

116TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend the Federal Power Act to authorize the Federal Energy Regulatory Commission and the Secretary of Energy to offer assistance in securing the assets of the owners and operators of energy infrastructure against threats and increasing the security of the electric grid, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Ms. MURKOWSKI (for herself and Mr. RISCH) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To amend the Federal Power Act to authorize the Federal Energy Regulatory Commission and the Secretary of Energy to offer assistance in securing the assets of the owners and operators of energy infrastructure against threats and increasing the security of the electric grid, and for other purposes.

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 “Energy Infrastructure  
5 Protection Act of 2020”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of Congress that—

3 (1) electrical energy is essential to civil society;

4 (2) the infrastructure that delivers electrical en-  
5 ergy to the people of the United States has been vul-  
6 nerable to attacks of varying scope for more than  
7 100 years;

8 (3) with the ready availability of information  
9 about electric infrastructure, and the ease of inter-  
10 national travel for individuals who seek to harm the  
11 United States, threats to electric infrastructure have  
12 multiplied in recent years;

13 (4) the geographic barriers of the Pacific Ocean  
14 and the Atlantic Ocean no longer provide sufficient  
15 protection for the people of the United States  
16 against threats to electric infrastructure, especially  
17 for threats coming from cyberspace;

18 (5) electric infrastructure around the world has  
19 been attacked during times of war and times of  
20 peace, on the ground and in cyberspace, by—

21 (A) individuals;

22 (B) criminal organizations; and

23 (C) foreign countries;

24 (6) like electric infrastructure, the fuel sup-  
25 pliers and other vendors who supply the electricity

1 industry are vulnerable to attacks designed to dis-  
2 rupt electricity service;

3 (7) before and during World War II, the Fed-  
4 eral Power Commission assisted owners and opera-  
5 tors of energy infrastructure in defending the assets  
6 of those owners and operators;

7 (8) the Department of Energy and the Federal  
8 Energy Regulatory Commission carry on the legacy  
9 of security assistance established by the Federal  
10 Power Commission;

11 (9) the Department of Energy, assisted by the  
12 expertise at the National Laboratories, and utilizing  
13 the statutory role of the Department as the lead  
14 Federal agency for cybersecurity in the energy sec-  
15 tor, has acted to assist owners and operators of elec-  
16 tric infrastructure when those owners and operators  
17 defend their assets;

18 (10) the Federal Energy Regulatory Commis-  
19 sion, utilizing the jurisdiction of the Commission  
20 over matters of cost recovery and electric reliability,  
21 has acted to assist owners and operators of electric  
22 infrastructure when those owners and operators de-  
23 fend their assets;

24 (11) owners and operators of electric infrastruc-  
25 ture, entities involved with electric infrastructure,

1 the Federal Energy Regulatory Commission, the De-  
2 partment of Energy, other Federal departments and  
3 agencies, States, and units of local government have  
4 information that—

5 (A) can be used by those who seek to harm  
6 the United States to disrupt electricity service;  
7 and

8 (B) should be protected from excessive dis-  
9 closure; and

10 (12) owners and operators of electric infrastruc-  
11 ture—

12 (A) have been acting to reduce the vulner-  
13 ability of their assets; and

14 (B) should have better opportunities to  
15 further reduce the vulnerability of their assets.

16 **SEC. 3. PROTECTING ENERGY INFRASTRUCTURE.**

17 (a) IN GENERAL.—Part II of the Federal Power Act  
18 (16 U.S.C. 824 et seq.) is amended—

19 (1) by adding at the end the following:

20 **“Subpart B—Protecting Energy Infrastructure”;**

21 (2) by redesignating section 215A (16 U.S.C.  
22 824o–1) as section 230, and moving that section so  
23 as to appear at the beginning of subpart B (as  
24 added by paragraph (1)); and

1           (3) by inserting after section 201 (16 U.S.C.  
2           824) the following:

3           **“Subpart A—General Requirements”.**

4           (b) DEFINITIONS.—Section 230 of the Federal Power  
5 Act (as redesignated by subsection (a)(2)) is amended—

6           (1) in the section heading, by striking  
7           **“CRITICAL ELECTRIC INFRASTRUCTURE SECUR-**  
8           **ITY”** and inserting **“DEFINITIONS”**;

9           (2) in subsection (a)—

10           (A) in the matter preceding paragraph (1),  
11           by striking the subsection designation and  
12           heading and all that follows through “this sec-  
13           tion:” and inserting the following:

14           “In this subpart:”;

15           (B) in paragraph (1), by striking “such  
16           terms” and all that follows through “respec-  
17           tively.” and inserting “the terms in section  
18           215(a).”;

19           (C) by redesignating paragraphs (2), (3),  
20           (4), (5), (6), (7), and (8) as paragraphs (3),  
21           (4), (5), (6), (8), (9), and (12), respectively;

22           (D) by inserting after paragraph (1) the  
23           following:

1           “(2) COMMISSION.—The term ‘Commission’  
2 means the Federal Energy Regulatory Commis-  
3 sion.”;

4           (E) in paragraph (3) (as so redesignated),  
5 by inserting “energy infrastructure or” after  
6 “means”;

7           (F) by striking paragraph (4) (as so redesi-  
8 gnated) and inserting the following:

9           “(4) CRITICAL ELECTRIC INFRASTRUCTURE IN-  
10 FORMATION.—

11           “(A) IN GENERAL.—The term ‘critical  
12 electric infrastructure information’ means infor-  
13 mation relating to critical electric infrastruc-  
14 ture, or proposed critical electric infrastructure,  
15 that—

16           “(i) is generated by, or provided to,  
17 the Secretary, the Commission, or any  
18 other Federal department or agency;

19           “(ii) is not classified national security  
20 information; and

21           “(iii) is designated as critical electric  
22 infrastructure information by the Secretary  
23 or the Commission under section 231(e) or  
24 235.

1           “(B) INCLUSIONS.—The term ‘critical elec-  
2           tric infrastructure information’ includes any in-  
3           formation that qualified as critical energy infra-  
4           structure information under the regulations of  
5           the Commission in effect on the day before the  
6           date of enactment of the Energy Infrastructure  
7           Protection Act of 2020.”;

8           (G) in paragraph (5) (as so redesignated),  
9           by striking “subsection (c)” and inserting “sec-  
10          tion 231(b)”;

11          (H) by inserting after paragraph (6) (as so  
12          redesignated) the following:

13          “(7) ENERGY INFRASTRUCTURE.—The term  
14          ‘energy infrastructure’ includes—

15               “(A) systems or assets comprising the  
16               bulk-power system;

17               “(B) systems or assets owned by electric  
18               utilities;

19               “(C) systems or assets that—

20                       “(i) allow for the transportation of  
21                       fuel, electricity, water, steam, heat, cold, or  
22                       any commodity that is used in the provi-  
23                       sion of electricity service; and

24                       “(ii) facilitate the delivery of—

1                   “(I) electrical energy to con-  
2                   sumers;

3                   “(II) wholesale transactions in  
4                   electrical energy; or

5                   “(III) the import or export of  
6                   electrical energy; and

7                   “(D) all systems or assets subject to the  
8                   jurisdiction of the Commission, including—

9                   “(i) pipelines for the transportation of  
10                  oil;

11                  “(ii) natural gas pipelines; and

12                  “(iii) water resources.”;

13                  (I) by inserting after paragraph (9) (as so  
14                  redesignated) the following:

15                  “(10) NATURAL GAS; NATURAL-GAS COM-  
16                  PANY.—The terms ‘natural gas’ and ‘natural-gas  
17                  company’ have the meanings given the terms in sec-  
18                  tion 2 of the Natural Gas Act (15 U.S.C. 717a).

19                  “(11) OIL; OIL PIPELINE.—The terms ‘oil’ and  
20                  ‘oil pipeline’ have the meanings given the terms in  
21                  section 1804 of the Energy Policy Act of 1992 (42  
22                  U.S.C. 7172 note; Public Law 102–486).”; and

23                  (J) by inserting after paragraph (12) (as  
24                  so redesignated) the following:



1           “(13) SOURCE OF THE INFORMATION.—The  
2 term ‘source of the information’ means—

3           “(A) the electric utility, Transmission Or-  
4 ganization, natural-gas company, licensee, or oil  
5 pipeline that provides to the Secretary or the  
6 Commission, as applicable, critical electric in-  
7 frastructure information, including—

8           “(i) critical electric infrastructure in-  
9 formation that is provided directly to the  
10 Secretary or the Commission by the elec-  
11 tric utility, Transmission Organization,  
12 natural-gas company, licensee, or oil pipe-  
13 line; and

14           “(ii) critical electric infrastructure in-  
15 formation that is provided to the Secretary  
16 or the Commission by an intermediary;

17           “(B) the Secretary, with respect to critical  
18 electric infrastructure information that is cre-  
19 ated by the Secretary;

20           “(C) the Commission, with respect to crit-  
21 ical electric infrastructure information that is  
22 created by the Commission; and

23           “(D) with respect to any critical electric  
24 infrastructure information not described in sub-  
25 paragraphs (A) through (C), the individual or

1           entity that provides to the Secretary or the  
2           Commission, as applicable, the critical electric  
3           infrastructure information.”; and

4           (3) by inserting before subsection (b) the fol-  
5       lowing:

6       **“SEC. 231. CRITICAL ELECTRIC INFRASTRUCTURE SECUR-**  
7                                       **RITY.”.**

8           (c) CRITICAL ELECTRIC INFRASTRUCTURE SECUR-  
9       RITY.—Section 231 of the Federal Power Act (as des-  
10      ignated by subsection (b)(3)) is amended—

11           (1) by redesignating subsections (b) through (f)  
12      as subsections (a) through (e), respectively;

13           (2) in paragraph (6)(B) of subsection (a) (as so  
14      redesignated), by striking “subsection (c)” and in-  
15      serting “subsection (b)”;

16           (3) in subsection (c) (as so redesignated)—

17                   (A) in paragraph (2)—

18                           (i) in the matter preceding subpara-  
19                           graph (A), by striking “Not later” and all  
20                           that follows through “shall” and inserting  
21                           “Each of the Secretary and the Commis-  
22                           sion, after consultation with the other,  
23                           shall”;

24                           (ii) in subparagraph (A), by adding  
25                           “and” at the end after the semicolon;

1 (iii) in subparagraph (B), by striking  
2 the semicolon at the end and inserting a  
3 period; and

4 (iv) by striking subparagraphs (C)  
5 and (D);

6 (B) by striking paragraph (3) and insert-  
7 ing the following:

8 “(3) AUTHORITY TO DESIGNATE.—

9 “(A) IN GENERAL.—The Secretary and the  
10 Commission may each designate information as  
11 critical electric infrastructure information pur-  
12 suant to the criteria and procedures established  
13 by the Secretary or the Commission, as applica-  
14 ble, under paragraph (2)(A).

15 “(B) SUBMISSION OF REQUEST FOR DES-  
16 IGNATION.—

17 “(i) IN GENERAL.—Any individual or  
18 entity may request that—

19 “(I) the Secretary designate in-  
20 formation in the possession of the  
21 Secretary as critical electric infra-  
22 structure information; and

23 “(II) the Commission designate  
24 information in the possession of the

1 Commission as critical electric infra-  
2 structure information.

3 “(ii) TREATMENT OF INFORMATION  
4 SUBMITTED FOR DESIGNATION.—On re-  
5 ceipt of a request under clause (i), the Sec-  
6 retary or the Commission, as applicable,  
7 shall treat the information that is the sub-  
8 ject of the request as critical electric infra-  
9 structure information until the earlier of—

10 “(I) the date on which the Sec-  
11 retary or the Commission, as applica-  
12 ble, designates the information as crit-  
13 ical electric infrastructure informa-  
14 tion; and

15 “(II) the date that is 21 days  
16 after the date on which the Secretary  
17 or the Commission, as applicable, pro-  
18 vides written notice to the individual  
19 or entity that submitted the request  
20 that the request is denied.

21 “(C) CONFLICTS BETWEEN DESIGNATIONS  
22 BY THE SECRETARY AND THE COMMISSION.—

23 “(i) INITIAL MEETING.—In the event  
24 of a conflict between a designation made  
25 by the Secretary and a designation made

1 by the Commission as to whether certain  
2 information is critical electric infrastruc-  
3 ture information, and the conflict has a  
4 material impact on the work of the Sec-  
5 retary or the Commission, the Secretary  
6 and the Commission shall confer to resolve  
7 the conflict for the purpose of achieving  
8 consistency across the Federal Government  
9 in the designation of the information.

10 “(ii) UNRESOLVED CONFLICTS.—If  
11 the Secretary and the Commission are un-  
12 able to resolve a conflict under clause (i)—

13 “(I) the Commission may con-  
14 tinue to designate any information in  
15 the possession of the Commission ac-  
16 cording to the criteria and procedures  
17 established by the Commission under  
18 paragraph (2)(A); and

19 “(II) the Secretary may continue  
20 to designate any information in the  
21 possession of the Department of En-  
22 ergy according to the criteria and pro-  
23 cedures established by the Secretary  
24 under paragraph (2)(A).”;

25 (C) in paragraph (8)—

1 (i) by striking “In implementing” and  
2 all that follows through “shall” and insert-  
3 ing the following:

4 “(A) IN GENERAL.—In implementing this  
5 section, the Secretary and the Commission shall  
6 reasonably attempt to”; and

7 (ii) by adding at the end the fol-  
8 lowing:

9 “(B) EFFECT OF FAILURE TO SEGREGATE  
10 INFORMATION.—A failure to segregate any par-  
11 ticular information under subparagraph (A)  
12 shall not result in an inference or finding that  
13 the information should not be entitled to protec-  
14 tion as critical electric infrastructure informa-  
15 tion.”;

16 (D) by striking paragraphs (9) and (10)  
17 and inserting the following:

18 “(9) DURATION OF DESIGNATION.—

19 “(A) IN GENERAL.—Except as provided in  
20 subparagraph (B), information may not be des-  
21 ignated as critical electric infrastructure infor-  
22 mation for a period longer than the information  
23 is related to energy infrastructure in service.

24 “(B) REDESIGNATION.—Any information  
25 may be redesignated by the Secretary or the

1 Commission as critical electric infrastructure  
2 information before, on, or after the date on  
3 which an earlier designation has expired.

4 “(C) VULNERABILITIES AND THREATS.—  
5 Information about a vulnerability or threat to  
6 energy infrastructure, or the planning and con-  
7 struction of a system or asset that is intended  
8 to address a vulnerability or threat to energy  
9 infrastructure, may be designated as critical  
10 electric infrastructure information—

11 “(i) for the period during which the  
12 vulnerability or threat exists; and

13 “(ii) for any additional period deter-  
14 mined to be appropriate by the Secretary  
15 or the Commission, as applicable.

16 “(10) REMOVAL OF DESIGNATION.—The Sec-  
17 retary or the Commission, as applicable, shall re-  
18 move the designation of critical electric infrastruc-  
19 ture information, in whole or in part, from a docu-  
20 ment or electronic communication if the Secretary or  
21 the Commission, as applicable, determines that the  
22 unauthorized disclosure of the information so des-  
23 ignated could no longer be used to impair the secu-  
24 rity or reliability of energy infrastructure, the bulk-  
25 power system, or distribution facilities.”; and

1 (E) by adding at the end the following:

2 “(12) NO IMMEDIATE OBLIGATION TO DES-  
3 IGNATE.—Any request for designation submitted to  
4 the Secretary or the Commission need not be consid-  
5 ered by the Secretary or the Commission, as applica-  
6 ble, until the information that is the subject of the  
7 request for designation becomes the subject of any  
8 request to disclose, including a request under—

9 “(A) section 552 of title 5, United States  
10 Code; or

11 “(B) any applicable law (including any  
12 Federal, State, political subdivision, or Tribal  
13 law) requiring public disclosure of information  
14 or records.

15 “(13) EFFECT OF PRIOR DETERMINATIONS.—A  
16 prior determination by the Secretary or the Commis-  
17 sion that certain information is not critical electric  
18 infrastructure information shall not affect the au-  
19 thority of the Secretary or the Commission to later  
20 designate that information as critical electric infra-  
21 structure information.”; and

22 (4) in subsection (e) (as so redesignated)—

23 (A) in paragraph (1), by striking “sub-  
24 section (b)(1)” and inserting “subsection  
25 (a)(1)”;



1 (B) in paragraph (2), by striking “sub-  
2 section (b)(1)” and inserting “subsection  
3 (a)(1)”;

4 (C) in paragraph (3), by striking “sub-  
5 section (d)” and inserting “subsection (c) or  
6 any of sections 232 through 235, as applica-  
7 ble”; and

8 (D) in paragraph (4)—

9 (i) by striking “subsection (b)(1)” and  
10 inserting “subsection (a)(1)”; and

11 (ii) by striking “paragraph (1) or (2  
12 )” and inserting “paragraph (1) or (2)”.

13 (d) ASSISTANCE, ACCESS, AND ENFORCEMENT.—  
14 Subpart B of part II of the Federal Power Act (as added  
15 by subsection (a)(1)) is amended by adding at the end the  
16 following:

17 **“SEC. 232. AUTHORITY OF THE COMMISSION TO OFFER AS-**  
18 **SISTANCE TO OWNERS AND OPERATORS OF**  
19 **ENERGY INFRASTRUCTURE.**

20 “(a) DEFINITION OF ELIGIBLE ENTITY.—In this sec-  
21 tion, the term ‘eligible entity’ means—

22 “(1) an authority of a State, political subdivi-  
23 sion, or Indian Tribe;

24 “(2) a Transmission Organization;

25 “(3) an electric utility;

1           “(4) a natural-gas company;

2           “(5) an oil pipeline; and

3           “(6) any other owner or operator of energy in-  
4       frastructure.

5       “(b) VOLUNTARY ASSISTANCE ON REQUEST.—On re-  
6       quest of an eligible entity, the Commission may provide  
7       assistance to the eligible entity—

8           “(1) by reviewing the configuration of the as-  
9       sets of the eligible entity against threats;

10          “(2) by reviewing the capability of the eligible  
11       entity to operate its assets after attacks on those as-  
12       sets;

13          “(3) by providing information about methods  
14       and tools that owners and operators of energy infra-  
15       structure may use to defend assets against threats;

16          “(4) by providing information regarding other  
17       resources that may be available to assist the eligible  
18       entity; and

19          “(5) by reviewing data and other assets in the  
20       possession of the eligible entity—

21               “(A) for evidence that the data or other  
22       asset—

23                       “(i) has been tampered with; or

24                       “(ii) has otherwise been the subject of  
25       threat activity; and

1           “(B) while ensuring an adequate chain of  
2           custody to enable criminal investigation and  
3           prosecution.

4           “(c) RELEASE OF INFORMATION.—

5           “(1) PROTECTION OF INFORMATION.—Any in-  
6           formation collected or created by the Commission in  
7           carrying out activities under subsection (b), includ-  
8           ing any report prepared under subsection  
9           (g)(1)(A)—

10           “(A) to the extent that the information is  
11           not already designated as critical electric infra-  
12           structure information, shall be handled by the  
13           Commission as if it had been designated by the  
14           Commission as critical electric infrastructure  
15           information under this subpart;

16           “(B) shall be exempt from disclosure under  
17           section 552(b)(3) of title 5, United States Code;  
18           and

19           “(C) shall not be made available by any  
20           Federal, State, political subdivision, or Tribal  
21           authority under any applicable law requiring  
22           public disclosure of information or records.

23           “(2) VOLUNTARY RELEASE.—

24           “(A) CONSENT REQUIRED.—Subject to  
25           subparagraph (C), if the source of any informa-

1           tion described in paragraph (1) provides con-  
2           sent, the Commission may share that informa-  
3           tion with—

4                   “(i) the Electric Reliability Organiza-  
5                   tion;

6                   “(ii) a regional entity;

7                   “(iii) an information sharing and  
8                   analysis center; or

9                   “(iv) an authority of a State, political  
10                  subdivision, or Indian Tribe that is in-  
11                  volved in protecting energy infrastructure  
12                  from threats.

13               “(B) ADVANCE CONSENT.—Consent to the  
14               disclosure of information by the Commission  
15               under subparagraph (A) may—

16                   “(i) be provided in advance of the dis-  
17                   closure of that information to, or the cre-  
18                   ation of that information by, the Commis-  
19                   sion; and

20                   “(ii) be a condition precedent to ob-  
21                   taining assistance from the Commission  
22                   under this section.

23               “(C) LIMITATION.—Any information that  
24               is shared with an authority described in sub-  
25               paragraph (A)(iv) shall be exempt from dislo-

1           sure by the authority as if that information  
2           were in the possession of the Commission under  
3           this subsection.

4           “(3) RELEASE TO FEDERAL AUTHORITIES.—

5                 “(A) CONSENT NOT REQUIRED.—The  
6           Commission may share any information de-  
7           scribed in paragraph (1) with a Federal author-  
8           ity regardless of whether the source of that in-  
9           formation consents to the disclosure.

10                “(B) LIMITATION.—Any information that  
11           is shared with a Federal authority under sub-  
12           paragraph (A) shall be exempt from disclosure  
13           by the Federal authority as if that information  
14           were in the possession of the Commission under  
15           this subsection.

16           “(d) WITHDRAWAL OF REQUEST.—

17                 “(1) IN GENERAL.—An eligible entity may  
18           withdraw a request for assistance under subsection  
19           (b) at any time.

20                 “(2) EFFECT.—On withdrawal of a request  
21           under paragraph (1), the Commission shall—

22                 “(A) terminate all assistance; and

23                 “(B) to the maximum extent practicable,  
24           and subject to any Federal law applicable to the  
25           Commission regarding retention of records, re-

1           turn to the eligible entity all information that  
2           the Commission received from the eligible enti-  
3           ty.

4           “(e) USE OF INFORMATION.—

5           “(1) INFORMATION PROVIDED FOR ASSIST-  
6           ANCE.—Any information that is provided by an eligi-  
7           ble entity to the Commission for the purpose of ob-  
8           taining assistance under subsection (b) may not be  
9           used as a basis for any order, rule, opinion, or deci-  
10          sion of the Commission.

11          “(2) INFORMATION OBTAINED BY OTHER  
12          MEANS.—Subject to applicable law, if the informa-  
13          tion described in paragraph (1) is obtained by the  
14          Commission in a manner other than the manner de-  
15          scribed in that paragraph, the Commission may use  
16          that information in any manner that the Commis-  
17          sion determines to be appropriate if—

18                 “(A) the Commission segregates the infor-  
19                 mation described in paragraph (1) from infor-  
20                 mation that is obtained by the Commission in  
21                 a manner not described in that paragraph; and

22                 “(B) the information described in para-  
23                 graph (1) has been and is reviewed only by in-  
24                 dividuals authorized by the Commission to pro-  
25                 vide assistance under subsection (b).

1           “(3) INFORMAL STAFF ADVICE.—An officer,  
2           employee, agent, or contractor of the Commission  
3           may advise an eligible entity that information pro-  
4           vided to the Commission for the purpose of obtain-  
5           ing assistance under subsection (b) should also be  
6           provided to the Commission for purposes unrelated  
7           to assistance under subsection (b).

8           “(f) EFFECT.—Nothing in this section—

9           “(1) authorizes the Commission to require any  
10          eligible entity to adopt any advice, report, rec-  
11          ommendation, best practice, finding, model, tool,  
12          method, plan, analysis, or assessment made by the  
13          Commission under this section; or

14          “(2) relieves an eligible entity from any obliga-  
15          tion to comply with a lawful order or rule of the  
16          Commission.

17          “(g) REPORTS FOR ELIGIBLE ENTITIES.—

18          “(1) IN GENERAL.—The Commission may pre-  
19          pare reports—

20                  “(A) for an eligible entity that requests as-  
21                  sistance under subsection (b); and

22                  “(B) for eligible entities generally.

23          “(2) AUTHORITY.—The Commission shall have  
24          sole discretion to prepare a report under paragraph  
25          (1).

1           “(3) REQUIREMENT.—A report under para-  
2 graph (1) shall not identify an eligible entity without  
3 the consent of that eligible entity.

4           “(4) EFFECT.—A report under paragraph  
5 (1)—

6                   “(A) shall not be binding on the Commis-  
7 sion; and

8                   “(B) shall not relieve an eligible entity  
9 from any obligation to comply with any applica-  
10 ble order or rule of the Commission.

11          “(h) SAVINGS CLAUSE.—Nothing in this section af-  
12 fects in any manner the authority, existing on the day be-  
13 fore the date of enactment of the Energy Infrastructure  
14 Protection Act of 2020, of—

15                   “(1) the Electric Reliability Organization;

16                   “(2) a regional entity;

17                   “(3) an information sharing and analysis cen-  
18 ter; or

19                   “(4) a component of any Federal department or  
20 agency other than the Commission, including the au-  
21 thority provided to—

22                           “(A) the Cybersecurity and Infrastructure  
23 Security Agency;

24                           “(B) the national cybersecurity and com-  
25 munications integration center established



1 under section 2209(b) of the Homeland Secu-  
2 rity Act of 2002 (6 U.S.C. 659(b)); and

3 “(C) the Sector-Specific Agency specified  
4 in section 61003(c)(2) of the FAST Act (6  
5 U.S.C. 121 note; Public Law 114–94).

6 **“SEC. 233. AUTHORITY OF THE SECRETARY TO OFFER AS-**  
7 **SISTANCE TO OWNERS AND OPERATORS OF**  
8 **ENERGY INFRASTRUCTURE.**

9 “(a) DEFINITION OF ELIGIBLE ENTITY.—In this sec-  
10 tion, the term ‘eligible entity’ means—

11 “(1) an authority of a State, political subdivi-  
12 sion, or Indian Tribe;

13 “(2) a Transmission Organization;

14 “(3) an electric utility;

15 “(4) a natural-gas company;

16 “(5) an oil pipeline; and

17 “(6) any other owner or operator of energy in-  
18 frastructure.

19 “(b) VOLUNTARY ASSISTANCE ON REQUEST.—On  
20 the request of an eligible entity, the Secretary may provide  
21 assistance to the eligible entity—

22 “(1) by reviewing the configuration of the as-  
23 sets of the eligible entity against threats;

1           “(2) by reviewing the capability of the eligible  
2           entity to operate its assets after attacks on those as-  
3           sets;

4           “(3) by providing information about methods  
5           and tools that owners and operators of energy infra-  
6           structure may use to defend their assets against  
7           threats;

8           “(4) by providing information regarding other  
9           resources that may be available to assist the eligible  
10          entity;

11          “(5) by reviewing data and other assets in the  
12          possession of the eligible entity—

13                 “(A) for evidence that the data or other  
14                 asset—

15                         “(i) has been tampered with; or

16                         “(ii) has otherwise been the subject of  
17                         threat activity; and

18                 “(B) while ensuring an adequate chain of  
19                 custody to enable criminal investigation and  
20                 prosecution;

21          “(6) by monitoring sensor data and other infor-  
22          mation flows of the eligible entity; and

23          “(7) by testing equipment and other assets of  
24          the eligible entity.

1       “(c) RESEARCH AND PLANNING.—The Secretary  
2 shall carry out a program—

3           “(1) to gather information about the tools and  
4 methods that have been used to penetrate or defend  
5 any eligible entity or industrial control system, in-  
6 cluding information about those tools and methods  
7 that is available from—

8           “(A) the Department of Homeland Secu-  
9 rity;

10          “(B) the Department of Defense;

11          “(C) any other Federal department or  
12 agency; and

13          “(D) any eligible entity;

14          “(2) to research and plan to ensure that the  
15 Federal Government has access to energy infrastruc-  
16 ture during a time of war or national crisis; and

17          “(3) to research and plan the response of the  
18 Secretary in the event that owners and operators of  
19 energy infrastructure are attacked.

20       “(d) RELEASE OF INFORMATION.—

21           “(1) PROTECTION OF INFORMATION.—Any in-  
22 formation collected or created by the Secretary in  
23 carrying out activities under subsection (b), includ-  
24 ing any report prepared under subsection  
25 (h)(1)(A)—

1           “(A) to the extent that the information is  
2 not already designated as critical electric infra-  
3 structure information, shall be handled by the  
4 Secretary as if it had been designated by the  
5 Secretary as critical electric infrastructure in-  
6 formation under this subpart;

7           “(B) shall be exempt from disclosure under  
8 section 552(b)(3) of title 5, United States Code;  
9 and

10           “(C) shall not be made available by any  
11 Federal, State, political subdivision, or Tribal  
12 authority under any applicable law requiring  
13 public disclosure of information or records.

14           “(2) VOLUNTARY RELEASE.—

15           “(A) CONSENT REQUIRED.—Subject to  
16 subparagraph (C), if the source of any informa-  
17 tion described in paragraph (1) provides con-  
18 sent, the Secretary may share that information  
19 with—

20                   “(i) the Electric Reliability Organiza-  
21 tion;

22                   “(ii) a regional entity;

23                   “(iii) an information sharing and  
24 analysis center; or

1                   “(iv) an authority of a State, political  
2                   subdivision, or Indian Tribe that is in-  
3                   volved in protecting energy infrastructure  
4                   from threats.

5                   “(B) ADVANCE CONSENT.—Consent to the  
6                   disclosure of information by the Secretary  
7                   under subparagraph (A) may—

8                   “(i) be provided in advance of the dis-  
9                   closure of that information to, or the cre-  
10                  ation of that information by, the Secretary;  
11                  and

12                  “(ii) be a condition precedent to ob-  
13                  taining assistance from the Secretary  
14                  under this section.

15                  “(C) LIMITATION.—Any information that  
16                  is shared with an authority described in sub-  
17                  paragraph (A)(iv) shall be exempt from disclo-  
18                  sure by the authority as if that information  
19                  were in the possession of the Secretary under  
20                  this subsection.

21                  “(3) RELEASE TO FEDERAL AUTHORITIES.—

22                  “(A) CONSENT NOT REQUIRED.—The Sec-  
23                  retary may share any information described in  
24                  paragraph (1) with a Federal authority regard-

1 less of whether the source of that information  
2 consents to the disclosure.

3 “(B) LIMITATION.—Any information that  
4 is shared with a Federal authority under sub-  
5 paragraph (A) shall be exempt from disclosure  
6 by the Federal authority as if that information  
7 were in the possession of the Secretary under  
8 this subsection.

9 “(e) WITHDRAWAL OF REQUEST.—

10 “(1) IN GENERAL.—An eligible entity may  
11 withdraw a request for assistance under subsection  
12 (b) at any time.

13 “(2) EFFECT.—On withdrawal of a request  
14 under paragraph (1), the Secretary shall—

15 “(A) terminate all assistance; and

16 “(B) to the maximum extent practicable,  
17 and subject to any Federal law applicable to the  
18 Secretary regarding retention of records, return  
19 to the eligible entity all information that the  
20 Secretary received from the eligible entity.

21 “(f) USE OF INFORMATION.—

22 “(1) INFORMATION PROVIDED FOR ASSIST-  
23 ANCE.—Any information that is provided by an eligi-  
24 ble entity to the Secretary for the purpose of obtain-  
25 ing assistance under subsection (b) may not be used

1 as a basis for any order, rule, opinion, or decision  
2 of the Secretary.

3 “(2) INFORMATION OBTAINED BY OTHER  
4 MEANS.—Subject to applicable law, if the informa-  
5 tion described in paragraph (1) is obtained by the  
6 Secretary in a manner other than the manner de-  
7 scribed in that paragraph, the Secretary may use  
8 that information in any manner that the Secretary  
9 determines to be appropriate if—

10 “(A) the Secretary segregates the informa-  
11 tion described in paragraph (1) from informa-  
12 tion that is obtained by the Secretary in a man-  
13 ner not described in that paragraph; and

14 “(B) the information described in para-  
15 graph (1) has been and is reviewed only by in-  
16 dividuals authorized by the Secretary to provide  
17 assistance under subsection (b).

18 “(3) INFORMAL STAFF ADVICE.—An officer,  
19 employee, agent, or contractor of the Secretary may  
20 advise an eligible entity that information provided to  
21 the Secretary for the purpose of obtaining assistance  
22 under subsection (b) should also be provided to the  
23 Secretary for purposes unrelated to assistance under  
24 subsection (b).

25 “(g) EFFECT.—Nothing in this section—

1           “(1) authorizes the Secretary to require any eli-  
2           gible entity to adopt any advice, report, rec-  
3           ommendation, best practice, finding, model, tool,  
4           method, plan, analysis, or assessment made by the  
5           Secretary under this section; or

6           “(2) relieves an eligible entity from any obliga-  
7           tion to comply with a lawful order or rule of the Sec-  
8           retary.

9           “(h) REPORTS FOR ELIGIBLE ENTITIES.—

10           “(1) IN GENERAL.—The Secretary may prepare  
11           reports—

12                   “(A) for an eligible entity that requests as-  
13                   sistance under subsection (b); and

14                   “(B) for eligible entities generally.

15           “(2) AUTHORITY.—The Secretary shall have  
16           sole discretion to prepare a report under paragraph  
17           (1).

18           “(3) REQUIREMENT.—A report under para-  
19           graph (1) shall not identify an eligible entity without  
20           the consent of that eligible entity.

21           “(4) EFFECT.—A report under paragraph  
22           (1)—

23                   “(A) shall not be binding on the Secretary;  
24                   and



1           “(B) shall not relieve an eligible entity  
2           from any obligation to comply with any applica-  
3           ble order or rule of the Secretary.

4           “(i) SAVINGS CLAUSE.—Nothing in this section af-  
5           fects in any manner the authority, existing on the day be-  
6           fore the date of enactment of the Energy Infrastructure  
7           Protection Act of 2020, of—

8           “(1) the Electric Reliability Organization;

9           “(2) a regional entity;

10          “(3) an information sharing and analysis cen-  
11          ter; or

12          “(4) a component of any Federal department or  
13          agency other than the Department of Energy, in-  
14          cluding the authority provided to—

15                 “(A) the Cybersecurity and Infrastructure  
16                 Security Agency; and

17                 “(B) the national cybersecurity and com-  
18                 munications integration center established  
19                 under section 2209(b) of the Homeland Secu-  
20                 rity Act of 2002 (6 U.S.C. 659(b)).

21         **“SEC. 234. ACCESS TO CRITICAL ELECTRIC INFRASTRUC-**  
22                 **TURE INFORMATION.**

23                 “(a) ACCESS.—

24                         “(1) IN GENERAL.—Except as provided in para-  
25                         graph (2), and subject to subsections (c) and (e), the

1 Secretary or the Commission, as applicable, shall not  
2 disclose or release critical electric infrastructure in-  
3 formation to any individual or entity.

4 “(2) EXCEPTIONS.—

5 “(A) IN GENERAL.—Subject to subpara-  
6 graph (B), the Secretary or the Commission, as  
7 applicable, may disclose critical electric infra-  
8 structure information—

9 “(i) to the source of the information;

10 “(ii) to a party or participant in a  
11 proceeding before the Secretary or the  
12 Commission, if—

13 “(I) the information is relevant  
14 to that proceeding; and

15 “(II) each individual seeking ac-  
16 cess to the information has entered  
17 into a nondisclosure agreement with  
18 the source of the information;

19 “(iii) to an individual who is an offi-  
20 cer, employee, agent, or contractor of the  
21 Secretary or the Commission;

22 “(iv) to an officer, employee, agent, or  
23 contractor of—

24 “(I) the Electric Reliability Orga-  
25 nization;

1 “(II) a regional entity; or

2 “(III) an information sharing  
3 and analysis center;

4 “(v) to an officer, employee, agent, or  
5 contractor of the Federal Government;

6 “(vi) to the President, the National  
7 Security Council, a member of Congress, a  
8 Federal judge or magistrate, or any officer  
9 of the United States appointed by the  
10 President with the advice and consent of  
11 the Senate;

12 “(vii) to an individual who is an offi-  
13 cer, employee, agent, or contractor of Con-  
14 gress, the Executive Office of the Presi-  
15 dent, or a court created under article I or  
16 III of the Constitution of the United  
17 States;

18 “(viii) to a landowner the property of  
19 which has a boundary that is crossed by,  
20 or located within the vicinity of, energy in-  
21 frastructure, as determined by the Sec-  
22 retary or the Commission, as applicable,  
23 if—

24 “(I) the landowner provides to  
25 the Secretary or the Commission, as

1 applicable, proof of the property inter-  
2 est of the landowner; and

3 “(II) the critical electric infra-  
4 structure information consists of de-  
5 tailed alignment sheets concerning ac-  
6 tual or proposed energy infrastructure  
7 within the vicinity of the property  
8 boundary, as determined by the Sec-  
9 retary or the Commission, as applica-  
10 ble;

11 “(ix) to an officer, employee, agent, or  
12 contractor of an authority of a State, polit-  
13 ical subdivision, or Indian Tribe, if each  
14 individual seeking access to the informa-  
15 tion has entered into a nondisclosure  
16 agreement with the Secretary or Commis-  
17 sion, as applicable;

18 “(x) to an individual holding a secu-  
19 rity clearance at the level of top secret or  
20 higher; or

21 “(xi) to any other individual, if—

22 “(I) the source of the informa-  
23 tion has given express consent to the  
24 disclosure of the information to the  
25 individual; and

1                   “(II) a nondisclosure agreement  
2                   between the source of the information  
3                   and each individual seeking access to  
4                   the information has been approved  
5                   by—

6                   “(aa) an administrative law  
7                   judge of, or assigned to, the De-  
8                   partment of Energy; or

9                   “(bb) an administrative law  
10                  judge of, or assigned to, the  
11                  Commission.

12                  “(B) DISCLOSURE FOR ACADEMIC, SCI-  
13                  ENTIFIC, OR RESEARCH PURPOSES.—The Sec-  
14                  retary or the Commission, as applicable, may  
15                  disclose critical electric infrastructure informa-  
16                  tion to an individual for academic, scientific, or  
17                  research purposes, including academic, sci-  
18                  entific, or research work that is conducted by  
19                  the Department of Energy at any laboratory of  
20                  the Department of Energy, if—

21                  “(i) the individual holds a security  
22                  clearance at the level of top secret or high-  
23                  er; or

24                  “(ii)(I) the source of the information  
25                  expressly consents to the disclosure of the

1 information to the individual for the aca-  
2 demic, scientific, or research work; and

3 “(II) a nondisclosure agreement be-  
4 tween the source of the information and  
5 each individual seeking access to the infor-  
6 mation has been approved by—

7 “(aa) an administrative law judge  
8 of, or assigned to, the Department of  
9 Energy; or

10 “(bb) an administrative law  
11 judge of, or assigned to, the Commis-  
12 sion.

13 “(C) AUTHORITY TO RETAIN INFORMA-  
14 TION.—

15 “(i) IN GENERAL.—The Secretary or  
16 the Commission, as applicable—

17 “(I) shall have no obligation to  
18 disclose critical electric infrastructure  
19 information to any individual or enti-  
20 ty; and

21 “(II) may withhold disclosure of  
22 critical electric infrastructure informa-  
23 tion at any time, for any reason, at  
24 the sole discretion of the Secretary or  
25 the Commission, as applicable.

1 “(ii) REQUIREMENT.—

2 “(I) IN GENERAL.—If the Sec-  
3 retary or the Commission, as applica-  
4 ble, determines that the disclosure of  
5 critical electric infrastructure informa-  
6 tion to an individual or entity may  
7 jeopardize the common defense and  
8 security of the United States, the in-  
9 formation shall not be disclosed to  
10 that individual or entity.

11 “(II) COORDINATION.—The Sec-  
12 retary shall share appropriate infor-  
13 mation and coordinate resources with  
14 the Commission to ensure compliance  
15 with the requirement described in sub-  
16 clause (I).

17 “(b) NONDISCLOSURE AGREEMENTS.—

18 “(1) IN GENERAL.—Each nondisclosure agree-  
19 ment entered into or approved under this section  
20 shall—

21 “(A) reflect the individual circumstances  
22 concerning the parties to the agreement;

23 “(B) permit the auditing of compliance  
24 with the agreement; and

1           “(C) be enforceable in law and equity by  
2           any district court of the United States.

3           “(2) MODIFICATION OF STANDARDIZED FORMS;  
4           DISPUTE RESOLUTION.—

5           “(A) STANDARDIZED FORMS.—

6           “(i) USE OF STANDARDIZED FORMS  
7           PERMITTED.—Potential parties to a non-  
8           disclosure agreement may use a standard-  
9           ized form of agreement if that form is ap-  
10          propriate for the particular circumstances.

11          “(ii) MODIFICATION BY THE PAR-  
12          TIES.—Notwithstanding any policy or rule  
13          of the Secretary or the Commission relat-  
14          ing to standardized forms of nondisclosure  
15          agreements, the express terms of a non-  
16          disclosure agreement shall be subject to  
17          appropriate revision by the parties to the  
18          agreement.

19          “(B) DISPUTE RESOLUTION.—

20          “(i) IN GENERAL.—Any dispute re-  
21          garding a nondisclosure agreement, includ-  
22          ing any dispute regarding the terms of a  
23          proposed nondisclosure agreement or com-  
24          pliance with an existing nondisclosure  
25          agreement, shall be resolved by—



1 “(I) a district court of the United  
2 States;

3 “(II) an administrative law judge  
4 of, or assigned to, the Department of  
5 Energy; or

6 “(III) an administrative law  
7 judge of, or assigned to, the Commis-  
8 sion.

9 “(ii) JUDICIAL REVIEW.—

10 “(I) IN GENERAL.—Any party to  
11 a proceeding to resolve a dispute de-  
12 scribed in clause (i) who is aggrieved  
13 by an order issued by an administra-  
14 tive law judge under that clause may  
15 obtain review of that order in a dis-  
16 trict court of the United States by fil-  
17 ing, in accordance with subclause (II),  
18 a petition for review in—

19 “(aa) the United States Dis-  
20 trict Court for the District of Co-  
21 lumbia; or

22 “(bb) the district court of  
23 the United States for the judicial  
24 district in which any party to the  
25 nondisclosure agreement resides.

1                   “(II) PETITION FOR REVIEW.—A  
2                   petition for review of any order sub-  
3                   ject to review under subclause (I)  
4                   shall—

5                                 “(aa) be filed not later than  
6                                 30 days after the date on which  
7                                 the administrative law judge  
8                                 issues the order; and

9                                 “(bb) request that the order  
10                                be modified or set aside in whole  
11                                or in part.

12                   “(3) OPTION FOR FEDERAL FORM OF NON-  
13                   DISCLOSURE AGREEMENT.—The Secretary or the  
14                   Commission, as applicable, may require an individual  
15                   seeking access to critical electric infrastructure in-  
16                   formation from the Secretary or the Commission to  
17                   enter into a nondisclosure agreement with the Sec-  
18                   retary or the Commission, as applicable, in addition  
19                   to any nondisclosure agreement entered into by that  
20                   individual with the source of the information.

21                   “(c) DISCLOSURE OF INDICATORS, METHODS, AND  
22                   TOOLS.—Notwithstanding subsection (a)(1), the Sec-  
23                   retary or the Commission, as applicable, may disclose indi-  
24                   cators, methods, and tools that have been used in pene-  
25                   trating or defending energy infrastructure if—

1           “(1) the source of the information consents to  
2           the release of that information; and

3           “(2) the Secretary or the Commission, as appli-  
4           cable, removes all information that would enable an  
5           individual to identify the source of the information.

6           “(d) PROTECTION OF INFORMATION.—Any critical  
7           electric infrastructure information that is disclosed by the  
8           Secretary or the Commission under subsection (a)(2), or  
9           that is required to be disclosed under a rule issued pursu-  
10          ant to subsection (e)(2)—

11           “(1) shall be protected from disclosure by the  
12          recipient;

13           “(2) shall be exempt from disclosure under sec-  
14          tion 552(b)(3) of title 5, United States Code; and

15           “(3) shall not be made available by any Fed-  
16          eral, State, political subdivision, or Tribal authority  
17          under any applicable law requiring public disclosure  
18          of information or records.

19          “(e) SAVINGS CLAUSES.—

20           “(1) INFORMATION CONTROLLED BY OWNERS  
21          AND OPERATORS OF ENERGY INFRASTRUCTURE.—

22          Nothing in this section limits the ability of an owner  
23          or operator of energy infrastructure to handle the  
24          information controlled by that owner or operator, in-  
25          cluding information that could be designated as crit-

1 ical electric infrastructure information, in whatever  
2 manner the owner or operator believes will best serve  
3 the interests of the owner or operator, including—

4 “(A) by exchanging that information with  
5 other owners or operators of energy infrastruc-  
6 ture; and

7 “(B) by providing that information to offi-  
8 cers, employees, agents, and contractors of the  
9 owner or operator.

10 “(2) DISCLOSURE TO CERTAIN INDIVIDUALS  
11 AND ENTITIES.—

12 “(A) IN GENERAL.—Except as provided in  
13 subparagraph (C), nothing in this section limits  
14 the ability of the Commission to issue or en-  
15 force a rule of general applicability requiring a  
16 public utility to disclose certain critical electric  
17 infrastructure information to an eligible recipi-  
18 ent described in subparagraph (B) that re-  
19 quests the information.

20 “(B) ELIGIBLE RECIPIENT DESCRIBED.—  
21 An eligible recipient referred to in subpara-  
22 graph (A) is—

23 “(i) an electric utility;

24 “(ii) a potential or existing inter-  
25 connection customer of the public utility;

1                   “(iii) a potential or existing trans-  
2 mission customer of the public utility;

3                   “(iv) a State regulatory authority; or

4                   “(v) a member of the public.

5                   “(C) REQUIREMENTS.—Any rule described  
6 in subparagraph (A) issued or enforced by the  
7 Commission shall—

8                   “(i) require that each request for crit-  
9 ical electric infrastructure information be  
10 disclosed to the source of the information;

11                   “(ii) require disclosure only if each in-  
12 dividual seeking access to critical electric  
13 infrastructure information has entered into  
14 a nondisclosure agreement with the source  
15 of the information;

16                   “(iii) provide that the source of the  
17 information shall have no liability for dam-  
18 ages associated with misuse of the critical  
19 electric infrastructure information that re-  
20 sults in an attack on energy infrastructure;  
21 and

22                   “(iv) with respect to a request sub-  
23 mitted by a member of the public, require  
24 disclosure only after each individual seek-  
25 ing access to critical electric infrastructure

1 information has entered into a nondisclo-  
2 sure agreement with the source of the in-  
3 formation that has been approved by—

4 “(I) an administrative law judge  
5 of, or assigned to, the Department of  
6 Energy; or

7 “(II) an administrative law judge  
8 of, or assigned to, the Commission.

9 **“SEC. 235. DESIGNATING INFORMATION HELD BY OTHER**  
10 **GOVERNMENTAL AUTHORITIES.**

11 “(a) DEFINITION OF ELIGIBLE ENTITY.—In this sec-  
12 tion:

13 “(1) IN GENERAL.—The term ‘eligible entity’  
14 means—

15 “(A) a Federal, State, political subdivision,  
16 or Tribal authority; and

17 “(B) a utility owned or operated by 1 or  
18 more of the authorities described in subpara-  
19 graph (A), including a joint action agency or  
20 similar entity.

21 “(2) EXCLUSIONS.—The term ‘eligible entity’  
22 does not include—

23 “(A) the Secretary; or

24 “(B) the Commission.

1           “(b) REQUEST FOR DESIGNATION.—An eligible enti-  
2 ty may submit to the Secretary or the Commission a re-  
3 quest to designate information that is in the possession  
4 and control of the eligible entity as critical electric infra-  
5 structure information by providing to the Secretary or the  
6 Commission, as applicable, a description of—

7           “(1) the nature of the information for which  
8 the designation is requested; and

9           “(2) the basis for the designation.

10          “(c) TIMING; EFFECT; FUTURE INFORMATION.—

11          “(1) TIMING.—

12                  “(A) SUBMISSION.—A request under sub-  
13 section (b) may be submitted to the Secretary  
14 or the Commission at any time, including after  
15 disclosure of the relevant information has been  
16 requested under any applicable law requiring  
17 public disclosure of information or records.

18                  “(B) TREATMENT OF SUBMITTED INFOR-  
19 MATION.—On receipt of a request under sub-  
20 section (b), the Secretary or the Commission, as  
21 applicable, shall treat the information that is  
22 the subject of the request as critical electric in-  
23 frastructure information until the earlier of—

24                          “(i) the date on which the Secretary  
25 or the Commission, as applicable, des-

1                   ignates the information as critical electric  
2                   infrastructure information; and

3                   “(ii) the date that is 21 days after the  
4                   date on which the Secretary or Commis-  
5                   sion, as applicable, provides written notice  
6                   to the eligible entity that submitted the re-  
7                   quest that the request is denied.

8                   “(2) EFFECT.—

9                   “(A) EFFECT OF REQUEST FOR PUBLIC  
10                  DISCLOSURE.—The submission of a request to  
11                  the Secretary or the Commission under sub-  
12                  section (b) after a request for public disclosure  
13                  of the relevant information has been made shall  
14                  not prejudice any decision with respect to  
15                  whether the information should be designated  
16                  as critical electric infrastructure information.

17                  “(B) EFFECT OF FAILURE TO TIMELY ACT  
18                  ON SUBMISSION.—If the Secretary or the Com-  
19                  mission, as applicable, fails to grant or deny a  
20                  request submitted under subsection (b) by the  
21                  date that is 1 year after the date on which the  
22                  request is submitted, the information that is the  
23                  subject of the request shall be designated as  
24                  critical electric infrastructure information for a



1 period of 10 years beginning on the date on  
2 which the request is submitted.

3 “(3) FUTURE INFORMATION.—A submission to  
4 the Secretary or the Commission under subsection  
5 (b) may concern—

6 “(A) existing information; or

7 “(B) information that is expected to be  
8 created after the date of the submission, includ-  
9 ing any information that is expected to be cre-  
10 ated on a periodic or ongoing basis.

11 “(d) RESPONSIBILITY FOR A DEFENSE.—An eligible  
12 entity for which the Secretary or the Commission, as ap-  
13 plicable, has granted a request to designate certain infor-  
14 mation as critical electric infrastructure information under  
15 this section, or for which information has been designated  
16 as critical electric infrastructure information for a period  
17 of 10 years under subsection (c)(2)(B)—

18 “(1) shall not request that the Secretary or the  
19 Commission provide a defense against any claim for  
20 disclosure of the designated information; and

21 “(2) shall be entirely responsible for a defense,  
22 including by paying for a defense, against any claim  
23 for disclosure of the designated information under—

24 “(A) section 552 of title 5, United States  
25 Code; or

1           “(B) any other applicable law (including  
2           any Federal, State, political subdivision, or  
3           Tribal law) requiring public disclosure of infor-  
4           mation or records.

5           “(e) DISCLOSURE AND RELEASE OF INFORMA-  
6 TION.—

7           “(1) IN GENERAL.—Except as provided in para-  
8           graph (2)—

9           “(A) any information that is in the posses-  
10          sion and control of an eligible entity shall not  
11          be subject to section 234(d); and

12          “(B) an eligible entity may establish stand-  
13          ards for the disclosure or release of information  
14          in the possession and control of the eligible en-  
15          tity.

16          “(2) PROTECTION OF CERTAIN INFORMA-  
17          TION.—Any critical electric infrastructure informa-  
18          tion that is disclosed to an eligible entity by the Sec-  
19          retary or the Commission under section 234(a)(2) or  
20          by a public utility under a rule issued pursuant to  
21          section 234(e)(2) shall be subject to section 234(d).

22 **“SEC. 236. WARTIME CLEARANCE.**

23          “(a) IN GENERAL.—Whenever Congress declares  
24          that a state of war exists, or in the event of a national  
25          disaster due to enemy attack, the Secretary and the Com-

1 mission are authorized, during the state of war or period  
2 of national disaster due to enemy attack, to confer with  
3 individuals and grant individuals access to critical electric  
4 infrastructure information pending further investigation  
5 of those individuals.

6 “(b) LIMITATION.—The Secretary and the Commis-  
7 sion may confer with individuals and grant individuals ac-  
8 cess to critical electric infrastructure information under  
9 subsection (a) only to the extent that, and for so long as,  
10 the Secretary or the Commission finds that such action  
11 is required to prevent impairment of the activities of the  
12 Secretary or the Commission that are in furtherance of  
13 the common defense and security.

14 **“SEC. 237. ENFORCEMENT AND SANCTIONS.**

15 “(a) ENFORCEMENT.—Any individual who fails to re-  
16 turn critical electric infrastructure information by the date  
17 that is 90 days after the date on which the individual is  
18 served with a demand by the Secretary or the Commission  
19 to return that critical electric infrastructure information  
20 shall be subject to enforcement under sections 314, 316,  
21 and 316A.

22 “(b) SANCTIONS.—

23 “(1) SANCTIONS BY THE COMMISSION.—The  
24 Commission shall ensure that appropriate sanctions  
25 are in place for—

1           “(A) any Commissioner or former Commis-  
2           sioner who knowingly and willfully discloses  
3           critical electric infrastructure information in a  
4           manner that is not authorized under this sub-  
5           part, with sanctions to include, at a minimum—

6                   “(i) the potential loss of access to crit-  
7                   ical electric infrastructure information; and

8                   “(ii) the potential public issuance of  
9                   letters of reprimand; and

10           “(B) any officer, employee, agent, or con-  
11           tractor of the Commission who knowingly and  
12           willfully discloses critical electric infrastructure  
13           information in a manner that is not authorized  
14           under this subpart.

15           “(2) SANCTIONS BY THE SECRETARY.—The  
16           Secretary shall ensure that appropriate sanctions are  
17           in place for any officer, employee, agent, or con-  
18           tractor of the Secretary who knowingly and willfully  
19           discloses critical electric infrastructure information  
20           in a manner that is not authorized under this sub-  
21           part.”.

22           (e) CONFORMING AMENDMENTS.—

23                   (1) Section 201 of the Federal Power Act (16  
24           U.S.C. 824) is amended—

25                           (A) in subsection (b)(2)—

1 (i) by striking “215A,” each place it  
2 appears;

3 (ii) in the first sentence, by inserting  
4 “and subpart B” after “and 222”; and

5 (iii) in the second sentence, by strik-  
6 ing “222,” and inserting “222 or subpart  
7 B”; and

8 (B) in subsection (e)—

9 (i) by striking “215A,”; and

10 (ii) by inserting “or subpart B” after  
11 “or 222”.

12 (2) Section 6003(c)(1)(A) of the FAST Act (6  
13 U.S.C. 121 note; Public Law 114–94) is amended by  
14 striking “section 215A” and inserting “section  
15 230”.