

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 743

(Senator Pinsky, *et al.*)

Education, Health, and Environmental Affairs

Ways and Means

Election Law - Election Service Providers - Contract Clauses and Termination of Contract

This bill prohibits the State Board of Elections (SBE) from approving a contract with an election service provider unless the contract includes a clause requiring the election service provider to provide specified notice of ownership of, investment in, or control of the election service provider by a foreign national. The bill also authorizes the State Administrator of Elections to terminate a contract with an election service provider on specified grounds regarding a foreign national's ability to control, influence, or direct the election service provider.

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: The bill does not directly affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits SBE from approving a contract with an election service provider unless the contract includes a clause requiring the election service provider to provide SBE notice of (1) 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 (2) 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.

The notice must include (1) the name and nationality of the foreign national that has ownership of or investment in, or control of, the election service provider and (2) the nature and extent of the ownership, investment, or control.

On a determination by the State Administrator of Elections 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. Within seven days after exercising the authority to terminate, in whole or in part, a contract with an election service provider, the State Administrator must notify, in writing, 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 of the termination of the contract and the reasons for the termination.

“Election service provider” means any person providing, supporting, or maintaining an election system on behalf of SBE.

“Election system” includes a voting system, an election management system, a voter registration website or database, an electronic pollbook, a system for tabulating or reporting election results, and any other information system that is determined to be central to the management, support, or administration of an election.

“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:

Contractor Disclosures to the Secretary of State

If, during a calendar year, a business enters into contracts, leases, or other agreements, with the State of a total of \$200,000 or more, the business must file with the Secretary of State a list that contains the name and address of (1) any resident agent of the business; (2) each officer of the business; and (3) if known, each person who has beneficial ownership of the business.

“Beneficial ownership” means (1) any ownership interest of 5% or more in a business; (2) any ownership interest of 5% or more in one or more entities in a chain of parent and subsidiary entities, any one of which participates in at least 5% of the capital or profits of a business; or (3) possession of an interest that exists under an agreement, contract,

relationship, understanding, or other arrangement and entitles a person to benefits substantially equivalent to an ownership interest of 5% or more of a business. Unless there are special circumstances, an individual is deemed to hold an ownership interest that is held by the individual's spouse, the individual's child, or other relative of the individual who lives in the individual's home.

"Termination for Convenience" Clause in Procurement Contracts

State procurement law and regulations require each procurement contract to include certain clauses, including a termination for convenience clause. State procurement regulations provide short form and long form preferred termination for convenience clauses. The short form statement indicates:

"The performance of work under this contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination."

Background: Increased attention has been paid to the security of the State's election systems as a result of cybersecurity threats to election systems that occurred in 2016. In addition, it was discovered in 2018 that a Russian investor had an ownership stake in the contractor that owned the servers for the State's voter registration, candidacy, election management, online ballot delivery, and election night results systems. No intrusions in the election systems were found, and in the midst of SBE preparing to migrate to another data center, the ownership structure of the contractor changed, with the direct contractor being sold to another company. The current contract is now being continued through the end of 2019.

For additional information on cybersecurity of the State's election systems, see [Issue Papers, 2019 Legislative Session](#), Department of Legislative Services, pgs. 211-214 ("Cybersecurity of Election Systems") (November 2018).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Board of Public Works; Department of General Services; Montgomery and Prince George's counties; Department of Legislative Services

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