

HOUSE BILL 392

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By: **Delegate Rosenberg**

Introduced and read first time: January 22, 2020

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Election Law – Security of Election Systems**

3 FOR the purpose of prohibiting the State Board of Elections from approving a contract with
4 an election service provider unless the contract includes a clause requiring the
5 election service provider to report to the State Administrator of Elections if any stage
6 in the manufacturing of a component of the provider's election system occurred
7 outside the United States; requiring the report to include certain information;
8 requiring the State Administrator to forward a copy of the report to certain persons
9 within a certain time period; altering the circumstances under which the State Board
10 is prohibited from certifying a voting system; requiring a voting system selected,
11 certified, and implemented by the State Board to consist of certain hardware, to use
12 certain technology, and to operate using certain software; authorizing certain
13 persons to share with independent experts for cybersecurity analysis a certain
14 hardware component manifest and certain software source code, system build tools,
15 and compilation parameters; requiring the State Board to decertify a previously
16 certified voting system if the voting system has not been certified by the U.S. Election
17 Assistance Commission as compliant with certain voting system guidelines within a
18 certain period of time; providing that a voting system that has not been certified by
19 the U.S. Election Assistance Commission as compliant with certain voting system
20 guidelines within a certain period of time is unconditionally decertified on a certain
21 date; providing that a voting system that was certified by the State Board before the
22 effective date of this Act may be submitted for recertification in accordance with the
23 requirements of this Act before a certain date; requiring that a voting system that
24 was certified by the State Board before the effective date of this Act be decertified on
25 a certain date if the voting system has not been recertified by the State Board in
26 accordance with the requirements of this Act before that date; defining certain terms;
27 providing for a delayed effective date; and generally relating to the security of
28 election systems.

29 BY adding to

30 Article – Election Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 2–110
2 Annotated Code of Maryland
3 (2017 Replacement Volume and 2019 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Election Law
6 Section 9–102 and 9–103
7 Annotated Code of Maryland
8 (2017 Replacement Volume and 2019 Supplement)

9 Preamble

10 WHEREAS, On June 27, 2019, the U.S. House of Representatives passed H.R. 2722,
11 the “Securing America’s Federal Elections Act” or the “SAFE Act”; and

12 WHEREAS, The SAFE Act would mandate numerous improvements in election
13 security; and

14 WHEREAS, The SAFE Act would require election service providers to disclose
15 whether any component of an election system was manufactured outside the United States;
16 and

17 WHEREAS, The SAFE Act would require voting systems to be decertified if they do
18 not comply with the most recent Voluntary Voting System Guidelines issued under the
19 Help America Vote Act; and

20 WHEREAS, The SAFE Act would require voting systems to be manufactured in the
21 United States; and

22 WHEREAS, The SAFE Act requires voting systems to consist of hardware that
23 conforms to a hardware component manifest describing the supply chain for each hardware
24 component that has been provided to government officials who may share it with
25 independent experts for cybersecurity analysis; and

26 WHEREAS, The SAFE Act requires voting systems to use technology that prevents
27 the operation of the voting system if any hardware component does not conform to a
28 hardware component manifest describing the supply chain for each hardware component
29 that has been provided to government officials who may share it with independent experts
30 for cybersecurity analysis; and

31 WHEREAS, The SAFE Act requires voting systems to operate using software for
32 which the source code, system build tools, and compilation parameters have been provided
33 to government officials who may share it with independent experts for cybersecurity
34 analysis; and

35 WHEREAS, The SAFE Act requires voting systems to use technology that prevents
36 the running of software on the voting system for which the source code, system build tools,

1 and compilation parameters have not been provided to government officials who may share
2 it with independent experts for cybersecurity analysis; and

3 WHEREAS, The SAFE Act requires voting systems to use technology that enables
4 election officials, cybersecurity researchers, and voters to verify that the software running
5 on the voting system was built from a specific, untampered-with version of the source code
6 that was provided to government officials and uses the system build tools and compilation
7 parameters that were provided to government officials; now, therefore,

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
9 That the Laws of Maryland read as follows:

10 **Article – Election Law**

11 **2–110.**

12 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
13 INDICATED.

14 (2) “APPROPRIATE PERSONS” MEANS:

15 (I) THE STATE BOARD;

16 (II) THE GOVERNOR;

17 (III) THE PRESIDENT OF THE SENATE OF MARYLAND;

18 (IV) THE SPEAKER OF THE HOUSE OF DELEGATES;

19 (V) THE ATTORNEY GENERAL; AND

20 (VI) THE DEPARTMENT OF INFORMATION TECHNOLOGY.

21 (3) “COMPONENT” INCLUDES ANY HARDWARE OR SOFTWARE
22 COMPONENT.

23 (4) “CONTRACT” MEANS AN AGREEMENT IN ANY FORM ENTERED
24 INTO BY A GOVERNMENTAL ENTITY FOR A PROCUREMENT AS DEFINED IN § 11–101
25 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

26 (5) “ELECTION SERVICE PROVIDER” MEANS ANY PERSON
27 PROVIDING, SUPPORTING, OR MAINTAINING AN ELECTION SYSTEM ON BEHALF OF
28 THE STATE BOARD OR A LOCAL BOARD, INCLUDING A CONTRACTOR OR VENDOR.

1 **(6) “ELECTION SYSTEM” MEANS ANY INFORMATION SYSTEM, OTHER**
2 **THAN A VOTING SYSTEM, USED FOR THE MANAGEMENT, SUPPORT, OR**
3 **ADMINISTRATION OF AN ELECTION, INCLUDING:**

4 **(I) THE ONLINE VOTER REGISTRATION SYSTEM;**

5 **(II) THE VOTER REGISTRATION DATABASE;**

6 **(III) THE ONLINE BALLOT REQUEST, DELIVERY, OR MARKING**
7 **SYSTEMS;**

8 **(IV) THE ELECTRONIC POLLBOOKS;**

9 **(V) THE ELECTION MANAGEMENT SYSTEM; AND**

10 **(VI) THE SYSTEM FOR TABULATING OR REPORTING ELECTION**
11 **RESULTS.**

12 **(B) THE STATE BOARD MAY NOT APPROVE A CONTRACT WITH AN ELECTION**
13 **SERVICE PROVIDER UNLESS THE CONTRACT INCLUDES A CLAUSE REQUIRING THE**
14 **ELECTION SERVICE PROVIDER TO REPORT TO THE STATE ADMINISTRATOR IF ANY**
15 **STAGE IN THE MANUFACTURING OF A COMPONENT OF THE ELECTION SERVICE**
16 **PROVIDER’S ELECTION SYSTEM OCCURRED OUTSIDE THE UNITED STATES.**

17 **(C) THE REPORT REQUIRED UNDER SUBSECTION (B) OF THIS SECTION**
18 **SHALL INCLUDE:**

19 **(1) THE SPECIFIC COMPONENTS OF THE ELECTION SYSTEM THAT**
20 **WERE MANUFACTURED OUTSIDE THE UNITED STATES;**

21 **(2) THE FOREIGN NATION IN WHICH THE COMPONENTS WERE**
22 **MANUFACTURED;**

23 **(3) A DESCRIPTION OF THE MANUFACTURING WORK PERFORMED**
24 **OUTSIDE THE UNITED STATES; AND**

25 **(4) THE MEASURES TAKEN BY THE ELECTION SERVICE PROVIDER TO**
26 **ENSURE THAT THE MANUFACTURING PROCESS IS SECURE.**

27 **(D) WITHIN 5 DAYS AFTER RECEIVING A REPORT UNDER SUBSECTION (B) OF**
28 **THIS SECTION, THE STATE ADMINISTRATOR SHALL FORWARD A COPY OF THE**
29 **REPORT TO THE APPROPRIATE PERSONS.**

1 9–102.

2 (a) In this section, a “voter–verifiable paper record” includes:

3 (1) a paper ballot prepared by the voter for the purpose of being read by a
4 precinct–based optical scanner;

5 (2) a paper ballot prepared by the voter to be mailed to the applicable local
6 board, whether mailed from a domestic or an overseas location; and

7 (3) a paper ballot created through the use of a ballot marking device.

8 (b) The State Board shall adopt regulations for the review, certification, and
9 decertification of voting systems.

10 (c) The State Board shall periodically review and evaluate alternative voting
11 systems.

12 (d) The State Board may not certify a voting system unless the State Board
13 determines that:

14 (1) the voting system will:

15 (i) protect the secrecy of the ballot;

16 (ii) protect the security of the voting process;

17 (iii) count and record all votes accurately;

18 (iv) accommodate any ballot used under this article;

19 (v) protect all other rights of voters and candidates;

20 (vi) be capable of creating a paper record of all votes cast in order
21 that an audit trail is available in the event of a recount, including a manual recount; and

22 (vii) provide a voter–verifiable paper record that:

23 1. is an individual document that is physically separated
24 from any other similar document and not part of a continuous roll;

25 2. is sufficiently durable to withstand repeated handling for
26 the purposes of mandatory random audits and recounts; and

27 3. uses ink that does not fade, smear, or otherwise degrade
28 and obscure or obliterate the paper record over time;

1 (2) the voting system has been:

2 (i) examined by an independent testing laboratory that is approved
3 by the U.S. Election Assistance Commission; [and]

4 (ii) [shown by the testing laboratory to meet the performance and
5 test standards for electronic voting systems established by the Federal Election
6 Commission or the U.S. Election Assistance Commission] **CERTIFIED BY THE U.S.**
7 **ELECTION ASSISTANCE COMMISSION AS COMPLIANT WITH THE MOST RECENT**
8 **VOLUNTARY VOTING SYSTEM GUIDELINES ISSUED UNDER THE FEDERAL HELP**
9 **AMERICA VOTE ACT;** and

10 (iii) **MANUFACTURED IN THE UNITED STATES; AND**

11 (3) the public interest will be served by the certification of the voting
12 system.

13 (e) In determining whether a voting system meets the required standards, the
14 State Board shall consider:

15 (1) the commercial availability of the system and its replacement parts and
16 components;

17 (2) the availability of continuing service for the system;

18 (3) the cost of implementing the system;

19 (4) the efficiency of the system;

20 (5) the likelihood that the system will malfunction;

21 (6) the system's ease of understanding for the voter;

22 (7) the convenience of voting afforded by the system;

23 (8) the timeliness of the tabulation and reporting of election returns;

24 (9) the potential for an alternative means of verifying the tabulation;

25 (10) accessibility for all voters with disabilities recognized by the Americans
26 with Disabilities Act; and

27 (11) any other factor that the State Board considers relevant.

28 (f) A voting system selected, certified, and implemented under this section shall:

1 (1) provide access to voters with disabilities that is equivalent to access
2 afforded voters without disabilities without creating a segregated ballot for voters with
3 disabilities;

4 (2) ensure the independent, private casting, inspection, verification, and
5 correction of secret ballots by voters with disabilities in an accessible media by both visual
6 and nonvisual means, including synchronized audio output and enhanced visual display;
7 and

8 (3) comply with both the Americans with Disabilities Act, P.L. 101–336,
9 and the Help America Vote Act, P.L. 107–252, including accessibility standards adopted as
10 part of the Voluntary Voting System Guidelines pursuant to the Help America Vote Act.

11 (g) (1) At least one voting system in each polling place on election day shall
12 provide access for voters with disabilities in compliance with subsection (f) of this section.

13 (2) The State Board shall ensure that adequate backup equipment is
14 available and contingency plans are established to ensure compliance with paragraph (1)
15 of this subsection.

16 (h) Before the selection of a voting system, the State Board shall:

17 (1) ensure that an accessible voting system conforms to the access
18 requirements of the Voluntary Voting System Guidelines developed in accordance with the
19 Help America Vote Act in effect at the time of selection; and

20 (2) conduct an accessibility and usability evaluation of the voting system
21 to assess its accessibility and usability by voters with disabilities, including:

22 (i) a public demonstration of the system; and

23 (ii) an evaluation by individuals representing a cross-section of
24 voters with disabilities.

25 **(I) (1) IN THIS SUBSECTION, “APPROPRIATE PERSONS” MEANS:**

26 **(I) THE STATE BOARD;**

27 **(II) THE GOVERNOR;**

28 **(III) THE PRESIDENT OF THE SENATE OF MARYLAND;**

29 **(IV) THE SPEAKER OF THE HOUSE OF DELEGATES;**

30 **(V) THE ATTORNEY GENERAL; AND**

1 (VI) THE DEPARTMENT OF INFORMATION TECHNOLOGY.

2 (2) A VOTING SYSTEM SELECTED, CERTIFIED, AND IMPLEMENTED
3 UNDER THIS SECTION SHALL:

4 (I) CONSIST OF HARDWARE THAT DEMONSTRABLY CONFORMS
5 TO A HARDWARE COMPONENT MANIFEST DESCRIBING THE SUPPLY CHAIN FOR EACH
6 HARDWARE COMPONENT THAT HAS BEEN PROVIDED TO THE APPROPRIATE
7 PERSONS;

8 (II) USE TECHNOLOGY THAT PREVENTS THE OPERATION OF THE
9 VOTING SYSTEM IF ANY HARDWARE COMPONENTS DO NOT MEET THE
10 REQUIREMENTS OF ITEM (I) OF THIS PARAGRAPH;

11 (III) OPERATE USING SOFTWARE FOR WHICH THE SOURCE CODE,
12 SYSTEM BUILD TOOLS, AND COMPILATION PARAMETERS HAVE BEEN PROVIDED TO
13 THE APPROPRIATE PERSONS;

14 (IV) USE TECHNOLOGY THAT PREVENTS THE RUNNING OF
15 SOFTWARE ON THE VOTING SYSTEM THAT DOES NOT MEET THE REQUIREMENTS OF
16 ITEM (III) OF THIS PARAGRAPH; AND

17 (V) USE TECHNOLOGY THAT ENABLES ELECTION OFFICIALS,
18 CYBERSECURITY RESEARCHERS, AND VOTERS TO VERIFY THAT THE SOFTWARE
19 RUNNING ON THE VOTING SYSTEM:

20 1. WAS BUILT FROM A SPECIFIC, UNTAMPERED-WITH
21 VERSION OF THE SOURCE CODE THAT IS DESCRIBED IN ITEM (III) OF THIS
22 PARAGRAPH; AND

23 2. USES THE SYSTEM BUILD TOOLS AND COMPILATION
24 PARAMETERS THAT ARE DESCRIBED IN ITEM (III) OF THIS PARAGRAPH.

25 (3) AN APPROPRIATE PERSON MAY SHARE WITH INDEPENDENT
26 EXPERTS FOR CYBERSECURITY ANALYSIS:

27 (I) THE HARDWARE COMPONENT MANIFEST THAT WAS
28 PROVIDED TO THE APPROPRIATE PERSON UNDER PARAGRAPH (2)(I) OF THIS
29 SUBSECTION; AND

30 (II) THE SOFTWARE SOURCE CODE, SYSTEM BUILD TOOLS, AND
31 COMPILATION PARAMETERS THAT WERE PROVIDED TO THE APPROPRIATE PERSON
32 UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION.

1 **[(i)] (J)** (1) The State Board shall adopt regulations relating to requirements
2 for each voting system selected and certified under § 9–101 of this subtitle.

3 (2) The regulations shall specify the procedures necessary to assure that
4 the standards of this title are maintained, including:

5 (i) a description of the voting system;

6 (ii) a public information program by the local board, at the time of
7 introduction of a new voting system, to be directed to all voters, candidates, campaign
8 groups, schools, and news media in the county;

9 (iii) local election officials' responsibility for management of the
10 system;

11 (iv) the actions required to assure the security of the voting system;

12 (v) the supplies and equipment required;

13 (vi) the storage, delivery, and return of the supplies and equipment
14 necessary for the operation of the voting system;

15 (vii) standards for training election officials in the operation and use
16 of the voting system;

17 (viii) before each election and for all ballot styles to be used, testing by
18 the members of the local board to ensure the accuracy of tallying, tabulation, and reporting
19 of the vote, and observing of that testing by representatives of political parties and of
20 candidates who are not affiliated with political parties;

21 (ix) the number of voting stations or voting booths required in each
22 polling place, in relation to the number of registered voters assigned to the polling place;

23 (x) the practices and procedures in each polling place appropriate to
24 the operation of the voting system;

25 (xi) assuring ballot accountability in systems using a document
26 ballot;

27 (xii) the actions required to tabulate votes; and

28 (xiii) postelection review and audit of the system's output.

29 (3) Certification of a voting system is not effective until the regulations
30 applicable to the voting system have been adopted.

1 9–103.

2 (a) The State Board:

3 (1) may decertify a voting system previously certified if the State Board
4 determines that the system no longer merits certification; and

5 (2) shall decertify a previously certified voting system if:

6 (I) the voting system no longer meets one or more of the standards
7 in § 9–102(d)(1)(i) through (iii) of this subtitle; **OR**

8 (II) **THE VOTING SYSTEM HAS NOT BEEN CERTIFIED BY THE U.S.**
9 **ELECTION ASSISTANCE COMMISSION AS COMPLIANT WITH THE MOST RECENT**
10 **VOLUNTARY VOTING SYSTEM GUIDELINES ISSUED UNDER THE FEDERAL HELP**
11 **AMERICA VOTE ACT WITHIN 2 YEARS AFTER THE ADOPTION OF THE GUIDELINES.**

12 (b) (1) **[The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
13 **SUBSECTION, THE State Board shall determine the effective date and conditions of the**
14 **decertification.**

15 (2) **A VOTING SYSTEM THAT HAS NOT BEEN CERTIFIED BY THE U.S.**
16 **ELECTION ASSISTANCE COMMISSION AS COMPLIANT WITH THE MOST RECENT**
17 **VOLUNTARY VOTING SYSTEM GUIDELINES ISSUED UNDER THE FEDERAL HELP**
18 **AMERICA VOTE ACT WITHIN 2 YEARS AFTER THE ADOPTION OF THE GUIDELINES IS**
19 **UNCONDITIONALLY DECERTIFIED ON THE DATE THAT IS 2 YEARS AFTER THE DATE**
20 **ON WHICH THE GUIDELINES WERE ADOPTED.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That a voting system that was
22 certified by the State Board of Elections before the effective date of this Act:

23 (1) may be submitted for recertification by the State Board in accordance
24 with § 9–102 of the Election Law Article, as enacted by Section 1 of this Act, before January
25 1, 2023; and

26 (2) is unconditionally decertified on January 1, 2023, if the voting system
27 has not been recertified by the State Board in accordance with § 9–102 of the Election Law
28 Article, as enacted by Section 1 of this Act, before January 1, 2023.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 January 1, 2021.