

116TH CONGRESS  
1ST SESSION

# H. R. 3412

To protect the administration of Federal elections against cybersecurity threats.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 2019

Mr. RODNEY DAVIS of Illinois (for himself, Mr. WALKER, Mr. LOUDERMILK, Mr. WALTZ, Mr. COLLINS of Georgia, and Mr. UPTON) introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Permanent Select Committee on 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 “Election Security As-  
5 sistance Act”.

1 **SEC. 2. GRANTS TO STATES FOR ELECTION ADMINISTRA-**  
2 **TION IMPROVEMENTS.**

3 (a) **AUTHORIZATION OF FUNDS.**—Notwithstanding  
4 section 104(c)(2)(B) of the Help America Vote Act of  
5 2002 (52 U.S.C. 20904(c)(2)(B)), there is authorized to  
6 be appropriated \$380,000,000 for fiscal year 2020 to the  
7 Election Assistance Commission for necessary expenses to  
8 make payments to States for activities to improve the ad-  
9 ministration of elections for Federal office, including to  
10 enhance election technology and make election security im-  
11 provements, as authorized by sections 101, 103, and 104  
12 of such Act.

13 (b) **PAYMENTS TO STATES.**—

14 (1) **STATE MATCH.**—Not later than two years  
15 after receiving funds under subsection (a), a State  
16 shall make available funds for activities described in  
17 such subsection in an amount equal to 25 percent of  
18 the total amount of the payment made to the State  
19 under such subsection.

20 (2) **TIMING.**—The Election Assistance Commis-  
21 sion shall make payments to States under subsection  
22 (a) not later than 45 days after the date of enact-  
23 ment of this Act.

24 (3) **GUARANTEED MINIMUM PAYMENT.**—For  
25 purposes of this section, with respect to section 103  
26 of such Act (52 U.S.C. 20903)—

1 (A) each reference to “\$5,000,000” shall  
2 be deemed to refer to “\$3,000,000”; and

3 (B) each reference to “\$1,000,000” shall  
4 be deemed to refer to “\$600,000”.

5 (c) REFERENCE.—For purposes of this section, with  
6 respect to sections 101 and 103 of such Act, each ref-  
7 erence to the “Administrator of General Services” or the  
8 “Administrator” shall be deemed to refer to the “Election  
9 Assistance Commission”.

10 **SEC. 3. TREATMENT OF ELECTRONIC POLL BOOKS AS PART**  
11 **OF VOTING SYSTEMS.**

12 (a) INCLUSION IN DEFINITION OF VOTING SYS-  
13 TEM.—Section 301(b) of the Help America Vote Act of  
14 2002 (52 U.S.C. 21081(b)) is amended—

15 (1) in the matter preceding paragraph (1), by  
16 striking “this section” and inserting “this Act”;

17 (2) by striking “and” at the end of paragraph  
18 (1);

19 (3) by redesignating paragraph (2) as para-  
20 graph (3); and

21 (4) by inserting after paragraph (1) the fol-  
22 lowing new paragraph:

23 “(2) any electronic poll book used with respect  
24 to the election; and”.

1 (b) DEFINITION.—Section 301 of such Act (52  
2 U.S.C. 21081) is amended—

3 (1) by redesignating subsections (c) and (d) as  
4 subsections (d) and (e); and

5 (2) by inserting after subsection (b) the fol-  
6 lowing new subsection:

7 “(c) ELECTRONIC POLL BOOK DEFINED.—In this  
8 Act, the term ‘electronic poll book’ means the total com-  
9 bination of mechanical, electromechanical, or electronic  
10 equipment (including the software, firmware, and docu-  
11 mentation required to program, control, and support the  
12 equipment) that is used—

13 “(1) to retain the list of registered voters at a  
14 polling location, or vote center, or other location at  
15 which voters cast votes in an election for Federal of-  
16 fice; and

17 “(2) to identify registered voters who are eligi-  
18 ble to vote in an election.”.

19 (c) EFFECTIVE DATE.—Section 301(e) of such Act  
20 (52 U.S.C. 21081(e)), as redesignated by subsection (b),  
21 is amended by striking the period at the end and inserting  
22 the following: “, or, with respect to any requirements re-  
23 lating to electronic poll books, on and after January 1,  
24 2020.”.

1 **SEC. 4. SECURITY CLEARANCE ASSISTANCE FOR ELECTION**  
2 **OFFICIALS.**

3 (a) STATE OFFICIALS.—In order to promote the  
4 timely sharing of information on threats to election infra-  
5 structure, the Secretary of Homeland Security may—

6 (1) help expedite a security clearance at the top  
7 secret level for the chief State election official and  
8 other appropriate State personnel involved in the ad-  
9 ministration of elections, as designated by the chief  
10 State election official;

11 (2) sponsor a security clearance at the top se-  
12 cret level for the chief State election official and  
13 other appropriate State personnel involved in the ad-  
14 ministration of elections, as designated by the chief  
15 State election official; and

16 (3) facilitate the issuance of a temporary clear-  
17 ance at the top secret level to the chief State election  
18 official and other appropriate State personnel in-  
19 volved in the administration of elections, as des-  
20 ignated by the chief State election official, if the  
21 Secretary determines classified information to be  
22 timely and relevant to the election infrastructure of  
23 the State at issue.

24 (b) ELECTION ASSISTANCE COMMISSION.—The Sec-  
25 retary shall expeditiously issue a security clearance at the  
26 top secret level to the following officials:

1           (1) Each member of the Election Assistance  
2 Commission appointed pursuant to section 203(a) of  
3 the Help America Vote Act of 2002 (52 U.S.C.  
4 20923(a)).

5           (2) The Executive Director of the Election As-  
6 sistance Commission appointed pursuant to section  
7 204(a)(1) of such Act (52 U.S.C. 20924(a)(1)).

8           (3) The General Counsel of the Election Assist-  
9 ance Commission appointed pursuant to section  
10 204(a)(4) of such Act (52 U.S.C. 20924(a)(4)).

11 (c) DEFINITIONS.—In this section—

12           (1) the term “chief State election official”  
13 means, with respect to a State, the individual des-  
14 ignated by the State under section 10 of the Na-  
15 tional Voter Registration Act of 1993 (52 U.S.C.  
16 20509) to be responsible for coordination of the  
17 State’s responsibilities under such Act;

18           (2) the term “election infrastructure” means  
19 storage facilities, polling places, and centralized vote  
20 tabulation locations used to support the administra-  
21 tion of elections for public office, as well as related  
22 information and communications technology, includ-  
23 ing voter registration databases, voting machines,  
24 electronic mail and other communications systems  
25 (including electronic mail and other systems of elec-

1       tion service providers who have entered into con-  
2       tracts with election agencies to support the adminis-  
3       tration of elections, manage the election process, and  
4       report and display election results), and other sys-  
5       tems used to manage the election process and to re-  
6       port and display election results on behalf of an elec-  
7       tion agency;

8               (3) the term “Secretary” means the Secretary  
9       of Homeland Security; and

10              (4) the term “State” has the meaning given  
11       such term in section 901 of the Help America Vote  
12       Act of 2002 (52 U.S.C. 21141).

13 **SEC. 5. DUTY OF SECRETARY OF HOMELAND SECURITY TO**  
14                               **NOTIFY STATE AND LOCAL OFFICIALS OF**  
15                               **ELECTION CYBERSECURITY INCIDENTS.**

16       (a) DUTY TO SHARE INFORMATION WITH DEPART-  
17       MENT OF HOMELAND SECURITY.—If a Federal entity re-  
18       ceives information about an election cybersecurity inci-  
19       dent, the Federal entity shall promptly share that infor-  
20       mation with the Department of Homeland Security, unless  
21       the head of the entity (or a Senate-confirmed official des-  
22       ignated by the head) makes a specific determination in  
23       writing that there is good cause to withhold the particular  
24       information.

1 (b) RESPONSE TO RECEIPT OF INFORMATION BY  
2 SECRETARY OF HOMELAND SECURITY.—

3 (1) IN GENERAL.—Upon receiving information  
4 about an election cybersecurity incident under sub-  
5 section (a), the Secretary of Homeland Security, in  
6 consultation with the Attorney General, the Director  
7 of the Federal Bureau of Investigation, and the Di-  
8 rector of National Intelligence, shall promptly (but  
9 in no case later than 96 hours after receiving the in-  
10 formation) review the information and make a deter-  
11 mination whether each of the following apply:

12 (A) There is credible evidence that the in-  
13 cident occurred.

14 (B) There is a basis to believe that the in-  
15 cident resulted, could have resulted, or could re-  
16 sult in voter information systems or voter tab-  
17 ulation systems being altered or otherwise af-  
18 fected.

19 (2) DUTY TO NOTIFY STATE AND LOCAL OFFI-  
20 CIALS.—

21 (A) DUTY DESCRIBED.—If the Secretary  
22 makes a determination under paragraph (1)  
23 that subparagraphs (A) and (B) of such para-  
24 graph apply with respect to an election cyberse-  
25 curity incident, not later than 96 hours after



1 making the determination, the Secretary shall  
2 provide a notification of the incident to each of  
3 the following:

4 (i) The chief executive of the State in-  
5 volved.

6 (ii) The State election official of the  
7 State involved.

8 (iii) The local election official of the  
9 election agency involved.

10 (B) TREATMENT OF CLASSIFIED INFORMA-  
11 TION.—

12 (i) EFFORTS TO AVOID INCLUSION OF  
13 CLASSIFIED INFORMATION.—In preparing  
14 a notification provided under this para-  
15 graph to an individual described in clause  
16 (i), (ii), or (iii) of subparagraph (A), the  
17 Secretary shall attempt to avoid the inclu-  
18 sion of classified information.

19 (ii) PROVIDING GUIDANCE TO STATE  
20 AND LOCAL OFFICIALS.—To the extent  
21 that a notification provided under this  
22 paragraph to an individual described in  
23 clause (i), (ii), or (iii) of subparagraph (A)  
24 includes classified information, the Sec-  
25 retary (in consultation with the Attorney

1           General and the Director of National Intel-  
2           ligence) shall indicate in the notification  
3           which information is classified.

4           (3) EXCEPTION.—

5           (A) IN GENERAL.—If the Secretary, in  
6           consultation with the Attorney General and the  
7           Director of National Intelligence, makes a de-  
8           termination that it is not possible to provide a  
9           notification under paragraph (1) with respect to  
10          an election cybersecurity incident without com-  
11          promising intelligence methods or sources or  
12          interfering with an ongoing investigation, the  
13          Secretary shall not provide the notification  
14          under such paragraph.

15          (B) ONGOING REVIEW.—Not later than 30  
16          days after making a determination under sub-  
17          paragraph (A) and every 30 days thereafter,  
18          the Secretary shall review the determination. If,  
19          after reviewing the determination, the Secretary  
20          makes a revised determination that it is pos-  
21          sible to provide a notification under paragraph  
22          (2) without compromising intelligence methods  
23          or sources or interfering with an ongoing inves-  
24          tigation, the Secretary shall provide the notifi-

1 cation under paragraph (2) not later than 96  
2 hours after making such revised determination.

3 (c) DEFINITIONS.—In this section, the following defi-  
4 nitions apply:

5 (1) ELECTION AGENCY.—The term “election  
6 agency” means any component of a State, or any  
7 component of a unit of local government in a State,  
8 which is responsible for the administration of elec-  
9 tions for Federal office in the State.

10 (2) ELECTION CYBERSECURITY INCIDENT.—  
11 The term “election cybersecurity incident” means an  
12 occurrence that actually or imminently jeopardizes,  
13 without lawful authority, the integrity, confiden-  
14 tiality, or availability of information on an informa-  
15 tion system of election infrastructure, or actually or  
16 imminently jeopardizes, without lawful authority, an  
17 information system of election infrastructure.

18 (3) FEDERAL ELECTION.—The term “Federal  
19 election” means any election (as defined in section  
20 301(1) of the Federal Election Campaign Act of  
21 1971 (52 U.S.C. 30101(1))) for Federal office (as  
22 defined in section 301(3) of the Federal Election  
23 Campaign Act of 1971 (52 U.S.C. 30101(3))).

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

4           (5) LOCAL ELECTION OFFICIAL.—The term  
5           “local election official” means the chief election offi-  
6           cial of a component of a unit of local government of  
7           a State that is responsible for administering Federal  
8           elections.

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

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

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

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

22                 (B) in the case of Puerto Rico, Guam,  
23                 American Samoa, the Northern Mariana Is-  
24                 lands, and the United States Virgin Islands, a

1 chief State election official designated by the  
2 State for purposes of this Act.

3 (d) EFFECTIVE DATE.—This section shall apply with  
4 respect to information about an election cybersecurity inci-  
5 dent which is received on or after the date of the enact-  
6 ment of this Act.

7 **SEC. 6. ESTABLISHMENT OF ELECTION CYBER ASSISTANCE**  
8 **UNIT IN ELECTION ASSISTANCE COMMIS-**  
9 **SION.**

10 (a) IN GENERAL.—Subtitle A of title II of the Help  
11 America Vote Act of 2002 (52 U.S.C. 20921 et seq.) is  
12 amended by adding at the end the following new part:

13 **“PART 4—ELECTION CYBER ASSISTANCE UNIT**  
14 **“SEC. 225. ELECTION CYBER ASSISTANCE UNIT.**

15 “(a) ESTABLISHMENT.—There is established in the  
16 Commission the Election Cyber Assistance Unit (hereafter  
17 in this part referred to as the ‘Unit’).

18 “(b) DUTIES.—The Unit will provide State and local  
19 election officials in various geographic regions of the  
20 United States with access to risk-management, resiliency,  
21 and technical support services provided by election admin-  
22 istration and cybersecurity experts who will be based in  
23 such regions and who may provide such services in person,  
24 by telephone, or online.”.

1 (b) CLERICAL AMENDMENT.—The table of contents  
2 of such Act is amended by adding at the end of the items  
3 relating to subtitle A of title II the following:

“PART 4—ELECTION CYBER ASSISTANCE UNIT

“Sec. 225. Election Cyber Assistance Unit.”.

4 **SEC. 7. REPRESENTATIVE OF DEPARTMENT OF HOMELAND**  
5 **SECURITY ON TECHNICAL GUIDELINES DE-**  
6 **VELOPMENT COMMITTEE.**

7 Section 221(c)(1) of the Help America Vote Act of  
8 2002 (52 U.S.C. 20961(c)(1)) is amended—

9 (1) by redesignating subparagraph (E) as sub-  
10 paragraph (F); and

11 (2) by inserting after subparagraph (D) the fol-  
12 lowing new subparagraph:

13 “(E) A representative of the Department  
14 of Homeland Security.”.

15 **SEC. 8. REPORTS TO CONGRESS ON FOREIGN THREATS TO**  
16 **ELECTIONS.**

17 (a) IN GENERAL.—Not later than 30 days after the  
18 date of enactment of this Act, and 30 days after the end  
19 of each fiscal year thereafter, the Secretary of Homeland  
20 Security and the Director of National Intelligence, in co-  
21 ordination with the heads of the appropriate Federal enti-  
22 ties, shall submit a joint report to the appropriate congres-  
23 sional committees and the chief State election official of

1 each State on foreign threats to elections in the United  
2 States, including physical and cybersecurity threats.

3 (b) VOLUNTARY PARTICIPATION BY STATES.—The  
4 Secretary shall solicit and consider comments from all  
5 State election agencies. Participation by an election agen-  
6 cy in the report under this section shall be voluntary and  
7 at the discretion of the State.

8 (c) APPROPRIATE FEDERAL ENTITIES.—In this sec-  
9 tion, the term “appropriate Federal entities” means—

10 (1) the Department of Commerce, including the  
11 National Institute of Standards and Technology;

12 (2) the Department of Defense;

13 (3) the Department of Homeland Security, in-  
14 cluding the component of the Department that re-  
15 ports to the Under Secretary responsible for over-  
16 seeing critical infrastructure protection, cybersecu-  
17 rity, and other related programs of the Department;

18 (4) the Department of Justice, including the  
19 Federal Bureau of Investigation;

20 (5) the Election Assistance Commission; and

21 (6) the Office of the Director of National Intel-  
22 ligence, the National Security Agency, and such  
23 other elements of the intelligence community (as de-  
24 fined in section 3 of the National Security Act of

1 1947 (50 U.S.C. 3003)) as the Director of National  
2 Intelligence determines are appropriate.

3 (d) OTHER DEFINITIONS.—In this section—

4 (1) the term “appropriate congressional com-  
5 mittees” means—

6 (A) the Committee on Rules and Adminis-  
7 tration, the Committee on Homeland Security  
8 and Governmental Affairs, the Select Com-  
9 mittee on Intelligence, and the Committee on  
10 Foreign Relations of the Senate; and

11 (B) the Committee on House Administra-  
12 tion, the Committee on Homeland Security, the  
13 Permanent Select Committee on Intelligence,  
14 and the Committee on Foreign Affairs of the  
15 House of Representatives;

16 (2) the term “chief State election official”  
17 means, with respect to a State, the individual des-  
18 ignated by the State under section 10 of the Na-  
19 tional Voter Registration Act of 1993 (52 U.S.C.  
20 20509) to be responsible for coordination of the  
21 State’s responsibilities under such Act;

22 (3) the term “election agency” means any com-  
23 ponent of a State or any component of a unit of  
24 local government of a State that is responsible for  
25 administering Federal elections;



1 (4) the term “Secretary” means the Secretary  
2 of Homeland Security; and

3 (5) the term “State” has the meaning given  
4 such term in section 901 of the Help America Vote  
5 Act of 2002 (52 U.S.C. 21141).

6 **SEC. 9. GAO ANALYSIS OF FEASIBILITY OF CONDUCTING**  
7 **RISK-LIMITING AUDITS.**

8 (a) ANALYSIS.—The Comptroller General of the  
9 United States shall conduct an analysis of the following:

10 (1) The feasibility for States to conduct risk-  
11 limiting audits of elections for Federal office.

12 (2) The types of risk-limiting audits performed  
13 by States.

14 (3) The extent to which risk-limiting audits per-  
15 formed by States have improved the administration  
16 of elections in such States.

17 (b) REPORT.—Not later than 1 year after the date  
18 of enactment of this Act, the Comptroller General of the  
19 United States shall submit to Congress a report on the  
20 analysis conducted under subsection (a).

21 **SEC. 10. GAO ANALYSIS OF FEASIBILITY OF REQUIRING**  
22 **USE OF PAPER BALLOTS.**

23 (a) ANALYSIS.—The Comptroller General of the  
24 United States shall conduct an analysis of the following:

1           (1) The feasibility of requiring the use of paper  
2           ballots in elections for Federal office on a nationwide  
3           basis.

4           (2) The impacts with respect to accessibility for  
5           individuals with disabilities of requiring the use of  
6           paper ballots in elections for Federal office.

7           (b) REPORT.—Not later than 180 days after the date  
8           of the enactment of this Act, the Comptroller General shall  
9           submit to Congress a report on the analysis conducted  
10          under subsection (a).

11 **SEC. 11. STUDY AND REPORT ON OPTIMAL BALLOT DESIGN.**

12          (a) STUDY.—The Election Assistance Commission  
13          shall conduct a study of the best ways to design ballots  
14          used in elections for public office, including paper ballots  
15          and electronic or digital ballots, to minimize confusion and  
16          user errors.

17          (b) REPORT.—Not later than January 1, 2020, the  
18          Election Assistance Commission shall submit to Congress  
19          a report on the study conducted under subsection (a).

○