

115TH CONGRESS
1ST SESSION

S. 1821

To establish the National Commission on the Cybersecurity of United States Election Systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2017

Mrs. GILLIBRAND (for herself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To establish the National Commission on the Cybersecurity of United States Election Systems, 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. ESTABLISHMENT OF COMMISSION.**

4 There is established the National Commission on the
5 Cybersecurity of United States Election Systems (in this
6 Act referred to as the “Commission”).

7 **SEC. 2. PURPOSES.**

8 The purposes of the Commission are—

9 (1) to identify and document mitigation and re-
10 sponse actions to or in the prevention of cybersecu-

1 rity vulnerabilities in, or threats or attacks to, the
2 election systems in the United States in 2016;

3 (2) to document and describe any harm or at-
4 tempted harm with respect to election systems in the
5 United States in 2016;

6 (3) to review foreign cyber interference in elec-
7 tions in other countries in order to understand addi-
8 tional cybersecurity threats, interference methods,
9 and successful defense mechanisms;

10 (4) to make a full and complete accounting of
11 what emerging threats and unmitigated vulnerabili-
12 ties remain and to identify likely threats to election
13 systems in the United States; and

14 (5) to report on the recommendations of the
15 Commission for action at the Federal, State, and
16 local level.

17 **SEC. 3. COMPOSITION OF THE COMMISSION.**

18 (a) MEMBERS.—The Commission shall be composed
19 of 15 members, of whom—

20 (1) 2 members shall be appointed by the Elec-
21 tion Assistance Commission;

22 (2) 3 members shall be appointed by the mem-
23 bers of the National Association of Secretaries of
24 State together with the members of the National As-
25 sociation of State Election Directors;

1 (3) 5 members shall be appointed by the major-
2 ity leader of the Senate, in consultation with the mi-
3 nority leader of the Senate, from all candidates nom-
4 inated under subparagraphs (A) through (E), in-
5 cluding—

6 (A) 3 candidates nominated by the chair-
7 person, in consultation with the ranking mem-
8 ber, of the Committee on the Judiciary of the
9 Senate;

10 (B) 3 candidates nominated by the chair-
11 person, in consultation with the ranking mem-
12 ber of the Select Committee on Intelligence of
13 the Senate;

14 (C) 3 candidates nominated by the chair-
15 person, in consultation with the ranking mem-
16 ber of the Committee on Foreign Relations of
17 the Senate;

18 (D) 3 candidates nominated by the chair-
19 person, in consultation with the ranking mem-
20 ber of the Committee on Homeland Security
21 and Governmental Affairs of the Senate; and

22 (E) 3 candidates nominated by the chair-
23 person, in consultation with the ranking mem-
24 ber of the Committee on Rules and Administra-
25 tion of the Senate; and

1 (4) 5 members shall be appointed by the Speak-
2 er of the House of Representatives, in consultation
3 with the minority leader of the House of Representa-
4 tives, from all candidates nominated under subpara-
5 graphs (A) through (E), including—

6 (A) 3 candidates nominated by the chair-
7 person, in consultation with the ranking mem-
8 ber of the Committee on the Judiciary of the
9 House of Representatives;

10 (B) 3 candidates nominated by the chair-
11 person, in consultation with the ranking mem-
12 ber of the Permanent Select Committee on In-
13 telligence of the House of Representatives;

14 (C) 3 candidates nominated by the chair-
15 person, in consultation with the ranking mem-
16 ber of the Committee on Foreign Affairs of the
17 House of Representatives;

18 (D) 3 candidates nominated by the chair-
19 person, in consultation with the ranking mem-
20 ber of the Committee on Homeland Security of
21 the House of Representatives; and

22 (E) 3 candidates nominated by the chair-
23 person, in consultation with the ranking mem-
24 ber of the Committee on House Administration
25 of the House of Representatives.

1 (b) CHAIRPERSON.—The Commission shall nominate
2 a chairperson of the Commission from among the mem-
3 bers of the Commission.

4 (c) QUALIFICATIONS; INITIAL MEETING.—

5 (1) POLITICAL PARTY AFFILIATION.—Not more
6 than 8 members of the Commission shall be from
7 the same political party.

8 (2) ELECTED OFFICIALS.—An individual ap-
9 pointed to the Commission may not be a serving
10 elected official of the Federal Government or any
11 State or local government.

12 (3) OTHER QUALIFICATIONS.—It is the sense of
13 Congress that individuals appointed to the Commis-
14 sion should be prominent United States citizens,
15 with national recognition and significant depth of ex-
16 perience in such professions as governmental service,
17 law enforcement, election law, election security, po-
18 litical campaign management, information warfare,
19 public administration, cyber espionage, and cyberse-
20 curity.

21 (4) INITIAL MEETING.—If 60 days after the
22 date of enactment of this Act, eight or more mem-
23 bers of the Commission have been appointed, those
24 members who have been appointed may meet and, if
25 necessary, select a temporary chairperson, who may

1 begin the operations of the Commission, including
2 the hiring of staff.

3 (d) QUORUM; VACANCIES.—After its initial meeting,
4 the Commission shall meet upon the call of the chair-
5 person or a majority of its members. Eight members of
6 the Commission shall constitute a quorum. Any vacancy
7 in the Commission shall not affect its powers, but shall
8 be filled in the same manner in which the original appoint-
9 ment was made.

10 **SEC. 4. FUNCTIONS OF THE COMMISSION.**

11 The functions of the Commission are—

12 (1) to conduct an investigation that—

13 (A) documents the relevant facts and cir-
14 cumstances with respect to harm or attempted
15 harm to the election systems in the United
16 States in 2016, including any regulation, plan,
17 policy, practice, or procedure; and

18 (B) may include relevant facts and cir-
19 cumstances relating to—

20 (i) intelligence agencies;

21 (ii) international intelligence agencies
22 with which the United States traditionally
23 collaborates;

24 (iii) law enforcement agencies;

1 (iv) election infrastructure providers,
2 vendors, or consultants;

3 (v) political campaign professionals,
4 information warfare experts, or political
5 press experts;

6 (vi) public or private cybersecurity
7 vendors, consultants, advisors, or staff;

8 (vii) State and local election officials
9 and election personnel;

10 (viii) persons with election oversight
11 responsibilities, including government enti-
12 ties and nonprofit organizations;

13 (ix) cybersecurity; and

14 (x) other areas of the public and pri-
15 vate sectors determined relevant by the
16 Commission;

17 (2) to identify and document successful and un-
18 successful mitigation and response actions in the
19 prevention of cybersecurity vulnerabilities, threats,
20 or attacks to the election systems in the United
21 States in 2016;

22 (3) to identify, review, and evaluate—

23 (A) what unmitigated cybersecurity gaps
24 remain; and

1 (B) what are the most likely threats to
2 election systems in the future;

3 (4) to develop recommendations for action at
4 the Federal, State, and local level, including with re-
5 spect to the structure, coordination, management
6 policies, and procedures of the Federal Government
7 in—

8 (A) assessing;

9 (B) detecting;

10 (C) preventing; and

11 (D) responding to cybersecurity vulnerabil-
12 ities, threats, or attacks; and

13 (5) to submit to the President and Congress the
14 reports required by this Act containing the findings,
15 conclusions, and recommendations as the Commis-
16 sion shall determine.

17 **SEC. 5. POWERS OF THE COMMISSION.**

18 (a) IN GENERAL.—

19 (1) HEARINGS AND EVIDENCE.—The Commis-
20 sion or, on the authority of the Commission, any
21 subcommittee or member thereof, may, for the pur-
22 pose of carrying out this Act—

23 (A) hold such hearings and sit and act at
24 such times and places, take such testimony, re-
25 ceive such evidence, administer such oaths; and

1 (B) require, by subpoena or otherwise, the
2 attendance and testimony of such witnesses and
3 the production of such books, records, cor-
4 respondence, memoranda, papers, and docu-
5 ments, as the Commission or such designated
6 subcommittee or designated member may deter-
7 mine advisable.

8 (2) SUBPOENAS.—

9 (A) ISSUANCE.—Subpoenas issued under
10 paragraph (1)(B) may be issued under the sig-
11 nature of the chairperson of the Commission,
12 the chairperson of any subcommittee created by
13 a majority of the Commission, or any member
14 designated by a majority of the Commission,
15 and may be served by any person designated by
16 the chairperson, subcommittee chairperson, or
17 member.

18 (B) ENFORCEMENT.—

19 (i) IN GENERAL.—In the case of con-
20 tumacy or failure to obey a subpoena
21 issued under paragraph (1)(B), the United
22 States district court for the judicial district
23 in which the subpoenaed person resides, is
24 served, or may be found, or where the sub-
25 poena is returnable, may issue an order re-

1 quiring such person to appear at any des-
2 ignated place to testify or to produce docu-
3 mentary or other evidence. Any failure to
4 obey the order of the court may be pun-
5 ished by the court as a contempt of that
6 court.

7 (ii) ADDITIONAL ENFORCEMENT.—

8 Sections 102 through 104 of the Revised
9 Statutes of the United States (2 U.S.C.
10 192 through 194) shall apply in the case
11 of any failure of any witness to comply
12 with any subpoena or to testify when sum-
13 moned under authority of this section.

14 (b) CLOSED MEETINGS.—

15 (1) IN GENERAL.—Meetings of the Commission
16 may be closed to the public under section 10(d) of
17 the Federal Advisory Committee Act (5 U.S.C.
18 App.) or other applicable law.

19 (c) CONTRACTING.—The Commission may, to such
20 extent and in such amounts as are provided in appropria-
21 tion Acts, enter into contracts to enable the Commission
22 to discharge the duties of the Commission under this Act.

23 (d) INFORMATION FROM FEDERAL AGENCIES.—The
24 Commission is authorized to secure directly from any exec-
25 utive department, bureau, agency, board, commission, of-

1 fice, independent establishment, or instrumentality of the
2 Government information, suggestions, estimates, and sta-
3 tistics for the purposes of this Act. Each department, bu-
4 reau, agency, board, commission, office, independent es-
5 tablishment, or instrumentality shall, to the extent author-
6 ized by law, furnish such information, suggestions, esti-
7 mates, and statistics directly to the Commission, upon re-
8 quest made by the chairperson, the chairperson of any
9 subcommittee created by a majority of the Commission,
10 or any member designated by a majority of the Commis-
11 sion.

12 (e) ASSISTANCE FROM FEDERAL AGENCIES.—

13 (1) GENERAL SERVICES ADMINISTRATION.—

14 The Administrator of General Services shall provide
15 to the Commission on a reimbursable basis adminis-
16 trative support and other services for the perform-
17 ance of the Commission's functions.

18 (2) OTHER DEPARTMENTS AND AGENCIES.—In

19 addition to the assistance prescribed in paragraph
20 (1), departments and agencies of the United States
21 are authorized to provide to the Commission such
22 services, funds, facilities, staff, and other support
23 services as they may determine advisable and as may
24 be authorized by law.

1 (f) GIFTS.—The Commission may accept, use, and
2 dispose of gifts or donations of services or property.

3 (g) POSTAL SERVICES.—The Commission may use
4 the United States mails in the same manner and under
5 the same conditions as departments and agencies of the
6 United States.

7 **SEC. 6. STAFF OF THE COMMISSION.**

8 (a) IN GENERAL.—

9 (1) APPOINTMENT AND COMPENSATION.—The
10 chairperson, in accordance with rules agreed upon
11 by the Commission, may appoint and fix the com-
12 pensation of a staff director and such other per-
13 sonnel as may be necessary to enable the Commis-
14 sion to carry out the functions of the Commission,
15 without regard to the provisions of title 5, United
16 States Code, governing appointments in the competi-
17 tive service, and without regard to the provisions of
18 chapter 51 and subchapter III of chapter 53 of such
19 title relating to classification and General Schedule
20 pay rates, except that no rate of pay fixed under this
21 subsection may exceed the equivalent of that payable
22 for a position at level V of the Executive Schedule
23 under section 5316 of title 5, United States Code.

24 (2) PERSONNEL AS FEDERAL EMPLOYEES.—

1 (A) IN GENERAL.—The executive director
2 and any personnel of the Commission who are
3 employees shall be employees under section
4 2105 of title 5, United States Code, for pur-
5 poses of chapters 63, 81, 83, 84, 85, 87, 89,
6 and 90 of that title.

7 (B) MEMBERS OF COMMISSION.—Subpara-
8 graph (A) shall not be construed to apply to
9 members of the Commission.

10 (b) CONSULTANT SERVICES.—The Commission is au-
11 thorized to procure the services of experts and consultants
12 in accordance with section 3109 of title 5, United States
13 Code, but at rates not to exceed the daily rate paid a per-
14 son occupying a position at level IV of the Executive
15 Schedule under section 5315 of title 5, United States
16 Code.

17 **SEC. 7. COMPENSATION AND TRAVEL EXPENSES.**

18 (a) COMPENSATION.—Each member of the Commis-
19 sion may be compensated at a rate not to exceed the daily
20 equivalent of the annual rate of basic pay in effect for
21 a position at level IV of the Executive Schedule under sec-
22 tion 5315 of title 5, United States Code, for each day dur-
23 ing which that member is engaged in the actual perform-
24 ance of the duties of the Commission.

1 (b) TRAVEL EXPENSES.—While away from their
2 homes or regular places of business in the performance
3 of services for the Commission, members of the Commis-
4 sion shall be allowed travel expenses, including per diem
5 in lieu of subsistence, in the same manner as persons em-
6 ployed intermittently in the Government service are al-
7 lowed expenses under section 5703(b) of title 5, United
8 States Code.

9 **SEC. 8. SECURITY CLEARANCES FOR COMMISSION MEM-**
10 **BERS AND STAFF.**

11 The appropriate executive departments and agencies
12 shall cooperate with the Commission in expeditiously pro-
13 viding to the Commission members and staff appropriate
14 security clearances in a manner consistent with existing
15 procedures and requirements, except that no person shall
16 be provided with access to classified information under
17 this section who would not otherwise qualify for such secu-
18 rity clearance.

19 **SEC. 9. REPORTS OF THE COMMISSION; TERMINATION.**

20 (a) INITIAL REPORT.—Not later than 6 months after
21 the date of the first meeting of the Commission, the Com-
22 mission shall submit to the President and Congress an ini-
23 tial report containing such findings, conclusions, and rec-
24 ommendations for corrective measures as have been
25 agreed to by a majority of Commission members.

1 (b) ADDITIONAL REPORTS.—Not later than 1 year
2 after the submission of the initial report of the Commis-
3 sion, the Commission shall submit to the President and
4 Congress a second report containing such findings, conclu-
5 sions, and recommendations for corrective measures as
6 have been agreed to by a majority of Commission mem-
7 bers.

8 (c) TERMINATION.—

9 (1) IN GENERAL.—The Commission, and all the
10 authorities of this Act, shall terminate 60 days after
11 the date on which the second report is submitted
12 under subsection (b).

13 (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-
14 MINATION.—The Commission may use the 60-day
15 period referred to in paragraph (1) for the purpose
16 of concluding the activities of the Commission, in-
17 cluding providing testimony to committees of Con-
18 gress concerning the reports of the Commission and
19 disseminating the second report.

20 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated to the Com-
22 mission such sums as may be necessary to carry out this
23 Act, to remain available until expended.

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