

115TH CONGRESS
2D SESSION

S. 2593

To protect the administration of Federal elections against cybersecurity threats.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2018

Mr. LANKFORD (for himself, Ms. KLOBUCHAR, Mr. GRAHAM, Ms. HARRIS, Ms. COLLINS, Mr. HEINRICH, Mr. BURR, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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 cybersecuri-
20 ty 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(e) 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

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

8 (2) SUNSET.—If the Comptroller General deter-
9 mines that over 90 percent of the funds appro-
10 priated under section 7(h)(1) have been expended by
11 the States, the reporting requirement in paragraph
12 (1) shall cease to be effective after the Comptroller
13 General submits a final report.

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

16 (a) AUTHORITY.—

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

19 (2) COORDINATION.—

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

23 (B) JOINT PROGRAM.—If the Chairman
24 determines that jointly carrying out this section
25 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 ible 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 1 or more of the pri-
10 vate 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”.

○