

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 392
Ways and Means

(Delegate Rosenberg)

Education, Health, and Environmental Affairs

Election Law – Foreign Manufacture of Election Systems – Notification and Termination of Contract

This bill requires that contracts with providers of election systems other than the voting system require a provider to report on (1) any manufacturing of components of the election system that occurs outside the United States or (2) any material change to a component in any stage of manufacturing, that occurs outside the United States at any time for the duration of the contract. The bill also authorizes the State Administrator of Elections to terminate a contract with an election service provider on a determination that a foreign national has the ability to control, influence, or direct the manufacturing of an election system. **The bill takes effect January 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures may increase in future years, by an indeterminate amount, as discussed below. Revenues are not affected.

Local Effect: Local government expenditures may increase in future years, by an indeterminate amount, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits the State Board of Elections (SBE) from approving a contract with an election service provider (any person providing, supporting, or maintaining an election system other than the voting system on behalf of SBE or a local board of elections) unless the contract includes a clause requiring the election service provider to report to the State Administrator of Elections if (1) any stage in the manufacturing of a hardware or software component of the election service provider's election system occurred outside the United States or (2) any material change to a component in any stage in the manufacturing of the election service provider's election system occurred outside the United States at any time for the duration of the contract. The report must include (1) the specific components of the election system that were manufactured outside the United States; (2) the foreign nation in which the components were manufactured; (3) a description of the manufacturing work performed outside the United States; and (4) the measures taken by the election service provider to ensure that the manufacturing process is secure.

"Election system" is defined as any information system, other than a voting system, used for the management, support, or administration of an election, including (1) the online voter registration system; (2) the voter registration database; (3) the online ballot request, delivery, or marking systems; (4) the electronic pollbooks; (5) the election management system; and (6) the system for tabulating or reporting election results.

Within five days after receiving a report from an election service provider, the State Administrator must forward a copy of the report to the appropriate persons (SBE, the Governor, the President of the Senate of Maryland, the Speaker of the House of Delegates, the Attorney General, and the Department of Information Technology).

The bill also authorizes the State Administrator to terminate, in whole or in part, a contract with an election service provider, on a determination by the State Administrator that a foreign national has the ability to control, influence, or direct the manufacturing of an election system in any manner that would compromise or influence, or give the appearance of compromising or influencing, the independence and integrity of an election. Within seven days after exercising that authority, the State Administrator must notify the appropriate persons (same persons as above), in writing, of the termination of the contract and the reasons for terminating the contract.

"Foreign national" includes (1) an individual who is a citizen of a foreign country and (2) an individual, a partnership, an association, a corporation, an organization, or any other combination of individuals organized under the laws of or having its principal place of business in a foreign country.

Current Law: Chapter 524 of 2018 requires an election service provider (any person providing, supporting, or maintaining an election system, including a voting system, on behalf of SBE or a local board of elections) to (1) notify the State Administrator of Elections if the election service provider knows that a security violation or specified attempted security violation has occurred involving an election system provided, supported, or maintained by the election service provider and (2) cooperate with the State Administrator in further reporting the violation or attempted violation to other officials.

Chapter 403 of 2019 establishes that SBE may not approve a contract with an election service provider (any person providing supporting, or maintaining an election system, including a voting system, on behalf of SBE) unless the contract includes a clause requiring the election service provider to provide SBE notice of:

- any ownership of or investment in the election service provider or control of the election service provider by a foreign national at the time of the award of the contract; and
- any material change in any ownership of or investment in the election service provider or control of the election service provider by a foreign national at any time for the duration of the contract.

If the State Administrator determines that the foreign national has the ability to control, influence, or direct the election service provider in any manner that would compromise or influence, or give the appearance of compromising or influencing, the independence and integrity of an election, the State Administrator may terminate, in whole or in part, the contract with the election service provider.

Background: The Securing America’s Federal Elections Act (SAFE Act), H.R. 2722, mentioned in the bill’s preamble, contains a provision similar to the bill’s provision requiring reporting by an election service provider of any manufacturing of components of an election system outside the United States. H.R. 2722 passed in the U.S. House of Representatives on June 27, 2019, but no action has been taken on the bill in the U.S. Senate.

State and Local Fiscal Effect: The bill’s requirement applicable to contracts with election service providers regarding reporting of manufacturing of components (or material changes to components in any stage of manufacturing) outside the United States, may increase the cost of those contracts, to the extent the requirement limits the number of vendors that choose to bid on a contract. Reduced competition for contracts has been shown to generally result in higher procurement costs, although the effect on a single contract is more difficult to predict. The extent to which costs would increase, if at all, cannot be reliably estimated.

To provide context, a couple of examples of costs associated with contracts for election systems other than the voting system are:

- Pollbooks – SBE is planning to procure and implement a new pollbook system for the 2022 and future elections, with \$30.0 million in local government expenditures (\$20.8 million) and State general funds (\$9.1 million) planned to be spent over the course of fiscal 2021 through 2024 for the procurement and implementation of the system, according to the Governor’s fiscal 2021 budget highlights publication.
- Data Center – A contract for a new data center was recently approved, to host various election systems, including the online voter registration system, the voter registration database, the online ballot delivery and marking system, and the election management system, at a cost of \$3.4 million for the base, two-year contract, and \$6.1 million for two, two-year renewal options, all paid for by local government expenditures.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): State Board of Elections; Department of Legislative Services

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