

116TH CONGRESS
1ST SESSION

S. 825

To amend the Help America Vote Act of 2002 to require States to take steps to ensure domestic ownership and control of election service providers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2019

Mr. VAN HOLLEN (for himself, Ms. COLLINS, Mr. CARDIN, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend the Help America Vote Act of 2002 to require States to take steps to ensure domestic ownership and control of election service providers, 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 “Protect our Elections
5 Act”.

1 **SEC. 2. ENSURING DOMESTIC OWNERSHIP AND CONTROL**
2 **OF ELECTION SYSTEMS.**

3 (a) IN GENERAL.—Title III of the Help America
4 Vote Act of 2002 (52 U.S.C. 21083 et seq.) is amended—

5 (1) by redesignating sections 304 and 305 as
6 sections 305 and 306; and

7 (2) by inserting after section 303 the following
8 new section:

9 **“SEC. 304. ENSURING DOMESTIC OWNERSHIP AND CON-**
10 **TROL OF ELECTION SYSTEMS.**

11 “(a) REQUIRING ELECTION SERVICE PROVIDERS TO
12 BE QUALIFIED.—Each State, unit of local government, or
13 component of a State or unit of local government which
14 is responsible for the administration of an election for
15 Federal office shall ensure that each election service pro-
16 vider who provides, supports, or maintains any component
17 of an election system used in the administration of the
18 election is a qualified election service provider.

19 “(b) ANNUAL EVALUATION TO ENSURE COMPLI-
20 ANCE.—Each State, unit of local government, or compo-
21 nent of a State or unit of local government which is re-
22 sponsible for the administration of an election for Federal
23 office shall, not less frequently than once each calendar
24 year, evaluate each election service provider to ensure that
25 the election service provider is a qualified election service
26 provider.

1 “(c) CYBERSECURITY BEST PRACTICES.—Not later
 2 than 90 days after the date of the enactment of this sec-
 3 tion, the Chair of the Commission and the Secretary of
 4 Homeland Security shall establish and publish cybersecu-
 5 rity best practices for election service providers who pro-
 6 vide, support, or maintain election systems, and shall es-
 7 tablish and publish updates to such best practices at such
 8 times as the Chair and the Secretary consider appropriate.

9 “(d) GUIDANCE AND TECHNICAL ASSISTANCE.—

10 “(1) IN GENERAL.—The Chair of the Commis-
 11 sion and the Secretary of Homeland Security may
 12 provide such guidance and technical assistance as
 13 may be appropriate to assist each State, unit of local
 14 government, or component of a State or unit of local
 15 government which is responsible for the administra-
 16 tion of an election for Federal office with its obliga-
 17 tions under this section.

18 “(2) DATABASE OF QUALIFIED ELECTION SERV-
 19 ICE PROVIDERS.—As part of providing guidance and
 20 technical assistance under this subsection, the Com-
 21 mission shall establish and maintain a database in
 22 which each State, unit of local government, or com-
 23 ponent of a State or unit of local government which
 24 is responsible for the administration of an election
 25 for Federal office can verify whether an election

1 service provider is a qualified election service pro-
2 vider.

3 “(e) ELECTION SERVICE PROVIDER AND QUALIFIED
4 ELECTION SERVICE PROVIDER DEFINED.—

5 “(1) ELECTION SERVICE PROVIDER.—In this
6 section, the term ‘election service provider’ means
7 any person providing, supporting, or maintaining an
8 election system on behalf of an election agency, such
9 as a contractor or vendor.

10 “(2) QUALIFIED ELECTION SERVICE PRO-
11 VIDER.—

12 “(A) IN GENERAL.—In this section, the
13 term ‘qualified election service provider’ means
14 an election service provider who meets each of
15 the following criteria, as established and pub-
16 lished by the Chair of the Commission in co-
17 ordination with the Secretary of Homeland Se-
18 curity:

19 “(i) Except as provided in subpara-
20 graph (C), the election service provider is
21 solely owned and controlled by United
22 States persons or persons described in sub-
23 paragraph (B).

1 “(ii) The election service provider sub-
2 mits in accordance with section 3(a) of the
3 Protect our Elections Act—

4 “(I) notice of any material
5 change in ownership or control of the
6 election service provider; and

7 “(II) any other information re-
8 quired to be reported under that sec-
9 tion.

10 “(iii) The election service provider
11 agrees to ensure that the election systems
12 will be developed and maintained in a man-
13 ner that is consistent with the cybersecu-
14 rity best practices established under sub-
15 section (c).

16 “(iv) The election service provider
17 agrees to maintain its information tech-
18 nology infrastructure in a manner that is
19 consistent with the cybersecurity best prac-
20 tices established under subsection (c).

21 “(v) The election service provider
22 shall report any known or suspected inci-
23 dents involving election systems to the
24 chief State election official of the State in-

1 volved or the official's designee, the Chair,
2 and the Secretary.

3 “(B) PERSONS DESCRIBED.—For purposes
4 of subparagraph (A)(i), a person described in
5 this subparagraph is a corporation or business
6 entity that is created or organized under the
7 laws of a country that is party to the UK–USA
8 Agreement for joint cooperation in signals intel-
9 ligence, military intelligence, and human intel-
10 ligence, also known as the ‘Five Eyes alliance’.

11 “(C) PERMITTING WAIVER OF DOMESTIC
12 OWNERSHIP AND CONTROL REQUIREMENT FOR
13 CERTAIN SUBSIDIARIES.—The Secretary of
14 Homeland Security may waive the requirement
15 of clause (i) of subparagraph (A) with respect
16 to a person who is a United States subsidiary
17 of a parent company which has implemented a
18 foreign ownership or control mitigation plan
19 that has been approved by the Secretary. Such
20 plan shall ensure that the parent company can-
21 not control, influence, or direct the subsidiary
22 in any manner that would compromise or influ-
23 ence, or give the appearance of compromising
24 or influencing, the independence and integrity
25 of an election.

1 “(D) INCIDENT DEFINED.—For purposes
2 of subparagraph (A)(v), the term ‘incident’ has
3 the meaning given that term in section
4 3552(b)(2) of title 44, United States Code.

5 “(f) ELECTION SYSTEM DEFINED.—In this section,
6 the term ‘election system’ means a voting system, an elec-
7 tion management system, a voter registration website or
8 database, an electronic pollbook, a system for tabulating
9 or reporting election results, an election agency commu-
10 nications system, or any other information system (as de-
11 fined in section 3502 of title 44, United States Code) that
12 the Secretary of Homeland Security, in consultation with
13 the Commission, identifies as central to the management,
14 support, or administration of a Federal election.

15 “(g) OWNERSHIP AND CONTROL DEFINED.—The
16 Commission, in consultation with the Secretary of the
17 Treasury, shall issue regulations defining the terms ‘own-
18 ership’ and ‘control’ for purposes of this section.”.

19 (b) CONFORMING AMENDMENT RELATING TO EN-
20 FORCEMENT.—Section 401 of such Act (52 U.S.C. 21111)
21 is amended by striking “and 303” and inserting “303, and
22 304”.

23 (c) CLERICAL AMENDMENTS.—The table of contents
24 of such Act is amended—

1 (1) by redesignating the items relating to sec-
 2 tions 304 and 305 as relating to sections 305 and
 3 306; and

4 (2) by inserting after the item relating to sec-
 5 tion 303 the following new item:

“Sec. 304. Ensuring domestic ownership and control of election systems.”.

6 (d) **EFFECTIVE DATE.**—The amendments made by
 7 this section shall apply with respect to elections for Fed-
 8 eral office held in 2020 or any succeeding year.

9 **SEC. 3. INFORMATION SHARING WITH RESPECT TO OWNER-**
 10 **SHIP OF ELECTION SERVICE PROVIDERS.**

11 (a) **IN GENERAL.**—Each election service provider
 12 shall submit to the Secretary of Homeland Security, the
 13 Election Assistance Commission, and appropriate State or
 14 local governmental entities the following:

15 (1) Not later than the date that is 90 days
 16 after the later of the date of the enactment of this
 17 section or the date that a person first becomes an
 18 election service provider, a report listing the identity
 19 of any foreign national (as defined in section 319(b)
 20 of the Federal Election Campaign Act of 1971 (52
 21 U.S.C. 30121(b))) who directly or indirectly owns or
 22 controls such election service provider and the per-
 23 centage of such ownership, and any other informa-
 24 tion necessary to determine whether the election

1 service provider is a qualified election service pro-
 2 vider.

3 (2) Not later than 90 days after the date of any
 4 material change in ownership or control of such elec-
 5 tion service provider, a notice of such change and an
 6 update of any information previously reported under
 7 paragraph (1).

8 (b) CIVIL PENALTY FOR FAILURE TO REPORT.—If
 9 an election service provider fails to submit a report re-
 10 quired under subsection (a), the Attorney General may,
 11 after notice and opportunity for hearing, impose a civil
 12 fine of \$20,000.

13 (c) DEFINITIONS.—In this section:

14 (1) APPROPRIATE STATE OR LOCAL GOVERN-
 15 MENTAL ENTITY.—The term “appropriate State or
 16 local governmental entity” means, with respect to an
 17 election service provider, any State or local govern-
 18 mental entity that the election service provider seeks
 19 to contract with, contracts with, or otherwise pro-
 20 vides services to provide, support, or maintain an
 21 election system.

22 (2) ELECTION SERVICE PROVIDER; ELECTION
 23 SYSTEM; QUALIFIED ELECTION SERVICE PRO-
 24 VIDER.—The terms “election service provider”,
 25 “election system”, and “qualified election service

1 provider'' have the meaning given those terms in
2 section 304 of the Help America Vote Act of 2002,
3 as added by section 2.

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