

ONE HUNDRED FIFTH LEGISLATURE

FIRST SESSION

LEGISLATIVE RESOLUTION 71

Introduced by Murante, 49.

Read first time March 15, 2017

Committee: Government, Military and Veterans Affairs

WHEREAS, Nebraska is a state of the United States, enjoying joint sovereignty with the federal government; and

WHEREAS, the Constitution of the United States recognizes the authority of the legislatures of each state to regulate the times, places, and manner of holding federal elections; and

WHEREAS, the election infrastructure of the United States is utilized to conduct federal, state, and local elections alike; and

WHEREAS, on January 6, 2017, United States Secretary of Homeland Security Jeh Johnson announced that he had designated election infrastructure as a subsector of the existing government facilities critical infrastructure sector; and

WHEREAS, Secretary Johnson's scope of the designation of elections as critical infrastructure includes physical elements, such as "storage facilities, polling places, and centralized vote tabulations locations," to which cybersecurity issues do not apply, "voter registration databases," of which redundant copies are separately stored, and "other systems to manage the election process and report and display results," which are not critical to the determination of official certified election results; and

WHEREAS, section 1016(e) of the USA Patriot Act of 2001, 42 U.S.C. 5195c(e), named the Critical Infrastructure Protection Act, defines critical infrastructure as, "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic

security, national public health or safety, or any combination of those matters"; and

WHEREAS, the election infrastructure in the United States is highly decentralized and constitutionally under the purview and control of the states; and

WHEREAS, the opposition to designating elections as critical infrastructure is bipartisan, as evidenced by a September 28, 2016, letter signed by Paul Ryan, Speaker of the United States House of Representatives, Nancy Pelosi, Democratic Leader of the United States House of Representatives, Mitch McConnell, Majority Leader of the United States Senate, and Harry Reid, Democratic Leader of the United States Senate, stating, "we would oppose any effort by the federal government to exercise any degree of control over the states' administration of elections by designating these systems as critical infrastructure"; and

WHEREAS, several states have discovered attempted intrusions by the United States Department of Homeland Security under former Secretary Johnson, which need to be thoroughly investigated by the Department of Homeland Security's Office of Inspector General, including such attempted intrusions to the designation process; and

WHEREAS, on February 7, 2017, current United States Homeland Security Secretary John Kelly indicated during testimony before the United States House of Representatives' Homeland Security Committee that he intends to uphold the former secretary's designation of elections as critical infrastructure; and

WHEREAS, on March 6, 2017, at the direction of Secretary John Kelly, Mr. David Hess, Senior Official Performing the Duties of the Under Secretary, reiterated this position in a letter to the Honorable Denise Merrill, Secretary of State of Connecticut; and

WHEREAS, the designation of this state's election systems as critical infrastructure is a violation of Nebraska's sovereignty and limits its options for performing its duties under the Constitution of the United States; and

WHEREAS, by allowing federal involvement in elections, this designation

could have a negative effect on the public's confidence in election systems.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIFTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature of the State of Nebraska urges United States Secretary of Homeland Security John Kelly to remove the designation of state election systems as critical infrastructure.

2. That the Legislature of the State of Nebraska urges the Honorable Donald Trump, President of the United States, the Honorable Mike Pence, Vice President of the United States, the United States Congress, the Honorable Deb Fischer, United States Senator for Nebraska, the Honorable Ben Sasse, United States Senator for Nebraska, the Honorable Jeff Fortenberry, Congressman for Nebraska, the Honorable Don Bacon, Congressman for Nebraska, and the Honorable Adrian Smith, Congressman for Nebraska, to call upon Secretary Kelly to remove the designation of state election systems as critical infrastructure.