

ELECTION WORKER PROTECTION ACT OF 2023

On May 9, 2023, U.S. Senate Rules Committee Chair Amy Klobuchar (D-Minn.) and U.S. Senate Judiciary Committee Chair Dick Durbin (D-Ill.) introduced the [Election Worker Protection Act of 2023](#) which aims to strengthen federal protections for election workers. This legislation would provide new resources to promote election worker recruitment and training, and strengthen federal laws related to the harassment, intimidation and doxing of election workers. The bill was originally introduced by Sens. Klobuchar and Durbin during the 117th Congress in 2022.

In the United States, the nation's 3,069 counties traditionally administer and fund elections at the local level, including overseeing polling places and coordinating poll workers for federal, state and local elections. County election officials work diligently with federal, state and other local election officials to ensure the safety and security of our voting systems and strive to administer elections in a way that is accurate, safe, secure and accessible for all voters.

Incidents of targeted threats and harassment towards election workers for performing their constitutionally upheld duties have unfortunately increased in occurrence and intensity over the past few years. These baseless incidents are partially due to the rise and continuous spread of mis- and dis-information related to the administration of elections and threatens the integrity of our electoral system. Counties urge Congress to enact legislation that will impose appropriate penalties for harassing or intimidating, threatening or causing harm to, attempting to pressure, or disseminating personal information of election officials, election workers or their family members. NACo applauds Sens. Klobuchar and Durbin for leading this charge in Congress and endorses this bill.

This analysis provides an overview of key provisions included in the *Election Worker Protection Act of 2023* and how it may impact county governments.

KEY HIGHLIGHTS

- Authorizes the U.S. Election Assistance Commission (EAC) to make grant funds available to states for the recruitment and training of poll workers and election volunteers
- Authorizes the EAC to make grant funds available to states for physical security services and social media threat monitoring for election workers
- Authorizes the EAC to make grant funds available to states and local governments to create or expand programs designed to protect the personally identifiable information (PII) of election workers.
- Makes the harassment and doxing of election workers as well as the intimidation of tabulation, canvas and certification efforts a federal crime
- Permits state or local election officials to remove poll observers from a polling location or location where votes are processed, scanned, tabulated or canvassed for a federal election if the observer has engaged in intimidation, deceptive practices or disrupted the vote counting process

- Ensures that the Department of Justice offers training and resources to assist federal, state, local and tribal law enforcement agencies in understanding, detecting, deterring and investigating threats to election workers.

OVERVIEW OF PROVISIONS

1. GRANTS FOR THE RECRUITMENT AND TRAINING OF ELECTION WORKERS

The *Election Worker Protection Act of 2023* authorizes funding to be appropriated to the U.S. Election Assistance Commission (EAC) for grant to states, and in some instances local governments, for the recruitment and training of individuals to serve as poll workers and election volunteers on election days. Grant recipients must consult EAC materials on best practices on recruitment, training and retention of poll workers and election volunteers.

To receive funds, states must submit an application to the EAC describing the recruitment and training activities it plans to carry out and assure the EAC that these funds would be used to supplement funds already dedicated to these programs. Each state must also assure the EAC that it will provide details related to the successful use of these funds, including the number of poll workers and election volunteers after recruitment and training. Assurances must also be made by each state that recruitment efforts will be dedicated to youth, minors, college-aged individuals and diversity in regard to race, ethnicity and disability. To determine the amount of a grant made to each state, the bill provides the following formula:

$$\text{State allocation} = (\text{Total grant funding made available to states}) \times (\text{Voting age population percentage for each state})$$

Voting age population percentage is calculated as the quotient of the voting age population of the state and the total voting age population of all states. Each of these figures are determined by estimates of the U.S. Census Bureau.

If a state does not submit an application for these election worker recruitment and training grants, the counties of that state would be given an opportunity to apply for direct funding from the EAC. Applications would describe the recruitment and training activities the county plans to carry out and assurances to the EAC that these funds would be used to supplement funds already dedicated to these programs. Each county would also be required to provide the EAC with details related to the successful use of these funds, including the number of poll workers and election volunteers after recruitment and training. The amount of the grant available directly to counties would be determined by the following formula:

$$\text{Direct County allocation} = [(\text{Total grant funding made available to states}) \times (\text{Voting age population percentage for each state})] \times \text{the voting population percentage of the county}$$

COUNTY IMPACT

As a result of the rise in threats and harassment towards election officials and poll workers, some counties have experienced reductions in the election workforce and have had more difficulty recruiting election workers due to individuals' safety concerns. An April 2023 survey of approximately 850 local election officials shows that of participants, 11 percent said they are very or somewhat likely to resign before 2024

and 12 percent of election officials began service as an election officials after the 2020 election¹. Simply put, the rise in targeted threats and harassment towards election officials has contributed to a significant election workforce shortage across the country.

As the primary administrator of elections at the local level, counties are typically responsible for the recruitment and training of poll workers and election volunteers. Counties are responsible for funding and managing over 100,000 polling places staffed with over 630,000 poll workers each election cycle. Since counties and local election officials oversee polling locations and poll worker recruitment, and the state role therein is limited, we would anticipate a significant portion of these funds to be suballocated to the county level. Federal funding dedicated to election administration should be administered in coordination and in consultation with local governments, including an assurance that a portion of the funding be made available to the discretion of local governments.

Counties support a consistent, predictable and dedicated federal funding stream to assist counties with meeting the significant federal requirements already imposed on local governments administering elections. Federal funding dedicated to election administration should be administered in coordination and in consultation with local governments, including an assurance that a portion of the funding be made available to the discretion of local governments. A consistent federal funding stream would allow counties to prepare for future technology and security updates, recruit, train and retain high-quality individuals that administer elections.

2. GRANTS FOR THE SAFETY OF ELECTION WORKERS

The *Election Worker Protection Act of 2023* authorizes funding for the EAC to make grants to states, and in certain cases counties and other local governments, for physical security services and social media threat monitoring for election workers.

To receive funds, states must submit an application to the EAC that describes the activities related to election worker safety it intends to fund. State applications must also provide assurances that the funds will supplement already dedicated investments, and the state will provide the EAC with the number of individuals provided services with these grant dollars. To determine the amount of a grant made to each state, the bill provides the following formula:

$$\text{State allocation} = (\text{Total grant funding made available to states}) \times (\text{Voting age population percentage for each state})$$

If a state does not submit an application for these election worker security grants, the counties of that state would be given an opportunity to apply for direct funding from the EAC. Applications would describe the activities the county plans to carry out and assurances to the EAC that these funds would be used to supplement funds already dedicated to these programs. Each county would also be required to provide the EAC with details related to the successful use of these funds, including the number of individuals served

¹ Currie, S., Horrigan, J., Sapper, M., Wilentz, B. (2023). *Local Election Officials Survey* [Data set]. The Brennan Center for Justice. <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-april-2023>

with this grant. The amount of the grant available directly to counties would be determined by the following formula:

$$\text{Direct County allocation} = [(\text{Total grant funding made available to states}) \times (\text{Voting age population percentage for each state})] \times \text{the voting population percentage of the county}$$

COUNTY IMPACT

As authorized by the Help America Vote Act (HAVA) of 2002, the EAC currently administers election security formula grants to states subject to annual discretionary appropriations. States are able to use these funds to: replace voting equipment, implement post-election audit systems, upgrade election-related computer systems to improve cybersecurity, facilitate cybersecurity training for state and local election officials, implement cybersecurity best practices and other activities that improve election security. While election worker safety can be an eligible use of HAVA grant funds, a majority of election security grant funds have historically been spent on election system security. Additionally, since these funds are directly allocated to states, counties have to rely on funds being suballocated.

According to a March 2022 survey of approximately 600 local election officials and workers, 77 percent feel as if threats and harassment towards election officials has increased in recent years. Of surveyed election officials, 17 percent reported experiencing threats and harassment themselves, but more than half are concerned about the safety of their colleagues in future elections². In coordination with our state and federal partners, counties are also on the frontlines of election security and safety. This includes the safety and security of voting systems as well as the staff and volunteers that help administer election services. By authorizing grant funds for the safety of these individuals, S. 1318 would provide state and local governments, including counties, with additional federal resources to cover the costly protective measures necessary to protect election workers.

Federal funding dedicated to election administration should be administered in coordination and in consultation with local governments, including an assurance that a portion of the funding be made available to the discretion of local governments.

3. GRANTS FOR THE PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION

S. 1318 would also establish a competitive grant program at the U.S. Department of Justice (DOJ) to provide states **and units of local governments (including counties)**, with funds to create or expand programs at the state or local level designed to protect the personally identifiable information (PII) of election workers if requested by the individual. State and local government agencies and other public entities that operate a state or local database or registry that contains PII would be eligible for funds as well. Such protections can be implemented by:

- Creating programs to redact or remove the PII of election workers from public records maintained by state agencies, including by hiring third parties to perform such work

² Currie, S., Horrigan, J., Sapper, M., Wilentz, B. (2023). *Local Election Officials Survey* [Data set]. The Brennan Center for Justice. <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-april-2023>

- Expanding existing programs to protect PII of election workers
- Developing improvements to protocols, procedures and policies that prevent the release of PII of election workers
- Funding the improvement of existing databases and registries to ensure PII of election workers is protected from release
- Implementing confidential opt-out systems that allow election workers to request that PII is not included in publicly accessible databases or registries

Application requirements for eligible entities shall be established by the U.S. Attorney General. States and local governments that receive funds through this program would be required to report to the DOJ how grant dollars were invested to protect the PII of election workers.

COUNTY IMPACT

Given the increased level of threats and harassment, counties must carefully balance the accessibility of election officials against their safety and well-being. As threats and harassment have become more personal in nature, counties have increased efforts to ensure that the personal identifiable information (PII) of their officials, staff and volunteers is protected. The grant funds included in this bill to help protect PII would provide counties with additional federal resources to develop procedures and expand existing programs that protect the privacy and safety of election officials on a requested basis.

Counties support a consistent, predictable and dedicated federal funding stream to assist counties with meeting the significant federal requirements already imposed on local governments administering elections. Federal funding dedicated to election administration should be administered in coordination and in consultation with local governments, including an assurance that a portion of the funding be made available to the discretion of local governments. A consistent federal funding stream would allow counties to prepare for future technology and security updates, recruit, train and retain high-quality individuals that administer elections.

4. LEGAL PROTECTIONS FOR ELECTION WORKERS

If enacted, the *Election Worker Protection Act* would make it unlawful for any person to intimidate, threaten or coerce an election worker with intent to impede, intimidate, or interfere with that election worker while engaged in official duties, or with intent to retaliate against said worker on the basis of the performance of such duties. Violators would be fined a maximum penalty of \$100,000 and/or a maximum prison sentence of five years and the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) would be directed to assign a special agent to each FBI field office to investigate threats against election workers.

S. 1318 also amends the federal criminal code on the intimidation of tabulation, canvas and certification efforts to apply to the processing or scanning of ballots and the tabulating, canvassing and certification of voting results. As such, the bill would make any attempt to interfere with the scanning, tabulating, canvassing and certification of ballots and election results a federal crime punishable by fine or a maximum prison sentence of five years.

The bill also adds election officials, poll workers, or election volunteers in connection with a federal election to the list of “covered persons” under the federal prohibition on making restricted personal information

publicly available, also known as “doxxing.” Violators would be subject to a fine or a maximum prison sentence of five years.

COUNTY IMPACT

Threats and violence against elections workers have been increasing in both frequency and intensity despite the 2020 General Election being deemed the “most secure in American history.”³ Counties urge the U.S. Congress to enact legislation that will impose appropriate penalties for offenses including but not limited to the following: harassing or intimidating election officials in the performance of their duty, threatening or causing harm to election officials or their families, attempting to pressure election officials or their family members to violate state law or the Constitution, and disseminating by any means the personal information of election officials or their family members.

As threats and harassment towards election officials and poll workers continue to rise, counties have worked collaboratively with state and local law enforcement to report and address these incidents. By strengthening federal law to make the intimidation, threatening and coercion of election workers a federal crime, this legislation aims to deter individuals from intimidating and threatening election officials and provides county election officials with additional legal protections when incidents occur.

5. PREVENTION OF POLL OBSERVER INTERFERENCE

This bill provides state and local election officials with the legal authority to remove a poll observer for a federal election from a polling location or any location where processing, scanning, tabulating, canvassing, or certifying voting results is occurring should they have a reasonable basis to believe that the observer:

- has engaged in, or will imminently engage in, intimidation or deception practices prohibited by federal law
- or has disrupted, or will disrupt, the voting, processing, scanning, tabulating or canvassing of ballots or the certification of results

This authority would become effective for any federal election occurring on or after the enactment of the bill.

COUNTY IMPACT

The presence of poll observers is critical to ensure public trust in elections and the integrity of our nation’s election integrity. It is also important that election officials have the proper authority to address safety and security concerns surrounding poll observer participation. Examples of incidents where such authority could be required include, but not limited to, the intimidation, harassment and/or deception of election workers and the safety and security of election systems and processes. This legislation would provide the legal authority for county election officials to address these incidents and remove poll observers from federal election, if appropriate and necessary.

6. TRAINING AND RESOURCES FOR FEDERAL, STATE AND LOCAL LAW ENFORCEMENT

The legislation requires the U.S. Attorney General to review and ensure that DOJ can provide training and resources to federal, state, local and tribal law enforcement agencies that assist in the understanding,

³ Cybersecurity & Infrastructure Security Agency. (2020, November 12). *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees* [Press Release]. <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>

detecting, deterring and investigation of threats to election workers. DOJ shall also make training available to Department prosecutors and Assistant U.S. Attorneys on countering and prosecuting threats to election workers.

COUNTY IMPACT

In July 2021, DOJ launched the Elections Threats Task Force to address the rise in threats against elections workers and includes representatives from the DOJ Criminal, Civil Rights, and National Security Divisions, the FBI and U.S. Department of Homeland Security (DHS). As of August 1, 2022, the Task Force has reviewed over 1,000 cases of threats against the election community, however only 11 percent of these cases have met the threshold for a federal criminal investigation as they have included threats of unlawful violence and are therefore not protected by the free speech clause of the First Amendment.⁴

As county election officials continue to combat threats and harassment, ensuring that our federal, state and local partners are educated on the current environment is essential. This bill directs the Department of Justice (DOJ) to provide the necessary training and resources for its federal, state and local law enforcement counterparts to detect, deter, investigate and prosecute these cases. Counties encourage DOJ to continue reviewing the cases that are reported and working with local law enforcement to ensure that cases of threats towards election officials and workers are reported so they can be reviewed, investigated and in those cases that result in criminal indictment, appropriate penalties can be imposed.

⁴ U.S. Department of Justice. (2022, August 1). *Readout of Election Threats Task Force Briefing with Elections Officials and Workers* [Press Release]. <https://www.justice.gov/opa/pr/readout-election-threats-task-force-briefing-election-officials-and-workers>