

117TH CONGRESS
1ST SESSION

S. 2269

To secure the bulk-power system in the United States.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Mr. SCOTT of Florida (for himself, Mr. RUBIO, Mr. MARSHALL, and Mr. COTTON) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To secure the bulk-power system in the United States.

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 “Protect American
5 Power Infrastructure Act”.

6 **SEC. 2. SECURING THE BULK-POWER SYSTEM.**

7 (a) DEFINITIONS.—In this section:

8 (1) BULK-POWER SYSTEM.—

9 (A) IN GENERAL.—The term “bulk-power
10 system” has the meaning given the term in sec-

1 tion 215(a) of the Federal Power Act (16
2 U.S.C. 824o(a)).

3 (B) INCLUSION.—The term “bulk-power
4 system” includes transmission lines rated at
5 69,000 volts (69 kV) or higher.

6 (2) COVERED EQUIPMENT.—The term “covered
7 equipment” means items used in bulk-power system
8 substations, control rooms, or power generating sta-
9 tions, including—

10 (A)(i) power transformers with a low-side
11 voltage rating of 69,000 volts (69 kV) or high-
12 er; and

13 (ii) associated control and protection sys-
14 tems, such as load tap changers, cooling sys-
15 tems, and sudden pressure relays;

16 (B)(i) generator step-up (GSU) trans-
17 formers with a high-side voltage rating of
18 69,000 volts (69 kV) or higher; and

19 (ii) associated control and protection sys-
20 tems, such as load tap changers, cooling sys-
21 tems, and sudden pressure relays;

22 (C) circuit breakers operating at 69,000
23 volts (69 kV) or higher;

24 (D) reactive power equipment rated at
25 69,000 volts (69 kV) or higher; and

1 (E) microprocessing software and firmware
2 that—

3 (i) is installed in any equipment de-
4 scribed in subparagraphs (A) through (D);

5 or

6 (ii) is used in the operation of any of
7 the items described in those subpara-
8 graphs.

9 (3) CRITICAL DEFENSE FACILITY.—

10 (A) IN GENERAL.—The term “critical de-
11 fense facility” means a facility that—

12 (i) is critical to the defense of the
13 United States; and

14 (ii) is vulnerable to a disruption of the
15 supply of electric energy provided to that
16 facility by an external provider.

17 (B) INCLUSION.—The term “critical de-
18 fense facility” includes a facility designated as
19 a critical defense facility by the Secretary of
20 Energy under section 215A(c) of the Federal
21 Power Act (16 U.S.C. 824o–1(c)).

22 (4) CRITICAL ELECTRIC INFRASTRUCTURE.—
23 The term “critical electric infrastructure” has the
24 meaning given the term in section 215A(a) of the
25 Federal Power Act (16 U.S.C. 824o–1(a)).

1 (5) DEFENSE CRITICAL ELECTRIC INFRASTRUC-
 2 TURE.—The term “defense critical electric infra-
 3 structure” has the meaning given the term in section
 4 215A(a) of the Federal Power Act (16 U.S.C. 824o-
 5 1(a)).

6 (6) ENTITY.—The term “entity” means a part-
 7 nership, association, trust, joint venture, corpora-
 8 tion, group, subgroup, or other organization.

9 (7) FOREIGN ADVERSARY.—The term “foreign
 10 adversary” means any foreign government or foreign
 11 nongovernment person engaged in a long-term pat-
 12 tern or serious instances of conduct significantly ad-
 13 verse to—

14 (A) the national security of—

15 (i) the United States; or

16 (ii) allies of the United States; or

17 (B) the security and safety of United
 18 States persons.

19 (8) PERSON.—The term “person” means an in-
 20 dividual or entity.

21 (9) PROCUREMENT.—The term “procurement”
 22 means the process of acquiring, through purchase,
 23 by contract and through the use of appropriated
 24 funds, supplies or services, including installation

1 services, by and for the use of the Federal Govern-
2 ment.

3 (10) TRANSACTION.—The term “transaction”
4 means the acquisition, importation, transfer, or in-
5 stallation of any bulk-power system electric equip-
6 ment by any person, or with respect to any property,
7 subject to the jurisdiction of the United States.

8 (11) UNITED STATES PERSON.—The term
9 “United States person” means—

10 (A) an individual who is—

11 (i) a citizen of the United States; or

12 (ii) an alien lawfully admitted for per-
13 manent residence in the United States;

14 (B) an entity organized under the laws of
15 the United States or any jurisdiction within the
16 United States, including a foreign branch of
17 such an entity; and

18 (C) any person in the United States.

19 (b) PROHIBITION.—

20 (1) IN GENERAL.—Except as otherwise pro-
21 vided in this subsection, no person that is the owner
22 or operator of defense critical electric infrastructure
23 may engage in any transaction relating to that de-
24 fense critical electric infrastructure that involves any
25 covered equipment in which a foreign adversary has

1 an ownership or any other interest, including
2 through an interest in a contract for the provision
3 of the covered equipment, over which a foreign ad-
4 versary has control, or with respect to which a for-
5 eign adversary exercises influence, including any
6 transaction that—

7 (A) is initiated after the date of enactment
8 of this Act; and

9 (B) the Secretary of Energy, in coordina-
10 tion with the Director of the Office of Manage-
11 ment and Budget and in consultation with the
12 Secretary of Defense, the Secretary of Home-
13 land Security, the Director of National Intel-
14 ligence, and the heads of other appropriate
15 Federal agencies, as determined by the Sec-
16 retary of Energy, determines—

17 (i) involves covered equipment de-
18 signed, developed, manufactured, or sup-
19 plied by persons owned by, controlled by,
20 or subject to the jurisdiction or direction of
21 a foreign adversary; and

22 (ii) poses an undue risk of cata-
23 strophic effects on the security or resil-
24 iency of defense critical electric infrastruc-
25 ture in the United States.

1 (2) MITIGATION MEASURES.—

2 (A) IN GENERAL.—The Secretary of En-
3 ergy, in consultation with the heads of other
4 Federal agencies, as appropriate, may—

5 (i) in accordance with subparagraph
6 (B), approve a transaction or class of
7 transactions prohibited under paragraph
8 (1); and

9 (ii) design or negotiate measures to
10 mitigate any concerns identified in making
11 determinations under paragraph (1)(B)
12 with respect to that transaction or class of
13 transactions.

14 (B) PRECONDITION TO APPROVAL OF OTH-
15 ERWISE PROHIBITED TRANSACTION.—The Sec-
16 retary of Energy shall implement the measures
17 described in subparagraph (A)(ii) before ap-
18 proving a transaction or class of transactions
19 that would otherwise be prohibited under para-
20 graph (1).

21 (3) APPLICATION.—

22 (A) IN GENERAL.—The prohibition de-
23 scribed in paragraph (1) shall apply to a trans-
24 action described in that paragraph regardless of
25 whether—

1 (i) a contract has been entered into
 2 with respect to that transaction before the
 3 date of enactment of this Act; or

4 (ii) a license or permit has been
 5 issued or granted with respect to that
 6 transaction before the date of enactment of
 7 this Act.

8 (B) CONTRARY LAW.—The prohibition de-
 9 scribed in paragraph (1) shall apply to each
 10 transaction described in that paragraph only to
 11 the extent not otherwise provided by—

12 (i) another statute; or

13 (ii) a regulation, order, directive, or li-
 14 cense issued pursuant to this section.

15 (4) PREQUALIFICATION.—

16 (A) IN GENERAL.—The Secretary of En-
 17 ergy, in consultation with the heads of other
 18 Federal agencies, as appropriate, may—

19 (i) establish and publish criteria for
 20 recognizing particular covered equipment
 21 and particular vendors in the market for
 22 covered equipment as prequalified for fu-
 23 ture transactions; and

1 (ii) apply those criteria to establish
 2 and publish, and update, as necessary, a
 3 list of prequalified equipment and vendors.

4 (B) SAVINGS PROVISION.—Nothing in this
 5 paragraph limits the authority of the Secretary
 6 of Energy under this subsection to prohibit or
 7 otherwise regulate any transaction involving
 8 prequalified equipment or vendors.

9 (c) IMPLEMENTATION.—

10 (1) IMPLEMENTATION BY THE SECRETARY OF
 11 ENERGY.—The Secretary of Energy shall take such
 12 actions as the Secretary determines to be necessary
 13 to implement this section, including—

14 (A) directing the timing and manner of the
 15 cessation of pending and future transactions
 16 prohibited under subsection (b)(1);

17 (B) adopting appropriate rules and regula-
 18 tions; and

19 (C) exercising any applicable power grant-
 20 ed to the President by the International Emer-
 21 gency Economic Powers Act (50 U.S.C. 1701 et
 22 seq.) and delegated to the Secretary.

23 (2) REQUIRED RULEMAKING.—

24 (A) IN GENERAL.—Not later than 150
 25 days after the date of enactment of this Act,

1 the Secretary of Energy, in consultation with
2 the Secretary of Defense, the Secretary of
3 Homeland Security, the Director of National
4 Intelligence, and the heads of other appropriate
5 Federal agencies, as determined by the Sec-
6 retary of Energy, shall issue rules or regula-
7 tions to implement this section.

8 (B) AUTHORITY.—A rule or regulation
9 issued under subparagraph (A) may—

10 (i) determine that particular countries
11 or persons are foreign adversaries exclu-
12 sively for the purposes of this section;

13 (ii) identify persons owned by, con-
14 trolled by, or subject to the jurisdiction or
15 direction of, foreign adversaries exclusively
16 for the purposes of this section;

17 (iii) identify particular equipment or
18 countries with respect to which trans-
19 actions involving covered equipment war-
20 rant particular scrutiny under this section;
21 and

22 (iv) identify a mechanism and relevant
23 factors for the negotiation of agreements
24 to mitigate concerns identified in making
25 determinations under subsection (b)(1)(B).

1 (3) IDENTIFICATION OF CERTAIN EQUIP-
2 MENT.—As soon as practicable after the date of en-
3 actment of this Act, the Secretary of Energy, in con-
4 sultation with the Secretary of Defense, the Sec-
5 retary of the Interior, the Secretary of Homeland
6 Security, the Director of National Intelligence, the
7 Board of Directors of the Tennessee Valley Author-
8 ity, and the heads of other appropriate Federal
9 agencies, as determined by the Secretary of Energy,
10 shall—

11 (A) identify existing covered equipment
12 that—

13 (i) is designed, developed, manufac-
14 tured, or supplied by persons owned by,
15 controlled by, or subject to the jurisdiction
16 or direction of a foreign adversary; and

17 (ii) poses an undue risk of cata-
18 strophic effects on the security or resil-
19 iency of critical electric infrastructure in
20 the United States; and

21 (B) develop recommendations on ways to
22 identify, isolate, monitor, or replace any covered
23 equipment identified under subparagraph (A)
24 as soon as practicable.

1 (4) COORDINATION AND INFORMATION SHAR-
2 ING.—The Secretary of Energy shall work with the
3 Secretary of Defense, the Secretary of the Interior,
4 the Secretary of Homeland Security, the Director of
5 National Intelligence, the Board of Directors of the
6 Tennessee Valley Authority, and the heads of other
7 appropriate Federal agencies, as determined by the
8 Secretary of Energy, to protect critical defense fa-
9 cilities from national security threats through—

10 (A) the coordination of the procurement of
11 energy infrastructure by the Federal Govern-
12 ment; and

13 (B) the sharing of risk information and
14 risk management practices to inform that pro-
15 curement.

16 (5) REQUIREMENT.—This section shall be im-
17 plemented—

18 (A) in a manner that is consistent with all
19 other applicable laws; and

20 (B) subject to the availability of appropria-
21 tions.

22 (d) REPORTS TO CONGRESS.—The Secretary of En-
23 ergy shall submit to Congress periodic reports describing

- 1 any progress made in implementing, or otherwise relating
- 2 to the implementation of, this section.

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