panel;

3 (B) four shall be appointed by the Chair-  
4 man, in consultation with the Secretary; and

5 (C) four shall be appointed by the Sec-  
6 retary, in consultation with the Chairman and  
7 the Director of the National Institute of Stand-  
8 ards and Technology.

9 (3) ELIGIBILITY.—Individuals appointed to the  
10 Advisory Panel established under paragraph (1)—

11 (A) may not be officers or employees of the  
12 United States;

13 (B) if appointed under paragraph (2)(A),  
14 shall possess expertise in election law, election  
15 administration, or cybersecurity; and

16 (C) if appointed under subparagraph (B)  
17 or (C) of paragraph (2), shall possess expertise  
18 in cybersecurity.

19 (4) TERMS; VACANCIES.—Members of the Advi-  
20 sory Panel shall serve for a term set by the Commis-  
21 sion. Any vacancy in the Advisory Panel shall be  
22 filled in the same manner as the original appoint-  
23 ment.

24 (5) COMPENSATION.—Members of the Advisory  
25 Panel shall serve on the Advisory Panel without

1 compensation, except that members of the Advisory  
2 Panel may be allowed travel expenses, including per  
3 diem in lieu of subsistence, at rates authorized for  
4 employees of agencies under subchapter I of chapter  
5 57 of title 5, United States Code, while away from  
6 their homes or regular places of business in the per-  
7 formance of services for the Advisory Panel.

8 (6) ADMINISTRATIVE STAFF.—Upon request of  
9 the Advisory Panel, the Commission shall provide to  
10 the Advisory Panel, on a reimbursable basis, the ad-  
11 ministrative support services necessary for the Advi-  
12 sory Panel to carry out its responsibilities under this  
13 Act.

14 (b) GUIDELINES.—

15 (1) IN GENERAL.—The Advisory Panel shall de-  
16 velop a set of guidelines for election cybersecurity,  
17 including standards for procuring, maintaining, test-  
18 ing, auditing, operating, and updating election sys-  
19 tems.

20 (2) REQUIREMENTS.—In developing the guide-  
21 lines, the Advisory Panel shall—

22 (A) identify the top risks to election sys-  
23 tems;

1 (B) describe how specific technology  
2 choices can increase or decrease those risks;  
3 and

4 (C) provide recommended policies, best  
5 practices, and overall security strategies for  
6 identifying, protecting against, detecting, re-  
7 sponding to, and recovering from the risks iden-  
8 tified under subparagraph (A).

9 (c) GRANT PROGRAM.—The Advisory Panel shall as-  
10 sist the Commission and the Department in carrying out  
11 the grant program required under section 7 by—

12 (1) submitting recommendations to the Com-  
13 mission about the grant program application proc-  
14 ess;

15 (2) submitting recommendations, including rec-  
16 ommended criteria, to the Commission for the grant  
17 program review process;

18 (3) submitting recommendations, including rec-  
19 ommended criteria, to the Commission for use of re-  
20 maining grant funds;

21 (4) submitting recommendations, including rec-  
22 ommended criteria, to the Commission for the in-  
23 terim grant program for non-paper equipment re-  
24 placement; and

1           (5) providing any other assistance that the  
2       Commission or the Department requests.

3       (d) VOTING SYSTEMS AND STATISTICAL AUDITS.—  
4       The guidelines developed under subsection (b) shall in-  
5       clude provisions regarding voting systems and statistical  
6       audits for Federal elections, including that—

7           (1) each vote is cast using a voting system  
8       that—

9           (A) would be eligible to be purchased  
10       under section 7(f); and

11          (B) allows the voter an opportunity to in-  
12       spect and confirm the marked ballot before  
13       casting it (consistent with accessibility require-  
14       ments); and

15          (2) each election result is determined by tab-  
16       ulating marked ballots (by hand or device), and  
17       prior to certification by a State of the election re-  
18       sult, election agencies within the State inspect (by  
19       hand and not by device) a random sample of the  
20       marked ballots and thereby establish high statistical  
21       confidence in the election result.

22       (e) ISSUES CONSIDERED.—

23          (1) IN GENERAL.—In developing the guidelines  
24       required under subsection (b), the Advisory Panel  
25       shall consider—

1 (A) applying established cybersecurity best  
2 practices to Federal election administration by  
3 States and local governments, including appro-  
4 priate technologies, procedures, and personnel  
5 for identifying, protecting against, detecting, re-  
6 sponding to, and recovering from cybersecurity  
7 events;

8 (B) mechanisms to verify that election sys-  
9 tems accurately tabulate ballots, report results,  
10 and identify a winner for each election for Fed-  
11 eral office, even if there is an error or fault in  
12 the voting system;

13 (C) specific types of election audits, includ-  
14 ing procedures and shortcomings for such au-  
15 dits;

16 (D) durational requirements needed to fa-  
17 cilitate election audits prior to election certifi-  
18 cation, including variations in the acceptance of  
19 postal ballots, time allowed to cure provisional  
20 ballots, and election certification deadlines;

21 (E) providing actionable guidance to elec-  
22 tion agencies that have not applied for or re-  
23 ceived grant funds under section 7, and to  
24 agencies that seek to implement additional cy-  
25 bersecurity protections;

1 (F) how the guidelines could assist other  
2 components of State and local governments;  
3 and

4 (G) any other factors that the Advisory  
5 Panel determines to be relevant.

6 (2) RELATIONSHIP TO VOLUNTARY VOTING SYS-  
7 TEM GUIDELINES AND NATIONAL INSTITUTE OF  
8 STANDARDS AND TECHNOLOGY CYBERSECURITY  
9 GUIDANCE.—In developing the guidelines required  
10 under subsection (b), the Advisory Panel shall con-  
11 sider—

12 (A) the voluntary voting system guidelines  
13 developed by the Commission; and

14 (B) cybersecurity standards and best prac-  
15 tices developed by the National Institute of  
16 Standards and Technology, including frame-  
17 works, consistent with section 2(c) of the Na-  
18 tional Institute of Standards and Technology  
19 Act (15 U.S.C. 272(c)).

20 (f) PUBLIC COMMENT.—The Advisory Panel shall—

21 (1) provide a reasonable opportunity for public  
22 comment, including through Commission publication  
23 in the Federal Register, on the guidelines required  
24 under subsection (b), including a 45-day opportunity  
25 for public comment on a draft of the guidelines be-

1       fore they are submitted under subsection (i), which  
2       shall, to the extent practicable, occur concurrently  
3       with the other activities of the Advisory Panel under  
4       this section; and

5               (2) consider the public comments in developing  
6       the guidelines.

7       (g) CONSULTATION.—In developing the guidelines re-  
8       quired under subsection (b), the Advisory Panel shall con-  
9       sult with—

10              (1) the appropriate Federal entities;

11              (2) the Standards Board, Board of Advisors,  
12       and Technical Guidelines Development Committee of  
13       the Commission;

14              (3) the Federal Communications Commission;

15              (4) the Federal Trade Commission;

16              (5) the National Governors Association;

17              (6) the National Association of Secretaries of  
18       State;

19              (7) the National Association of State Election  
20       Directors;

21              (8) the National Association of Election Offi-  
22       cials;

23              (9) the National Association of Counties;

24              (10) the National League of Cities;

1           (11) the International Association of Govern-  
2           ment Officials;

3           (12) the Multi-State Information Sharing and  
4           Analysis Center;

5           (13) the National Science Foundation; and

6           (14) any other interested entities that the Advi-  
7           sory Panel determines are necessary to the develop-  
8           ment of the guidelines.

9           (h) SUBMISSION TO COMMISSION.—Not later than  
10          180 days after the date of enactment of this Act, the Advi-  
11          sory Panel shall submit the guidelines required under sub-  
12          section (b) to the Commission.

13          (i) SUBMISSION TO CONGRESS; MODIFICATION.—Not  
14          later than 14 calendar days after the date on which the  
15          Commission receives guidelines under subsection (h) or (l),  
16          the Commission shall submit the guidelines to the appro-  
17          priate congressional committees. The Commission may  
18          modify the guidelines in advance of submission to Con-  
19          gress if—

20                 (1) the Commission determines that there is  
21                 good cause to modify the guidelines, consistent with  
22                 the considerations established in subsection (e) and  
23                 notwithstanding the recommendation of the Advisory  
24                 Panel; and

1           (2) the Commission submits a written justifica-  
2           tion of the modification to the Advisory Panel and  
3           the appropriate congressional committees.

4           (j) DISTRIBUTION TO ELECTION AGENCIES.—The  
5           Commission shall distribute the guidelines required under  
6           subsection (b) to all election agencies known to the Com-  
7           mission and the Department.

8           (k) PUBLICATION.—The Commission shall make the  
9           guidelines required under subsection (b) available on the  
10          public website of the Department.

11          (l) PERIODIC REVIEW.—Not later than January 31,  
12          2019, and once every 2 years thereafter, the Advisory  
13          Panel shall review and update the guidelines required  
14          under subsection (b).

15          (m) RULE OF CONSTRUCTION.—Nothing in this sec-  
16          tion shall be construed to subject the process for devel-  
17          oping the guidelines required under subsection (b) to sub-  
18          chapter II of chapter 5, and chapter 7, of title 5, United  
19          States Code (commonly known as the “Administrative  
20          Procedure Act”).

21          (n) CONFORMING AMENDMENT.—Section 202 of the  
22          Help America Vote Act of 2002 (52 U.S.C. 20921) is  
23          amended by striking “and” at the end of paragraph (5),  
24          by striking the period at the end of paragraph (6) and

1 inserting “; and”, and by adding at the end the following  
 2 new paragraph:

3 “(7) establishing the advisory panel of inde-  
 4 pendent experts on election cybersecurity under sec-  
 5 tion 5(a)(1) of the Secure Elections Act.”.

6 **SEC. 6. REPORTS TO CONGRESS.**

7 (a) REPORTS ON FOREIGN THREATS TO ELEC-  
 8 TIONS.—

9 (1) IN GENERAL.—Not later than 30 days after  
 10 the date of enactment of this Act, and 30 days after  
 11 the end of each fiscal year thereafter, the Secretary  
 12 and the Director of National Intelligence, in coordi-  
 13 nation with the heads of the appropriate Federal en-  
 14 tities, shall submit a joint report to the appropriate  
 15 congressional committees on foreign threats to elec-  
 16 tions in the United States, including physical and  
 17 cybersecurity threats.

18 (2) VOLUNTARY PARTICIPATION BY STATES.—

19 The Secretary shall solicit and consider comments  
 20 from all State election agencies. Participation by an  
 21 election agency in the report under this subsection  
 22 shall be voluntary and at the discretion of the State.

23 (b) REPORTS ON GRANT PROGRAM.—

24 (1) IN GENERAL.—Not later than 2 years after  
 25 the date of enactment of this Act, and, subject to

paragraph (2), every 4 years thereafter, the Comptroller General of the United States shall submit a report to the appropriate congressional committees on the grant program established under section 7, including how grant funds have been distributed and used to implement the guidelines required under section 5(b).

(2) SUNSET.—If the Comptroller General determines that over 90 percent of the funds appropriated under section 7(h)(1) have been expended by the States, the reporting requirement in paragraph (1) shall cease to be effective after the Comptroller General submits a final report.

**SEC. 7. STATE ELECTION SYSTEM CYBERSECURITY AND  
MODERNIZATION GRANTS.**

(a) AUTHORITY.—

(1) IN GENERAL.—The Commission shall award grants in accordance with this section.

(2) COORDINATION.—

(A) IN GENERAL.—The Commission shall coordinate with the Secretary in carrying out this section.

(B) JOINT PROGRAM.—If the Chairman determines that jointly carrying out this section with the Secretary would increase State partici-

1           pation and cybersecurity preparedness, the  
2           Chairman shall—

3                   (i) submit notice of the determination  
4                   to the Committee on Homeland Security  
5                   and Governmental Affairs and the Com-  
6                   mittee on Rules and Administration of the  
7                   Senate and the Committee on Homeland  
8                   Security and the Committee on House Ad-  
9                   ministration of the House of Representa-  
10                  tives; and

11                  (ii) enter into a Memorandum of Un-  
12                  derstanding with the Secretary to carry  
13                  out the grant program.

14       (b)    CYBERSECURITY    AND    MODERNIZATION  
15   GRANTS.—

16           (1) APPLICATION PROCESS.—

17                   (A)   IN   GENERAL.—The   Commission  
18                   shall—

19                          (i) establish a process for States to  
20                          apply for election system cybersecurity and  
21                          modernization grants;

22                          (ii) in establishing the application  
23                          process, consider the recommendations of  
24                          the Advisory Panel under section 5(c); and

1 (iii) ensure that the application proc-  
2 ess requires that a State seeking a grant  
3 provide a detailed explanation of how elec-  
4 tion agencies within the State will imple-  
5 ment the guidelines established under sec-  
6 tion 5(b).

7 (B) REVIEW.—The Commission—

8 (i) shall fund a State application sub-  
9 mitted under subparagraph (A) if the  
10 Commission determines that—

11 (I) the election agencies within  
12 the State will likely implement the  
13 guidelines established under section  
14 5(b);

15 (II) with respect to the guidelines  
16 related to statistical audits, consistent  
17 with section 5(d), the State will com-  
18 plete a statewide pilot program during  
19 a biennial Federal general election not  
20 later than 2022; and

21 (III) the State will match at least  
22 ten percent of the total grant alloca-  
23 tion for election cybersecurity im-  
24 provements; and

1 (ii) in reviewing a State application,  
2 shall consider the recommendations and  
3 criteria of the Advisory Panel under sec-  
4 tion 5(c).

5 (C) STATE IMPLEMENTATION.—

6 (i) IN GENERAL.—A State receiving a  
7 grant under this subsection may adopt any  
8 reasonable implementation of the guide-  
9 lines established under section 5(b).

10 (ii) INCONSISTENCY WITH STATE  
11 LAW.—If implementation of the guidelines  
12 would be inconsistent with State law, the  
13 State shall—

14 (I) identify in the application of  
15 the State the legal issue and the  
16 guidelines that the State cannot im-  
17 plement;

18 (II) specify in the application of  
19 the State the amount of grant funds  
20 that the State would spend imple-  
21 menting those guidelines if the law  
22 were not inconsistent; and

23 (III) not spend the amount of  
24 grant funds specified under subclause  
25 (II) until the legal issue is resolved.

1 (D) PROTECTION OF PERSONAL INFORMA-  
2 TION.—The application process established  
3 under this paragraph shall not require a State  
4 to disclose the personal information of any  
5 voter.

6 (2) USE OF FUNDS.—

7 (A) IN GENERAL.—Except as provided in  
8 subparagraph (B), a State receiving a grant  
9 under this subsection shall use the funds re-  
10 ceived under the grant to implement the guide-  
11 lines established under section 5(b).

12 (B) REMAINING FUNDS.—A State may use  
13 funds from a grant under this subsection to im-  
14 prove, upgrade, or acquire hardware, software,  
15 or services for the purposes of improving ad-  
16 ministration of Federal elections, consistent  
17 with the guidelines established under section  
18 5(b), if—

19 (i) the State election official submits a  
20 written certification to the Commission  
21 that the election agencies within the State  
22 have implemented the guidelines estab-  
23 lished under section 5(b); and

24 (ii) the Commission, after consider-  
25 ation of the recommendations and criteria

1 of the Advisory Panel under section 5(c),  
2 approves the use of funds.

3 (3) LIMITATION ON AMOUNT OF GRANTS.—

4 (A) IN GENERAL.—Subject to subpara-  
5 graph (C), the amount of funds provided to a  
6 State under a grant under this subsection shall  
7 be equal to the product obtained by multi-  
8 plying—

9 (i) the total amount appropriated for  
10 grants pursuant to the authorization under  
11 subsection (h) reduced by the amounts de-  
12 scribed in subsections (d)(6) and (e)(5); by

13 (ii) the State allocation percentage for  
14 the State (as determined under paragraph  
15 (2)).

16 (B) STATE ALLOCATION PERCENTAGE.—

17 The State allocation percentage for a State is  
18 the amount (expressed as a percentage) equal  
19 to the quotient obtained by dividing—

20 (i) the total voting age population of  
21 all States (as reported in the most recent  
22 decennial census); by

23 (ii) the voting age population of the  
24 State (as reported in the most recent de-  
25 cennial census).

1 (C) MINIMUM AMOUNT OF PAYMENT.—The  
2 amount determined under this subsection may  
3 not be less than—

4 (i) in the case of any of the several  
5 States or the District of Columbia, 0.5  
6 percent of the total amount appropriated  
7 for grants under this section; or

8 (ii) in the case of the Commonwealth  
9 of Puerto Rico, Guam, American Samoa,  
10 the Commonwealth of Northern Mariana  
11 Islands, or the United States Virgin Is-  
12 lands, 0.1 percent of such total amount.

13 (D) PRO RATA REDUCTIONS.—The Com-  
14 mission shall make such pro rata reductions to  
15 the allocations determined under subparagraph  
16 (A) as are necessary to comply with the require-  
17 ments of subparagraph (C).

18 (4) GRANTS FOR LOCAL JURISDICTIONS.—

19 (A) ELIGIBILITY.—If a State notifies the  
20 Commission that it will not apply for election  
21 system cybersecurity and modernization grants  
22 under this subsection, the Commission shall  
23 award grants to election agencies within the  
24 State.

1           (B) APPLICATION PROCESS.—The Com-  
2 mission shall establish a process for election  
3 agencies that are eligible under subparagraph  
4 (A) to apply for election system cybersecurity  
5 and modernization grants, consistent with the  
6 application process for States established under  
7 paragraph (1).

8           (C) USE OF FUNDS.—An election agency  
9 that receives a grant under this subsection is  
10 subject to the use of funds restrictions in para-  
11 graph (2).

12          (D) LIMITATION ON AMOUNT OF GRANT.—  
13 The amount of funds provided to an election  
14 agency under a grant under this subsection  
15 shall be equal to the amount obtained by multi-  
16 plying the amount available to the State under  
17 paragraph (3) by the quotient obtained by di-  
18 viding—

19               (i) the voting age population of the  
20 State (as reported in the most recent de-  
21 cennial census) who would cast their bal-  
22 lots in a Federal election using voting sys-  
23 tems operated by the election agency  
24 (under current State law); by

1 (ii) the voting age population of the  
2 State (as reported in the most recent de-  
3 cennial census).

4 (c) INTERIM GRANT PROGRAM FOR ELECTION PRE-  
5 PAREDNESS.—

6 (1) IN GENERAL.—The Commission, in con-  
7 sultation with the Secretary, shall award a grant to  
8 an election agency, regardless of State submission of  
9 an application under subsection (b)(1)(A), that—

10 (A) receives a “cyber hygiene” scan, a risk  
11 and vulnerability assessment, or a similar cy-  
12 bersecurity evaluation by the Department or a  
13 contractor approved by the Department; and

14 (B) not later than November 6, 2018, sub-  
15 mits to the Commission and the Department—

16 (i) the results of the evaluation de-  
17 scribed in subparagraph (A);

18 (ii) a plan for rapidly remediating the  
19 vulnerabilities identified by the evaluation,  
20 including specific expenditures; and

21 (iii) in the case of an application by  
22 any election agency of a political subdivi-  
23 sion of a State, a certification of approval  
24 from the State election agency.

1           (2) PRIORITIZATION FOR LOCAL GOVERN-  
2           MENTS.—A State election agency may authorize  
3           some or all other election agencies within the State  
4           to apply for interim grants under paragraph (1). If  
5           the amount available under paragraph (5) is not suf-  
6           ficient to fund the applications received from election  
7           agencies within the State, the State election agency  
8           may establish a priority order for funding applica-  
9           tions.

10          (3) USE OF FUNDS.—An election agency that  
11          receives a grant under paragraph (1) shall only use  
12          the funds received under the grant to implement the  
13          remediation plan submitted under paragraph  
14          (1)(B)(ii).

15          (4) UNAVAILABILITY OF DEPARTMENT SERV-  
16          ICES.—If an election agency requests an evaluation  
17          by the Department consistent with paragraph  
18          (1)(A), and the Department is not able to provide  
19          the evaluation during the 30-calendar-day period fol-  
20          lowing the request, the agency may—

21                 (A) procure a reasonably equivalent eval-  
22                 uation from a private-sector entity; and

23                 (B) use funds received from a grant under  
24                 paragraph (1) as reimbursement for the cost of  
25                 the evaluation.

1           (5) LIMITATION ON AMOUNT OF GRANT; CO-  
2           ORDINATION WITH CYBERSECURITY AND MOD-  
3           ERNIZATION GRANTS.—

4           (A) LIMITATION.—The aggregate amount  
5           of grants under this subsection to all election  
6           agencies in a State shall not exceed 10 percent  
7           of the limitation with respect to such State  
8           under subsection (b)(3).

9           (B) COORDINATION WITH CYBERSECURITY  
10          AND MODERNIZATION GRANTS.—The amount  
11          under subsection (b)(3) for purposes of grants  
12          under subsection (b) to a State shall be reduced  
13          by the amount of grants provided under this  
14          subsection to election agencies within the State,  
15          less any unused amount returned to the De-  
16          partment.

17       (d) INTERIM GRANT PROGRAM FOR NON-PAPER  
18       EQUIPMENT REPLACEMENT.—

19           (1) IN GENERAL.—The Commission shall award  
20           grants to States designated under paragraph (2) for  
21           the purpose of replacing voting systems that would  
22           not be eligible for purchase under subsection (f).

23           (2) ELIGIBILITY.—Not later than 60 days after  
24           the date of enactment of this Act, the Commission  
25           shall develop a list of States in which 10 percent or

1 more of votes in the first Federal election occurring  
2 after the date of enactment of this Act are expected  
3 to be cast using voting systems that would not be el-  
4 igible for purchase under subsection (f), and shall  
5 submit the list to the appropriate congressional com-  
6 mittees.

7 (3) APPLICATION PROCESS.—The Commission  
8 shall—

9 (A) establish an application process for  
10 States designated under paragraph (2) to apply  
11 for grants under this subsection; and

12 (B) consider the recommendations of the  
13 Advisory Panel under section 5(c) in estab-  
14 lishing the application process; and ensure that  
15 a State applying for a grant submits—

16 (i) an inventory of voting systems in  
17 the State that would not be eligible for  
18 purchase under subsection (f);

19 (ii) a plan to expeditiously replace  
20 those voting systems; and

21 (iii) a commitment to State funding  
22 for replacements that is at least equivalent  
23 to the grant amount.

24 (4) REVIEW.—The Commission—

1 (A) shall fund a State application if the  
 2 Commission determines that the State will like-  
 3 ly replace the voting systems that would not be  
 4 eligible for purchase under subsection (f); and

5 (B) in reviewing a State application, shall  
 6 consider the recommendations and criteria of  
 7 the Advisory Panel under section 5(c).

8 (5) USE OF FUNDS.—A State election agency  
 9 that receives funds under paragraph (1) shall only  
 10 use the funds to replace voting systems that would  
 11 not be eligible for purchase under subsection (f).

12 (6) LIMITATIONS; COORDINATION WITH CYBER-  
 13 SECURITY AND MODERNIZATION GRANTS.—

14 (A) LIMITATIONS.—Of the total amount  
 15 authorized to be appropriated under subsection  
 16 (h), \$186,000,000 shall be used for grants  
 17 awarded under this subsection.

18 (B) FORMULA FOR GRANT AMOUNTS.—  
 19 The grant amount made available to each State  
 20 shall be set according to the proportional for-  
 21 mula described in subsection (b)(3), as applied  
 22 to the list of States designated under paragraph  
 23 (2) and the number of votes cast in those  
 24 States using voting systems that would not be  
 25 eligible for purchase under subsection (f).

1 (C) COORDINATION WITH CYBERSECURITY  
2 AND MODERNIZATION GRANTS.—If the Sec-  
3 retary determines that no additional State will  
4 receive a grant under this paragraph, the Sec-  
5 retary shall reallocate any amounts remaining  
6 under subparagraph (A) to the cybersecurity  
7 and modernization grant program under sub-  
8 section (b).

9 (7) GRANTS FOR LOCAL JURISDICTIONS.—

10 (A) ELIGIBILITY.—If a State designated  
11 under paragraph (2) notifies the Commission  
12 that it will not apply for grants under this sub-  
13 section, the Commission shall award grants to  
14 election agencies within such State.

15 (B) APPLICATION PROCESS.—The Com-  
16 mission shall establish a process for election  
17 agencies that are eligible under subparagraph  
18 (A) to apply for grants under this subsection,  
19 consistent with the application process for  
20 States established under paragraph (3).

21 (C) REVIEW.—The Commission shall re-  
22 view applications of election agencies under this  
23 paragraph in a similar manner to the manner  
24 required for applications by States under para-  
25 graph (4).

1           (D) USE OF FUNDS.—An election agency  
2           that receives a grant under this subsection is  
3           subject to the use of funds restrictions in para-  
4           graph (5).

5           (E) LIMITATION ON AMOUNT OF GRANT.—  
6           The amount of funds provided to an election  
7           agency under a grant under this subsection  
8           shall be equal to the amount obtained by multi-  
9           plying the amount available to the State under  
10          paragraph (6)(B) by the quotient obtained by  
11          dividing—

12                 (i) the voting age population of the  
13                 State (as reported in the most recent de-  
14                 cennial census) who would cast their bal-  
15                 lots in a Federal election using voting sys-  
16                 tems that are operated by the election  
17                 agency (under current State law) and that  
18                 would not be eligible for purchase under  
19                 subsection (f); by

20                 (ii) the voting age population of the  
21                 State (as reported in the most recent de-  
22                 cennial census) who would cast their bal-  
23                 lots in a Federal election using voting sys-  
24                 tems that would not be eligible for pur-  
25                 chase under subsection (f).

1       (e) FINANCIAL ASSISTANCE FOR AUDITING EX-  
2 PENSES.—

3           (1) IN GENERAL.—The Commission shall award  
4 grants to reimburse States that conduct statistical  
5 audits of a proportionally large number of ballots in  
6 close Federal elections if the statistical audit—

7           (A) is consistent with the guidelines estab-  
8 lished under section 5(b); and

9           (B) includes the inspection (by hand and  
10 not by device) of an amount of paper ballots in  
11 excess of 5 percent of the voting age population  
12 within the State (in the case of national or  
13 statewide office) or district covered by the elec-  
14 tion.

15       (2) APPLICATIONS PROCESS.—

16           (A) IN GENERAL.—A State seeking a  
17 grant under this subsection shall submit an ap-  
18 plication in such form and manner and at such  
19 time as the Commission may require.

20           (B) LOCAL GOVERNMENTS.—A State elec-  
21 tion agency may authorize some or all other  
22 election agencies within the State to apply for  
23 grants under paragraph (1). The Commission  
24 shall establish rules for the application of para-

1           graphs (3) and (4)(B) to agencies requesting  
2           grants under this subparagraph.

3           (3) LIMITATION ON AMOUNT OF GRANTS.—The  
4           amount of funds provided under a grant under this  
5           subsection shall be equal to the cost of the statistical  
6           audit, less the cost of inspecting (by hand and not  
7           by device) a number of ballots equal to 5 percent  
8           of—

9                   (A) in the case of an election for a national  
10           or statewide office, the voting age population  
11           within the State; or

12                   (B) in the case of an election for any other  
13           office, the voting age population within the dis-  
14           trict covered by the election.

15           (4) TIMING; DISTRIBUTION.—

16                   (A) IN GENERAL.—The Commission shall  
17           award grants under this subsection on January  
18           31, 2019, and every 2 years thereafter.

19                   (B) INSUFFICIENT FUNDS.—If the amount  
20           appropriated for carrying out this subsection is  
21           insufficient to fund the grants, the Commission  
22           shall fund such grants according to the propor-  
23           tional formula described in subsection (b)(3), as  
24           applied to the States seeking grants under this  
25           subsection and the number of marked paper

1           ballots that were inspected by hand in excess of  
2           5 percent of the voting age population within  
3           the State (in the case of national or statewide  
4           office) or district covered by the election.

5           (5) LIMITATION.—Of the total amount author-  
6           ized to be appropriated under subsection (h),  
7           \$5,000,000 shall be used for grants under this sub-  
8           section.

9           (f) PROHIBITION ON USE FOR CERTAIN VOTING SYS-  
10          TEMS.—

11           (1) IN GENERAL.—Funds received under a  
12           grant under this section may not be used for any  
13           voting system that records each vote in electronic  
14           storage, unless the system is an optical scanner that  
15           reads paper ballots.

16           (2) ELECTRONIC USER INTERFACES.—Funds  
17           received under a grant under this section may be  
18           used for a voting system with an electronic user  
19           interface provided that the voting system is con-  
20           sistent with clause (i).

21           (g) CONTRACTING ASSISTANCE.—Not later than 90  
22           days after the date of enactment of this Act, the Adminis-  
23           trator of General Services, in consultation with the Direc-  
24           tor of the National Institute of Standards and Technology,

1 shall take such actions as may be necessary through com-  
2 petitive processes—

3           (1) to qualify a set of private sector entities  
4           that are capable of assisting States with identifying,  
5           protecting against, detecting, responding to, and re-  
6           covering from election cybersecurity incidents,  
7           threats, and vulnerabilities;

8           (2) to establish contract vehicles to enable  
9           States to access the services of one or more of the  
10          private sector organizations after receiving amounts  
11          under a grant under this section;

12          (3) to ensure that the contract vehicles permit  
13          individual States to augment Federal funds with  
14          funding otherwise available to the States; and

15          (4) to provide a list of qualified entities to the  
16          Chairman and Secretary in order to ensure it is  
17          readily available to State election officials.

18          (h) AUTHORIZATION OF APPROPRIATIONS.—

19               (1) IN GENERAL.—There is authorized to be  
20               appropriated to the Commission \$386,000,000 to  
21               carry out this section for fiscal year 2018.

22               (2) AVAILABILITY.—Any amounts appropriated  
23               pursuant to paragraph (1) shall remain available  
24               without fiscal year limitation until expended.

25               (3) FUNDING SOURCE.—

1 (A) DEFINITIONS.—In this paragraph—

2 (i) the terms “agency”, “closeout”,  
3 and “Federal grant award” have the  
4 meanings given those terms in section 2 of  
5 the Grants Oversight and New Efficiency  
6 Act (Public Law 114–117; 130 Stat. 6);  
7 and

8 (ii) the term “Director” means the  
9 Director of the Office of Management and  
10 Budget.

11 (B) CLOSEOUT OF EXPIRED AND  
12 UNDISBURSED FEDERAL GRANTS.—Not later  
13 than 1 year after the date of enactment of this  
14 Act, the Director shall promulgate procedures  
15 requiring the head of each agency to promptly  
16 conduct a closeout of each Federal grant award.

17 (C) RELATED REPORTS.—In promulgating  
18 the procedures required under subparagraph  
19 (B), the Director shall consider the rec-  
20 ommendations and data in the reports required  
21 to be submitted under section 2 of the Grants  
22 Oversight and New Efficiency Act (Public Law  
23 114–117; 130 Stat. 6) and section 530 of the  
24 Commerce, Justice, Science, and Related Agen-

1           cies Appropriations Act, 2016 (Public Law  
2           114–113; 129 Stat. 2329), and similar reports.

3           (D) EXPIRATION.—The procedures re-  
4           quired under subparagraph (B) shall expire 4  
5           years after the date on which the procedures  
6           are promulgated.

7           (i) CONFORMING AMENDMENT.—Section 202(7) of  
8           the Help America Vote Act of 2002 (52 U.S.C. 20921),  
9           as amended by section 5, is amended by inserting “and  
10          carrying out the grant programs under section 7 of such  
11          Act” after “Secure Elections Act”.

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