

ELECTION SUPPORT CONSOLIDATION AND EFFICIENCY
ACT

JUNE 2, 2011.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. DANIEL E. LUNGREN of California, from the Committee on
House Administration, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 672]

The Committee on House Administration, to whom was referred the bill (H.R. 672) to terminate the Election Assistance Commission, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Election Support Consolidation and Efficiency Act”.

SEC. 2. TERMINATION OF ELECTION ASSISTANCE COMMISSION.

(a) **TERMINATION.**—The Help America Vote Act of 2002 (42 U.S.C. 15301 et seq.) is amended by adding at the end the following new title:

“TITLE X—TERMINATION OF COMMISSION

“Subtitle A—Termination

“SEC. 1001. TERMINATION.

“Effective on the Commission termination date, the Commission (including the Election Assistance Commission Standards Board and the Election Assistance Commission Board of Advisors under part 2 of subtitle A of title II) is terminated and may not carry out any programs or activities.

“SEC. 1002. TRANSFER OF OPERATIONS TO OFFICE OF MANAGEMENT AND BUDGET DURING TRANSITION.

“(a) **IN GENERAL.**—The Director of the Office of Management and Budget shall, effective upon the Commission termination date—

“(1) perform the functions of the Commission with respect to contracts and agreements described in subsection 1003(a) until the expiration of such contracts and agreements, but shall not renew any such contract or agreement; and

“(2) shall take the necessary steps to wind up the affairs of the Commission.

“(b) **EXCEPTION FOR FUNCTIONS TRANSFERRED TO OTHER AGENCIES.**—Subsection (a) does not apply with respect to any functions of the Commission that are transferred under subtitle B.

“SEC. 1003. SAVINGS PROVISIONS.

“(a) **PRIOR CONTRACTS.**—The termination of the Commission under this subtitle shall not affect any contract that has been entered into by the Commission before the Commission termination date. All such contracts shall continue in effect until modified, superseded, terminated, set aside, or revoked in accordance with law by an authorized Federal official, a court of competent jurisdiction, or operation of law.

“(b) **OBLIGATIONS OF RECIPIENTS OF PAYMENTS.**—

“(1) **IN GENERAL.**—The termination of the Commission under this subtitle shall not affect the authority of any recipient of a payment made by the Commission under this Act prior to the Commission termination date to use any portion of the payment that remains unobligated as of the Commission termination date, and the terms and conditions that applied to the use of the payment at the time the payment was made shall continue to apply.

“(2) **SPECIAL RULE FOR STATES RECEIVING REQUIREMENTS PAYMENTS.**—In the case of a requirements payment made to a State under part 1 of subtitle D of title II, the terms and conditions applicable to the use of the payment for purposes of the State’s obligations under this subsection (as well as any obligations in effect prior to the termination of the Commission under this subtitle), and for purposes of any applicable requirements imposed by regulations promulgated by the Director of the Office of Management and Budget, shall be the general terms and conditions applicable under Federal law, rules, and regulations to payments made by the Federal government to a State, except that to the extent that such general terms and conditions are inconsistent with the terms and conditions that are specified under part 1 of subtitle D of title II or section 902, the terms and conditions specified under such part and such section shall apply.

“(c) **PENDING PROCEEDINGS.**—

“(1) **NO EFFECT ON PENDING PROCEEDINGS.**—The termination of the Commission under this subtitle shall not affect any proceeding to which the Commission is a party that is pending on such date, including any suit to which the Commission is a party that is commenced prior to such date, and the applicable official shall be substituted or added as a party to the proceeding.

“(2) **TREATMENT OF ORDERS.**—In the case of a proceeding described in paragraph (1), an order may be issued, an appeal may be taken, judgments may be rendered, and payments may be made as if the Commission had not been terminated. Any such order shall continue in effect until modified, terminated, superseded, or revoked by an authorized Federal official, a court of competent jurisdiction, or operation of law.

“(3) **CONSTRUCTION RELATING TO DISCONTINUANCE OR MODIFICATION.**—Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any proceeding described in paragraph (1) under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if the Commission had not been terminated.

“(4) **REGULATIONS FOR TRANSFER OF PROCEEDINGS.**—The Director of the Office of Management and Budget may issue regulations providing for the orderly transfer of proceedings described in paragraph (1).

“(d) **JUDICIAL REVIEW.**—Orders and actions of the applicable official in the exercise of functions of the Commission shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been issued or taken by the Commission. Any requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function of the Commission shall apply to the exercise of such function by the applicable official.

“(e) **APPLICABLE OFFICIAL DEFINED.**—In this section, the ‘applicable official’ means, with respect to any proceeding, order, or action—

“(1) the Director of the Office of Management and Budget, to the extent that the proceeding, order, or action relates to functions performed by the Director of the Office of Management and Budget under section 1002; or

“(2) the Federal Election Commission, to the extent that the proceeding, order, or action relates to a function transferred under subtitle B.

“SEC. 1004. COMMISSION TERMINATION DATE.

“The ‘Commission termination date’ is the first date following the expiration of the 60-day period that begins on the date of the enactment of this subtitle.

“Subtitle B—Transfer of Certain Authorities**“SEC. 1011. TRANSFER OF ELECTION ADMINISTRATION FUNCTIONS TO FEDERAL ELECTION COMMISSION.**

“There are transferred to the Federal Election Commission (hereafter in this section referred to as the ‘FEC’) the following functions of the Commission:

“(1) The adoption of voluntary voting system guidelines, in accordance with part 3 of subtitle A of title II.

“(2) The testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories, in accordance with subtitle B of title II.

“(3) The maintenance of a clearinghouse of information on the experiences of State and local governments in implementing voluntary voting system guidelines and in operating voting systems in general.

“(4) The development of a standardized format for reports submitted by States under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act, and the making of such format available to States and units of local government submitting such reports, in accordance with section 703(b).

“(5) Any functions transferred to the Commission under section 801 (relating to functions of the former Office of Election Administration of the FEC).

“(6) Any functions transferred to the Commission under section 802 (relating to functions described in section 9(a) of the National Voter Registration Act of 1993).

“(7) Any functions of the Commission under section 1604(a) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1277; 42 U.S.C. 1977ff note) (relating to establishing guidelines and providing technical assistance with respect to electronic voting demonstration projects of the Secretary of Defense).

“(8) Any functions of the Commission under section 589(e)(1) of the Military and Overseas Voter Empowerment Act (42 U.S.C. 1973ff–7(e)(1)) (relating to providing technical assistance with respect to technology pilot programs for the benefit of absent uniformed services voters and overseas voters).

“SEC. 1012. EFFECTIVE DATE.

“The transfers under this subtitle shall take effect on the Commission termination date described in section 1004.”.

(b) CLERICAL AMENDMENT.—The table of contents of such Act is amended by adding at the end the following:

“TITLE X—TERMINATION OF COMMISSION**“Subtitle A—Termination**

“Sec. 1001. Termination.

“Sec. 1002. Transfer of operations to Office of Management and Budget during transition.

“Sec. 1003. Savings provisions.

“Sec. 1004. Commission termination date.

“Subtitle B—Transfer of Certain Authorities

“Sec. 1011. Transfer of election administration functions to Federal Election Commission.

“Sec. 1012. Effective date.”.

SEC. 3. REPLACEMENT OF STANDARDS BOARD AND BOARD OF ADVISORS WITH GUIDELINES REVIEW BOARD.

(a) REPLACEMENT.—Part 2 of subtitle A of title II of the Help America Vote Act of 2002 (42 U.S.C. 15341 et seq.) is amended to read as follows:

“PART 2—GUIDELINES REVIEW BOARD**“SEC. 211. ESTABLISHMENT.**

“There is established the Guidelines Review Board (hereafter in this part referred to as the ‘Board’).

“SEC. 212. DUTIES.

“The Board shall, in accordance with the procedures described in part 3, review the voluntary voting system guidelines under such part.

“SEC. 213. MEMBERSHIP.

“(a) **IN GENERAL.**—The Board shall be composed of 82 members appointed as follows:

“(1) One State or local election official from each State, to be selected by the chief State election official of the State, who shall take into account the needs of both State and local election officials in making the selection.

“(2) 2 members appointed by the National Conference of State Legislatures.

“(3) 2 members appointed by the National Association of Secretaries of State.

“(4) 2 members appointed by the National Association of State Election Directors.

“(5) 2 members appointed by the National Association of County Recorders, Election Administrators, and Clerks.

“(6) 2 members appointed by the Election Center.

“(7) 2 members appointed by the International Association of County Recorders, Election Officials, and Treasurers.

“(8) 2 members appointed by the United States Commission on Civil Rights.

“(9) 2 members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

“(10) The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief’s designee.

“(11) The director of the Federal Voting Assistance Program of the Department of Defense.

“(12) The Director of the National Institute of Standards and Technology or the Director’s designee.

“(13) 4 members representing professionals in the field of science and technology, of whom—

“(A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and

“(B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.

“(14) 4 members representing voter interests, of whom—

“(A) one each shall be appointed by the chair and ranking minority member of the Committee on House Administration of the House of Representatives; and

“(B) one each shall be appointed by the chair and ranking minority member of the Committee on Rules and Administration of the Senate.

“(b) **MANNER OF APPOINTMENTS.**—

“(1) **IN GENERAL.**—Appointments shall be made to the Board under subsection (a) in a manner which ensures that the Board will be bipartisan in nature and will reflect the various geographic regions of the United States.

“(2) **SPECIAL RULE FOR CERTAIN APPOINTMENTS.**—The 2 individuals who are appointed as members of the Board under each of the paragraphs (2) through (9) of subsection (a) may not be members of the same political party.

“(c) **TERM OF SERVICE; VACANCY.**—Members of the Board shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board shall be filled in the manner in which the original appointment was made.

“(d) **EXECUTIVE BOARD.**—

“(1) **IN GENERAL.**—Not later than 60 days after the day on which the appointment of its members is completed, the Board shall select 9 of its members to serve as the Executive Board of the Guidelines Review Board, of whom—

“(A) not more than 5 may be State election officials;

“(B) not more than 5 may be local election officials; and

“(C) not more than 5 may be members of the same political party.

“(2) **TERMS.**—Except as provided in paragraph (3), members of the Executive Board of the Board shall serve for a term of 2 years and may not serve for more than 3 consecutive terms.

“(3) **STAGGERING OF INITIAL TERMS.**—Of the members first selected to serve on the Executive Board of the Board—

“(A) 3 shall serve for 1 term;

“(B) 3 shall serve for 2 consecutive terms; and

“(C) 3 shall serve for 3 consecutive terms,

as determined by lot at the time the members are first appointed.

“(4) **DUTIES.**—The Executive Board of the Board shall carry out such duties of the Board as the Board may delegate.

“(e) **BYLAWS; DELEGATION OF AUTHORITY.**—The Board may promulgate such bylaws as it considers appropriate to provide for the operation of the Board, including bylaws that permit the Executive Board to grant to any of its members the authority to act on behalf of the Executive Board.

“SEC. 214. POWERS; NO COMPENSATION FOR SERVICE.**“(a) HEARINGS AND SESSIONS.—**

“(1) IN GENERAL.—To the extent that funds are made available by the Federal Election Commission, the Board may hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out this title, except that the Board may not issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence.

“(2) MEETINGS.—The Board shall hold a meeting of its members—

“(A) not less frequently than once every 2 years for purposes selecting the Executive Board and voting on the voluntary voting system guidelines referred to it under section 222; and

“(B) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with this title.

“(b) INFORMATION FROM FEDERAL AGENCIES.—The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out this Act. Upon request of the Executive Board, the head of such department or agency shall furnish such information to the Board.

“(c) POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government.

“(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Executive Board, the Administrator of the General Services Administration shall provide to the Board, on a reimbursable basis, the administrative support services that are necessary to enable the Board to carry out its duties under this title.

“(e) NO COMPENSATION FOR SERVICE.—Members of the Board shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

“SEC. 215. STATUS OF BOARD AND MEMBERS FOR PURPOSES OF CLAIMS AGAINST BOARD.

“(a) IN GENERAL.—The provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the Board and its members for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the Board.

“(b) EXCEPTION FOR CRIMINAL ACTS AND OTHER WILLFUL CONDUCT.—Subsection (a) may not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of a member of the Board.”.

(b) CONFORMING AMENDMENTS.—

(1) MEMBERSHIP ON TECHNICAL GUIDELINES DEVELOPMENT COMMITTEE.—Section 221(c)(1) of such Act (42 U.S.C. 15361(c)(1)) is amended—

(A) in subparagraph (A), by striking clauses (i) and (ii) and inserting the following:

“(i) Members of the Guidelines Review Board.”;

(B) by redesignating clause (iii) of subparagraph (A) as clause (ii); and

(C) in subparagraph (D), by striking “Standards Board or Board of Advisors” and inserting “Guidelines Review Board”.

(2) CONSIDERATION OF PROPOSED GUIDELINES.—Section 222(b) of such Act (42 U.S.C. 15362(b)) is amended—

(A) in the heading, by striking “BOARD OF ADVISORS AND STANDARDS BOARD” and inserting “GUIDELINES REVIEW BOARD”; and

(B) by striking paragraphs (2) and (3) and inserting the following:

“(2) GUIDELINES REVIEW BOARD.—The Executive Director of the Commission shall submit the guidelines proposed to be adopted under this part (or any modifications to such guidelines) to the Guidelines Review Board.”.

(3) REVIEW OF PROPOSED GUIDELINES.—Section 222(c) of such Act (42 U.S.C. 15362(c)) is amended by striking “the Board of Advisors and the Standards Board shall each review” and inserting “the Guidelines Review Board shall review”.

(4) FINAL ADOPTION OF PROPOSED GUIDELINES.—Section 222(d) of such Act (42 U.S.C. 15362(d)) is amended by striking “the Board of Advisors and the Standards Board” each place it appears in paragraphs (1) and (2) and inserting “the Guidelines Review Board”.

(5) ASSISTANCE WITH NIST REVIEW OF TESTING LABORATORIES.—Section 231(c)(1) of such Act (42 U.S.C. 15371(c)(1)) is amended by striking “the Stand-

ards Board and the Board of Advisors” and inserting “the Guidelines Review Board”.

(6) ASSISTING FEC WITH DEVELOPMENT OF STANDARDIZED FORMAT FOR REPORTS ON ABSENTEE BALLOTS OF ABSENT UNIFORMED SERVICES AND OVERSEAS VOTERS.—Section 703(b) of such Act (42 U.S.C. 1973ff–1 note) is amended by striking “the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board” and inserting “the Guidelines Review Board”.

(c) CLERICAL AMENDMENT.—The table of contents of such Act is amended by amending the item relating to part 2 of subtitle A of title II to read as follows:

“PART 2—GUIDELINES REVIEW BOARD

“Sec. 211. Establishment.

“Sec. 212. Duties.

“Sec. 213. Membership.

“Sec. 214. Powers; no compensation for service.

“Sec. 215. Status of Board and members for purposes of claims against Board.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the Commission termination date described in section 1004 of the Help America Vote Act of 2002 (as added by section 1(a)).

SEC. 4. SPECIAL REQUIREMENTS RELATING TO TRANSFER OF CERTAIN AUTHORITIES TO FEDERAL ELECTION COMMISSION.

(a) DEVELOPMENT AND ADOPTION OF VOLUNTARY VOTING SYSTEM GUIDELINES.—

(1) IN GENERAL.—Part 3 of subtitle A of title II of the Help America Vote Act of 2002 (42 U.S.C. 15361 et seq.) is amended by adding at the end the following new section:

“SEC. 223. TRANSFER OF AUTHORITY TO FEDERAL ELECTION COMMISSION.

“(a) TRANSFER.—Effective on the Commission termination date described in section 1004, the Federal Election Commission (hereafter in this section referred to as the ‘FEC’) shall be responsible for carrying out the duties and functions of the Commission under this part.

“(b) ROLE OF EXECUTIVE DIRECTOR.—The FEC shall carry out the operation and management of its duties and functions under this part through the Office of the Executive Director of the FEC.”.

(2) CLERICAL AMENDMENT.—The table of contents of such Act is amended by adding at the end of the item relating to part 3 of subtitle A of title II the following:

“Sec. 223. Transfer of authority to Federal Election Commission.”.

(b) TESTING, CERTIFICATION, DECERTIFICATION, AND RECERTIFICATION OF VOTING SYSTEM HARDWARE AND SOFTWARE.—

(1) IN GENERAL.—Subtitle B of title II of such Act (42 U.S.C. 15371 et seq.) is amended by adding at the end the following new section:

“SEC. 232. TRANSFER OF AUTHORITY TO FEDERAL ELECTION COMMISSION.

“(a) TRANSFER.—

“(1) IN GENERAL.—Effective on the Commission termination date described in section 1004, the Federal Election Commission (hereafter in this section referred to as the ‘FEC’) shall be responsible for carrying out the duties and functions of the Commission under this subtitle.

“(2) ROLE OF EXECUTIVE DIRECTOR.—The FEC shall carry out the operation and management of its duties and functions under this subtitle through the Office of the Executive Director of the FEC.

“(b) TRANSFER OF OFFICE OF VOTING SYSTEM TESTING AND CERTIFICATION.—

“(1) IN GENERAL.—There are transferred to the FEC all functions that the Office of Voting System Testing and Certification of the Commission (hereafter in this section referred to as the ‘Office’) exercised under this subtitle before the Commission termination date.

“(2) TRANSFER OF PROPERTY, RECORDS, AND PERSONNEL.—

“(A) PROPERTY AND RECORDS.—The contracts, liabilities, records, property, appropriations, and other assets and interests of the Office, together with the unexpended balances of any appropriations or other funds available to the Office, are transferred and made available to the FEC.

“(B) PERSONNEL.—

“(i) IN GENERAL.—The personnel of the Office are transferred to the FEC, except that the number of full-time equivalent personnel so transferred may not exceed the number of full-time equivalent personnel of the Office as of January 1, 2011.

“(ii) TREATMENT OF EMPLOYEES AT TIME OF TRANSFER.—An individual who is an employee of the Office who is transferred under this section

shall not be separated or reduced in grade or compensation because of the transfer during the 1-year period that begins on the date of the transfer.”.

(2) CLERICAL AMENDMENT.—The table of contents of such Act is amended by adding at the end of the items relating to subtitle B of title II the following:

“Sec. 232. Transfer of authority to Federal Election Commission.”.

(c) DEVELOPMENT OF STANDARDIZED FORMAT FOR REPORTS ON ABSENTEE BALLOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS.—Section 703(b) of such Act (42 U.S.C. 1973ff-1 note) is amended by adding at the end the following: “Effective on the Commission termination date described in section 1004, the Federal Election Commission shall be responsible for carrying out the duties and functions of the Commission under this subsection.”.

SEC. 5. CONFORMING AMENDMENTS TO OTHER LAWS.

(a) FEDERAL ELECTION CAMPAIGN ACT OF 1971.—

(1) DUTIES OF FEC.—Section 311(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438(a)) is amended—

(A) by striking “and” at the end of paragraph (8);

(B) by striking the period at the end of paragraph (9) and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

“(10) provide for the adoption of voluntary voting system guidelines, in accordance with part 3 of subtitle A of title II of the Help America Vote Act of 2002 (42 U.S.C. 15361 et seq.);

“(11) provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories, in accordance with subtitle B of title II of the Help America Vote Act of 2002 (42 U.S.C. 15371 et seq.);

“(12) maintain a clearinghouse of information on the experiences of State and local governments in implementing voluntary voting system guidelines and in operating voting systems in general;

“(13) carry out the duties described in section 9(a) of the National Voter Registration Act of 1993;

“(14) develop a standardized format for reports submitted by States under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act, make such format available to States and units of local government submitting such reports, and receive such reports in accordance with section 102(c) of such Act, in accordance with section 703(b) of the Help America Vote Act of 2002;

“(15) carry out the duties described in section 1604(a)(2) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1277; 42 U.S.C. 1977ff note); and

“(16) carry out the duties described in section 589(e)(1) of the Military and Overseas Voter Empowerment Act (42 U.S.C. 1973ff-7(e)(1)).”.

(2) AUTHORIZATION TO ENTER INTO PRIVATE CONTRACTS TO CARRY OUT FUNCTIONS.—Section 311 of such Act (2 U.S.C. 438) is amended by adding at the end the following new subsection:

“(g) Subject to applicable laws, the Commission may enter into contracts with private entities to carry out any of the authorities that are the responsibility of the Commission under paragraphs (10) through (16) of subsection (a).”.

(3) LIMITATION ON AUTHORITY TO IMPOSE REQUIREMENTS ON STATES AND UNITS OF LOCAL GOVERNMENT.—Section 311 of such Act (2 U.S.C. 438), as amended by paragraph (2), is further amended by adding at the end the following new subsection:

“(h) Nothing in paragraphs (10) through (16) of subsection (a) or any other provision of this Act shall be construed to grant the Commission the authority to issue any rule, promulgate any regulation, or take any other actions that imposes any requirement on any State or unit of local government, except to the extent that the Commission had such authority prior to the enactment of this subsection or to the extent permitted under section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-7(a)).”.

(b) NATIONAL VOTER REGISTRATION ACT OF 1993.—Section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-7(a)) is amended by striking “Election Assistance Commission” and inserting “Federal Election Commission”.

(c) UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.—

(1) DEVELOPMENT OF STANDARDS FOR STATE REPORTS.—Section 101(b)(11) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(b)(11)) is amended by striking “the Election Assistance Commission” and inserting “the Federal Election Commission”.

(2) RECEIPT OF REPORTS ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Section 102(c) of such Act (42 U.S.C. 1973ff–1(c)) is amended by striking “the Election Assistance Commission (established under the Help America Vote Act of 2002)” and inserting “the Federal Election Commission”.

(d) ELECTRONIC VOTING DEMONSTRATION PROJECTS FOR SECRETARY OF DEFENSE.—Section 1604(a)(2) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1277; 42 U.S.C. 1977ff note) is amended by striking “the Election Assistance Commission” and inserting “the Federal Election Commission”.

(e) TECHNOLOGY PILOT PROGRAM FOR ABSENT MILITARY AND OVERSEAS VOTERS.—Section 589(e)(1) of the Military and Overseas Voter Empowerment Act (42 U.S.C. 1973ff–7(e)(1)) is amended by striking “Election Assistance Commission” and inserting “Federal Election Commission”.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the Commission termination date described in section 1004 of the Help America Vote Act of 2002 (as added by section 1(a)).

SEC. 6. OTHER CONFORMING AMENDMENTS RELATING TO TERMINATION.

(a) HATCH ACT.—Section 7323(b)(2)(B)(i)(I) of title 5, United States Code, is amended by striking “or the Election Assistance Commission”.

(b) SENIOR EXECUTIVE SERVICE.—Section 3132(a)(1)(C) of title 5, United States Code, is amended by striking “or the Election Assistance Commission”.

(c) INSPECTOR GENERAL ACT OF 1978.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking “the Election Assistance Commission”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the Commission termination date described in section 1004 of the Help America Vote Act of 2002 (as added by section 1(a)).

SEC. 7. STUDIES.

(a) PROCEDURES FOR ADOPTION AND MODIFICATION OF VOLUNTARY VOTING SYSTEM GUIDELINES.—

(1) STUDY.—The Comptroller General shall conduct a study of the procedures used to adopt and modify the voluntary voting system guidelines applicable to the administration of elections for Federal office, and shall develop recommendations on methods to improve such procedures, taking into account the needs of persons affected by such guidelines, including State and local election officials, voters with disabilities, absent military and overseas voters, and the manufacturers of voting systems.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report the recommendations developed under such paragraph.

(b) PROCEDURES FOR VOTING SYSTEM TESTING AND CERTIFICATION.—

(1) STUDY.—The Federal Election Commission shall conduct a study of the procedures for the testing, certification, decertification, and recertification of voting system hardware and software used in elections for Federal office, and shall develop a recommendation on the entity that is best suited to oversee and carry out such procedures, taking into consideration the needs of persons affected by such procedures, including State and local election officials, voters with disabilities, absent military and overseas voters, and the manufacturers of voting systems.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Federal Election Commission shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report the recommendation developed under such paragraph.

BACKGROUND AND NEED FOR LEGISLATION

INTRODUCTION

Congress established the Election Assistance Commission (EAC) as part of the Help America Vote Act of 2002 (HAVA). HAVA allocated large sums of federal money to states to replace punch card and lever voting systems and to develop statewide voter registration databases. The administration of these payments to states was a principal function of the EAC. In addition, the EAC was established to operate a federal voting system testing and certification

program, maintain a clearinghouse of election administration information, and perform a series of research studies mandated by HAVA.

Today, the flow of election administration funds to states from the federal government has ended. The EAC has completed its HAVA-required research (with one exception discussed below). Even with those programs, the EAC has overhead costs that exceed its budget for program administration. Without them, the EAC is a bureaucracy in search of a mission.

Worse, it is a bureaucracy with a history of poor financial and managerial decisions and (apparently meritorious) claims of employment discrimination based on political viewpoint and military service. The EAC has repeatedly become mired in partisan controversies. The National Association of Secretaries of State has twice called on Congress to dissolve the EAC. The time has come to heed that call.

ORGANIZATION OF THE EAC

The EAC was established with four full-time commissioners appointed by the President and confirmed by the Senate. HAVA directs that one commissioner be appointed at the recommendation of each of the Speaker of the House, House Minority Leader, Majority Leader of the Senate, and Minority Leader of the Senate. HAVA also established the positions of executive director and general counsel, each appointed by the commissioners. All other staff positions are established and hired at the discretion of the executive director.

HAVA authorized appropriations for the EAC of up to \$10 million in each of the years 2003, 2004 and 2005. No appropriations were authorized for years after 2005. For budgetary purposes, the EAC is divided into the following departments: Management, Testing and Certification, Communications, Grants and Research. The agency also has an inspector general.

HAVA requires that any action the EAC is authorized to carry out under the Act must have the approval of at least three commissioners. In 2008, the EAC adopted—without a public vote—a policy establishing the roles and responsibilities of commissioners and staff. The policy limits the commissioners' authority to setting strategic policy, hiring of statutory positions and adoption of certain formal reports. The executive director's authority includes presentation of policy decisions to the commissioners, staffing levels and hiring decisions and all operational matters. Since the adoption of the policy, disputes have arisen regarding whether the agency could perform certain tasks, such as awarding competitive grants and submitting a budget request to Congress, without a vote of the commissioners.

BUDGET AND STAFFING

Notwithstanding the authorized limit of \$10 million per year, in FY 2010 the EAC's budget was \$17.959 million (this was the most recent full-year enacted appropriation). The agency's requested budget for FY 2012 is \$13.715 million. Of this, \$3.25 million is transferred to NIST for technical and scientific support of the testing and certification program and \$10.465 million is for operation

of the agency (the comparable amount for FY 2010 was \$13.409 million). The budget request the agency submitted to Congress breaks the operating budget request into the following amounts:

Management—51.7%	\$5,406,718
Grants—3.6%	372,500
Research—10.9%	1,137,025
Testing and Certification—12.5%	1,307,493
Communications—6.4%	669,583
Inspector General—14.9%	1,562,346

Adding up the budgets for the four program departments, they total \$3,516,601. This means the agency has a management cost of \$5.4 million for \$3.5 million worth of programs. This is an unjustifiably inefficient organization by any measure.

Through FY 2007, various appropriations acts limited the number of staff the EAC could hire. When that limit was removed, the staff grew quickly and steadily until it reached its current level of 50. This increase took place without any increase in the responsibilities assigned to the agency. When asked about the increase, EAC officials have testified to congressional committees that it was necessary to satisfy the administrative requirements of operating a federal agency. This only underscores the agency's inefficiency when overhead costs are weighed against program operations.

Even though the agency's requested FY 2012 operating budget is 22% less than its enacted FY 2010 budget, the total staff level declines by only one person. The agency's staff has testified to a recognition the agency needs to become leaner, but its decision to maintain a full level of staff in the face of a large budget cut does not bear out that statement. According to information provided to the Committee by the EAC, the average annual salary of staff there exceeds \$100,000.

THE EAC'S ROLE IN ELECTIONS

Since the enactment of HAVA, there have been three major contested elections that called into doubt the functioning of the election process: for Governor of the State of Washington in 2004, for the House of Representatives in the 13th District of Florida in 2006 and for the U.S. Senate in Minnesota in 2008. Each resulted in a protracted dispute that was not resolved until months after the election, and each led to charges of system breakdowns in the election process and partisan manipulation by election officials. Neither HAVA nor the EAC prevented the problems uncovered in those elections, and the EAC had no role in resolving them.

The EAC does not register voters, nor does it have any enforcement authority over laws governing voter registration. The EAC has no role in the casting or counting of ballots, or resolving election disputes. Election officials have direct functional connections to the EAC when they receive funds from it and when they seek to use voting systems certified by it. Other contact is informational, and the informational function does not need to be performed by the federal government.

Likewise, voters have direct functional connections to the EAC only when they use the EAC's website to download the national voter registration form—which is available from other sources and can be made available on any government web site. Other contact between the EAC and voters is informational, and the information

from the EAC is second-hand because the actual rules and procedures for elections are set by state and local jurisdictions.

EAC PROGRAM AREAS

Grants

In budgetary terms the EAC's largest responsibility by far was the disbursement of funds to states to replace voting systems and comply with HAVA requirements. To date the federal government has distributed over \$3.1 billion to states for these purposes, nearly all of it before 2006. In each of its last three budget requests, for fiscal years 2010, 2011 and 2012, the EAC has requested zero funding for these payments. Some funding was provided for FY 2010. The continuing resolution in place for the balance of FY 2011 reduced the amount to zero. In view of the request for zero funds and the status of the federal budget, it seems unlikely money will be appropriated in the foreseeable future for support of state election administration programs.

During the time funds have been distributed to states, there has been a substantial dispute over their proper treatment. For voting system upgrades and compliance with HAVA mandates such as a statewide voter registration database, Congress in HAVA used the term "payment" and these amounts were distributed based on formulas. Other amounts were designated "grants" in HAVA and distributed using other criteria. The categorization of funds distributed to the states has a significant impact on the states because it determines the level of recordkeeping and audit response required. EAC made an administrative decision to impose the highest level of requirements on the states. States opposed this decision, and in 2009 the National Association of Secretaries of State adopted a resolution calling on the EAC to comply strictly with Congress' designation in HAVA of the funds as "payments."

Some election officials have questioned this legislation because of the hardship their jurisdictions will suffer without continued federal funding. The lack of funding is not caused by the proposed termination of the EAC. Rather, the absence of funds to distribute is merely one more reason why operation of the EAC is an unnecessary and wasteful use of scarce taxpayer resources. With no funds left to distribute, there is no reason to retain the EAC to operate a department to disburse them.

Research

HAVA required the EAC to perform five specified research studies: (1) facilitating military and overseas voting, (2) human factors in voting system design, (3) using Social Security numbers in voter registration, (4) electronic and Internet voting and (5) free or reduced postage for absentee ballots. Four of those studies have been completed.

The fifth study, on the use of Social Security numbers in voter registration, is now some seven years overdue. It has been the subject of acerbic letters exchanged between the EAC and the Social Security Administration (SSA). The two agencies seem unable to agree on their roles in the study. While HAVA assigned the study to the EAC and called for it to be completed in consultation with the SSA, the SSA has accused the EAC of trying to shift responsi-

bility for the study onto the SSA. In the face of this dispute, it seems unlikely the final study will be completed in the foreseeable future.

The EAC also produces documents called Election Management Guidelines and Quick Start Guides. The agency has completed all of these documents that it plans to produce. Even if they had not been completed, their value has been questioned in congressional testimony and elsewhere.

With the required research effectively complete, and other materials likewise complete, there is no reason to retain the EAC to operate a research department. There is no Congressional mandate for further research, and any research conducted likely would be designed to justify the department's continued existence rather than to fulfill an important and uniquely federal need.

Testing and certification

Prior to the enactment of HAVA, the National Association of State Election Directors operated a program to test and certify voting systems so that election officials purchasing such systems had some independent validation of their quality and performance. The Federal Election Commission also played a role in the process prior to the enactment of HAVA through the voting system standards it issued in 1990.

HAVA created a federal program to perform this function in place of the association of state officials who operated it previously. The program involves four parts: developing the standards voting systems are required to meet in order to be certified (the Voluntary Voting System Guidelines, or VVSG), accrediting labs to test voting systems against those standards, conducting the tests, and certifying that systems satisfy the standards.

To issue a VVSG, a Technical Guidelines Development Committee (TGDC) works with the EAC to develop the initial draft. The TGDC consists of 15 people, including representatives of NIST and the Access Board, election officials, and others with scientific and technical expertise. The draft VVSG is issued for comment, and is submitted to two boards. One is the EAC's Board of Advisors, consisting of 37 individuals representing organizations or appointed by Congress. The other is the EAC's Standards Board, a 110-person body that includes two election officials from each state and territory. The Advisory Board and Standards Board review the VVSG and return comments to the EAC. The EAC then revises the VVSG, issues it again for public comment, and adopts it in its final form. The last fully-adopted VVSG is from 2005.

The EAC accredits laboratories to test voting systems against the standards in the VVSG. Currently there are two EAC-accredited testing labs. The decision to certify a lab is made by majority vote of the commissioners. Voting system manufacturers submit systems to the labs for testing, and the labs conduct the tests and report their findings.

Based on the results of testing by accredited labs, the EAC may certify that a voting system meets the standards in the VVSG. This certification is made by staff and does not require action of the commissioners. The first certification of a voting system occurred on February 6, 2009, and since then six more have been certified.

The reason the voting system guidelines are termed “voluntary” is that states are not required to use the federal standards or certification when they purchase voting systems. The federal standards and certification are available for the states as an optional tool to assist them in purchasing reliable and trustworthy voting systems.

Based on an EAC analysis in January, 2011, 35 states and territories make use of the federal standards and certification—some by requiring federal certification of the systems they purchase, some by requiring that systems be tested to federal standards in a federally-accredited lab and some by requiring testing to federal standards without specifying the type of lab that may conduct the tests. The other 20 states and territories make no use of the federal testing and certification program.

It is an open question whether a federal testing and certification program using standards developed under the HAVA system is the best long-term process for supporting voting system quality. The reliance on the current system by 35 states and territories means that a rapid change could disrupt those states’ ability to purchase voting systems. However, there are alternatives to maintaining the EAC to conduct the federal program. The operation of the testing and certification program does not justify operating a separate federal agency.

Communications

Prior to the enactment of HAVA, the Federal Election Commission operated a clearing house of election administration information for state and local election officials. This clearinghouse has been absorbed into the EAC’s web site. The design of the agency’s web site has been recognized for its quality. However, the operation of a web site collecting data on election administration does not justify operating a separate federal agency.

The communications department of the EAC performs other functions in addition to maintaining the clearinghouse. It handles congressional relations, FOIA and media relations. None of these functions is unique to the EAC and indeed all of them are effectively overhead of operating an agency.

MANAGEMENT AND PARTISAN CONTROVERSY

The EAC’s mission does not warrant a stand-alone agency to perform it—especially when the grants and research portions of that mission are successfully completed. The overhead and administrative costs of maintaining an agency are too great to justify the continued expense. In addition, a series of incidents at the EAC have shown a pattern of questionable decision-making, poor financial choices and partisan controversy.

T-shirts

In 2008, amidst growing concerns about workplace morale, the EAC purchased shirts to distribute to its then-39 employees. The shirts were classified as an award for employees who worked an extended shift on Election Day. Because of an error in the purchase order, the agency purchased nearly three times the intended number of shirts—a total of 458, consisting of 378 short-sleeved polo shirts in three colors, 40 long-sleeved polo shirts, and 40 zip-hooded

sweatshirts. The total cost was \$6,976.50. Each employee received five shirts, one of each type/color. The value of the shirts given to each employee was approximately \$81. After the shirts were distributed, there were 263 left in inventory, worth \$3,817.50.

Retaliation and hostile work environment

The EAC's 2008 employee survey found that 32% of the responding employees felt they could not report a violation of law without fear of retaliation. Because of the survey results and multiple reports to the Inspector General of a hostile work environment and retaliatory actions by management, the EAC's Inspector General conducted an investigation into the agency's workplace environment.

In response, the EAC commissioned an outside firm, C.W. Hines & Associates, to examine the agency and recommend changes. The Hines group designed a teambuilding program for the EAC that involved interviews with staff, focus groups and a teambuilding retreat. The report produced by the Hines group began by lauding the EAC's executive director as "indeed a man of both courage and vision." The report concluded that problems with the agency rested with a handful of people who were not team players. The recommendations included creating a "Work Environment Improvement" team and scheduling "forgiveness sessions" to address lingering resentments. The EAC paid the Hines Group \$77,674 for its work.

After the IG's workplace environment investigation and the completion of the teambuilding contract, another incident occurred at the EAC's 2010 holiday party. During a gift exchange, one employee proffered an inappropriate, sexually-themed gift. A member of the agency's senior management received the gift and allowed it to continue to be included in the gift exchange and transferred to other employees. Following a complaint, the Inspector General looked into this event and recommended additional EEO training.

Accusations of politicized decisions

On at least two occasions the EAC has been involved in highly-publicized events involving claims the agency based decisions on political considerations. In 2004, the citizens of Arizona approved a ballot proposition requiring applicants for voter registration to show proof of U.S. citizenship in order to be registered. Arizona asked the EAC to change the instruction on the national voter registration form administered by the EAC to reflect the change in Arizona law. First the EAC's executive director, acting without a vote by the commissioners, wrote to Arizona's Secretary of State that federal law pre-empted state law on the matter and the state was obligated to accept a federal form for voter registration even if it did not include the documentation of citizenship required by Arizona law. The commissioners subsequently deadlocked on a motion to change the form. That motion failed on a 2-2 vote, with Republican commissioners voting one way and Democratic commissioners voting the other.

The EAC hired two contractors to prepare a report on voter fraud. The contractors submitted a draft report to the agency. The agency's final report differed in several respects from the draft submitted by the contractors. Amid accusations that the changes were

politically motivated, the EAC's Inspector General conducted an investigation.

Discrimination based on partisan affiliation and military service

The position of General Counsel is one of two staff positions created by HAVA and selected by the commissioners. In 2008, the EAC reviewed candidates for the position and gave an individual an offer in writing, which he accepted. After the candidate's selection, two of the Commissioners researched his off-the-job political activity or received contacts about his appointment and found that the individual was a Republican. Notwithstanding that the EAC Human Resources Director wrote to the Commissioners at the beginning of the selection process that, "[i]ntroducing political party affiliation into the selection process is in direct violation of the prohibited personnel practices," these same two Commissioners then voted to disapprove his appointment. Their votes caused the hiring decision to deadlock on a 2-2 vote, with Republican commissioners voting one way and Democratic commissioners voting the other.

The individual made a claim of political discrimination and the case was referred to the Office of Special Counsel (OSC). While the investigation was ongoing, the OSC negotiated an agreement between the individual and the EAC. Without admitting fault, the EAC agreed to provide the individual a "substantial monetary settlement." After the settlement, the OSC issued a press release stating, "OSC's investigation uncovered evidence indicating that the EAC illegally refused to approve the complainant's appointment because he was a Republican."

In 2010, the EAC conducted another hiring process to fill the still-vacant position of General Counsel. One of the two finalists for the position was a lawyer serving in the military reserves. In the course of the final interview, the applicant asserts that one of the commissioners pursued a line of questioning that was an attempt to use the applicant's military service as a negative in the employment selection process by pointing out the potential for short or long-term absence as a reservist. The applicant has filed a discrimination complaint under the Uniformed Services Employment and Reemployment Rights Act (USERRA) with the Department of Labor.

According to a media report dated May 24, 2011:

On March 14, 2011, DOL informed the Office of Personnel Management (OPM) that the lawyer's claim of discrimination was "meritorious and that the claimant is entitled to the position of General Counsel and compensation for lost wages and other benefits." The DOL letter stated that Hillman asked the lawyer "inappropriate questions regarding his military obligations" during his interview. Even worse, she apparently lied to DOL investigators when she "denied making any comments about [the lawyer's] military commitments." Witnesses present during the interview confirmed that Hillman had asked these inappropriate questions.

DOL even has a recording of the closed session at the EAC where the commissioners discussed the two finalists for the General Counsel job, which included the reserve offi-

cer. To her credit, Republican Commissioner Gineen Bresso confronted Hillman over her inappropriate questions and the fact that they violated USERRA. In that recording, according to DOL's letter, "Hillman admitted that she asked questions about [the lawyer's] reserve duties"—something she later denied to DOL investigators.

DOL's letter tells OPM that if this is not resolved, the claim will be referred to the Office of Special Counsel, the same office that investigated Hillman and Rodriguez in the earlier case. Once again, it looks like the taxpayers will be saddled with large expenses thanks to the misbehavior of an EAC commissioner.

CONCLUSION

The EAC has completed many of its major functions. Its operations and budget show that its mission cannot justify maintaining a federal agency. The EAC has a record of discrimination based on political affiliation and military service and a history of partisan controversy. The functions of the EAC that continue to be necessary and valuable can be performed by another agency more efficiently and at least as effectively.

SUMMARY OF H.R. 672 (AS ORDERED REPORTED)

§ 1—Short Title—This section cites the short title of the bill as the "Election Support Consolidation and Efficiency Act"

§ 2—Termination of the Election Assistance Commission

Subtitle A—Termination

- Transfers remaining operations regarding EAC contracts and agreements to the Office of Management and Budget (OMB);
- Allows any payments made by the Commission prior to its termination to be utilized as was intended under the prior terms and conditions, while providing that requirements payments shall be subject only to the procedures set out in HAVA; and
- Sets the Commission termination date at 60 days after enactment.

Subtitle B—Transfer of Certain Authorities

- Transfers the functions of the Office of Voting System Testing and Certification and its existing staff to the Federal Election Commission (FEC).
- Transfers responsibilities pertaining to the adoption of Voluntary Voting System Guidelines to the FEC.
- Transfers responsibilities for maintaining a clearinghouse on the election administration experiences of states to the FEC.
- Transfers reporting requirements under UOCAVA and EAC responsibilities under the MOVE Act to the FEC.
- Transfers responsibility for regulations concerning the national voter registration form back to the FEC.

§ 3—Replacement of Standards Board and Board of Advisors with Guidelines Review Board

- Creates an 82-member Guidelines Review Board made up of stakeholders from the elections community to review proposed VVSGs in the same manner currently done by the Advisory Board and Standards Board; and

- Maintains the existing Technical Guidelines Development Committee (changed only to include members of the Guidelines Review Board instead of the Advisory Board and Standards Board).

§ 4—Conforming Amendments for the transfer of responsibilities to FEC

§ 5—Conforming Amendments to other Laws

§ 6—Conforming Amendments related to termination

§ 7—Studies

(1) Directs the Comptroller General to conduct a study of the process for adoption of Voluntary Voting System Guidelines and develop recommendations to improve such procedures. This report shall be presented to Congress no later than 2 years after enactment of the Act.

(2) Directs the Federal Election Commission to conduct a study of the procedures for the testing, certification, decertification, and recertification of voting system hardware and software and develop a recommendation on the entity best suited to oversee and carry out such procedures. This report shall be presented to Congress no later than 2 years after enactment of the Act.

SEC. 2

This section terminates the EAC promptly and responsibly. It allows for the orderly wind-down of the agency by the Office of Management and Budget. It preserves any pending actions involving the agency. It ensures that requirements payments distributed to states but not yet obligated by the states remain available for their use. In general, such use is to be conducted under the terms and conditions in place at the time the payments were distributed, including advisory opinions issued by the EAC. In recognition of the concerns expressed by states through testimony to the Committee and the 2009 resolution of the National Association of Secretaries of State, the Committee amended this section to provide that general laws relating to payments by the federal government shall apply but, except as required by those laws, the only terms and conditions imposed on the states shall be those specified in HAVA.

While terminating the EAC, this section preserves certain functions that the Committee believes provide continuing value to state and local election officials. The most substantial of those is the testing and certification of voting systems, including the development of voluntary guidelines to be used as standards for such testing and certification. The Committee amended the bill to transfer this function to the FEC rather than to NIST. This change was made in response to feedback the Committee received from members of the elections and scientific communities that a separation of the scientific and decision-making aspects of the testing and certification function would best serve all stakeholders.

The responsibility to develop voluntary guidelines and perform the testing and certification function is transferred to the FEC. In addition, the responsibility to maintain the clearinghouse of voting system information is transferred to the FEC. Prior to enactment of HAVA the FEC was responsible for regulations implementing the national voter registration form, and that responsibility is returned to the FEC. Various reporting requirements assigned to the

EAC by the Uniformed and Overseas Civilian Absentee Voting Act and the Military and Overseas Voter Empowerment Act are transferred to the FEC. Taken in total these transferred functions account for less than 20% of the EAC's operating budget.

SEC. 3

State and local election officials strongly encouraged the Committee to preserve a formal, structured role for them in the development of the VVSG. This role currently is provided by the Technical Guidelines Development Committee, Board of Advisors and Standards Board created by HAVA. One comment from the FEC, in a letter dated March 16, 2011, was, "the EAC was assisted in its role of developing and adopting voluntary voting system guidelines through input from local and state election officials and the Technical Guidelines Development Committee, and the FEC hopes it would have similar assistance in carrying out its duties." The Committee amended the bill to give election officials a strong continued role while making the process more streamlined and efficient.

The Technical Guidelines Development Committee is preserved in its current form. The functions of the Advisory Board and Standards Board, which total 147 members, will be performed by a Guidelines review Board of 82 members. That board includes election officials from every state and territory, officials of key government agencies and organizations and members appointed by Congress. The administrative structure of the board is similar to that of the current Standards Board.

SEC. 4

This section transfers the EAC's Office of Voting System Testing and Certification ("Office") to the FEC. The transfer includes the Office's existing staff, property and records to ensure a smooth transition and preserve the progress made by the EAC in developing the testing and certification program. This section also provides for the transfer of the other responsibilities assigned to the FEC.

SEC. 5

This section includes a provision similar to Section 209 of HAVA. It provides that nothing in this Act gives the FEC any new authority to impose requirements on state or local government through rules, regulations or other actions. The only exceptions to this provision are authority held by the FEC prior to enactment of the Act and the authority previously held by the FEC that is transferred back to promulgate regulations implementing the national voter registration form.

SEC. 7

The Committee believes it is important to conduct the termination of the EAC with minimal disruption to state and local election officials. The Committee recognizes that the absence of future requirements payments is itself a disruption, but it is a direct result of budget and appropriations matters involving record Federal debt and deficits. The Committee has listened carefully to the testimony and other comment it has received, and has sought to ensure

that the direct effects on state and local election officials of terminating the EAC are as small as possible. Preserving the voting system testing and certification program in nearly identical form to that operated by the EAC is one step the Committee has taken in this regard. The Committee recognizes, and has been advised by witnesses and commenters, that the current system has improved significantly in recent years but still could benefit from further improvement. Rather than attempt to impose additional changes at this time, and to ensure that appropriate changes can be considered in the future, the Committee amended the bill to provide for two studies relating to the testing and certification program. The first calls on the Comptroller General to evaluate the process of developing the VVSG and make recommendations for improvement. The second calls on the FEC to evaluate the procedures for testing and certification and make a recommendation as to what entity is best suited to fulfill those functions. Both studies are to be submitted to Congress within two years of enactment of the Act.

COMMITTEE CONSIDERATION OF H.R. 672

INTRODUCTION AND REFERRAL

On February 11, 2011, Representative Harper of Mississippi along with Representative Lungren of California, Representative Gingrey of Georgia and Representative Rokita of Indiana introduced H.R. 672, which was referred to the Committee on House Administration with an additional referral to the Committee on Science, Space and Technology.

HEARINGS

On March 17, 2011, the Committee on House Administration's Subcommittee on Elections held a hearing entitled "Election Assistance Commission Operations and 2012 Budget Request."

Members present: Chairman Harper, Mr. Nugent, Mr. Rokita, Ranking Minority Member Brady and Mr. Gonzalez.

Witnesses: Commissioner Donetta Davidson, Commissioner Gineen Bresso, Executive Director Thomas Wilkey, Chief Operating Officer Alice Miller, and Chief Financial Officer Annette Lafferty.

On April 14, 2011, the Committee on House Administration's Subcommittee on Elections held a hearing entitled "H.R. 672—to Terminate the Election Assistance Commission."

Members present: Chairman Harper, Mr. Nugent, Mr. Rokita and Mr. Gonzalez.

Witnesses: First panel—Representative Steny Hoyer. Second Panel—New Hampshire Secretary of State Bill Gardner, Mississippi Secretary of State Delbert Hosemann, Florida Secretary of State Kurt Browning, Sacramento County (California) Registrar of Voters Jill LaVine and Mr. John Fortier.

MARKUP

On May 25, 2011, the Committee met to mark up H.R. 672. The Committee ordered H.R. 672 reported favorably, as amended, by voice vote, with a quorum present.

COMMITTEE RECORD VOTES

House Rule XIII, clause 3(b) requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the Committee report.

Substitute amendment offered by Mr. Gonzalez to Mr. Harper's amendment in the nature of a substitute

The amendment reauthorizes the EAC from 2012 through 2016. Additionally, the amendment requires states to participate in post-election surveys, creates ongoing surveys to check ADA compliance, mandates a study on methods to reduce costs for the administration of elections and mandates that the Government Accountability Office (GAO) conduct a study on how the EAC can improve its effectiveness. The amendment creates an escrow account controlled by EAC that would collect payments from voting system manufacturers and distribute them to testing labs at a set rate. The amendment allows the EAC to establish fees for testing and to choose which testing lab would test each voting system.

The vote on the amendment was 3–5 and the amendment was not agreed to.

ROLL CALL NO. 112–1
GONZALEZ AMENDMENT #1

Name	Response to call of the roll		
	Aye	Nay	Answered Present
Mr. Harper		X	.....
Mr. Gingrey		X	.....
Mr. Schock		X	.....
Mr. Rokita .....			.....
Mr. Nugent		X	.....
Mr. Brady	X		.....
Ms. Lofgren	X		.....
Mr. Gonzalez	X		.....
Mr. Lungren		X	.....

Amendment offered by Mr. Gonzalez to Mr. Harper's amendment in the nature of a substitute

The amendment delays the termination date of the EAC until 120 days after enactment and requires completion of a GAO study on (a) the ability of other offices of the Federal government to complete the mission of the EAC, (b) whether termination will affect voters' participation in elections, and (c) the budgetary impact of termination on the Federal government in cost savings to the Federal government and whether those cost savings will be shifted to the states.

The vote on the amendment was 3–5 and the amendment was not agreed to.

ROLL CALL NO. 112-2
GONZALEZ AMENDMENT # 2

Name	Response to call of the roll		
	Aye	Nay	Answered Present
Mr. Harper		X	.....
Mr. Gingrey		X	.....
Mr. Schock		X	.....
Mr. Rokita .....			.....
Mr. Nugent		X	.....
Mr. Brady	X		.....
Ms. Lofgren	X		.....
Mr. Gonzalez	X		.....
Mr. Lungren		X	.....

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with House Rule XXIII, clause 3(c)(1), the Committee states that the findings and recommendations of the Committee, based on oversight activities under House Rule X, clause 2(b)(1), are incorporated into the general discussion section of this report.

STATEMENT OF BUDGET AUTHORITY AND RELATED ITEMS

The resolution does not provide new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures and a statement under House Rule XXIII, clause 3(c)(2), and section 308(a)(1) of the Congressional Budget Act of 1974 is not required.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with House Rule XXIII, clause 3(c)(3), the Committee states, with respect to H.R. 672, that the Director of the Congressional Budget Office did not submit a cost estimate and comparison under section 402 of the Congressional Budget Act of 1974.

PERFORMANCE GOALS AND OBJECTIVES

In compliance with House Rule XXIII, clause 3(c)(4), the Committee states that the general discussion section of this report includes a statement of the general performance goals and objectives, including outcome-related goals and objectives, for which H.R. 672 authorizes funding.

CONSTITUTIONAL AUTHORITY STATEMENT

Congress has the power to enact this legislation pursuant to Article I, Section 4 of the U.S. Constitution. Section 4 grants Congress the authority to make laws governing the time, place, and manner of holding Federal elections.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 672 does not contain any congressional

earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

HELP AMERICA VOTE ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

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TITLE II—COMMISSION

SUBTITLE A—ESTABLISHMENT AND GENERAL ORGANIZATION

* * * * *

[PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

[Sec. 211. Establishment.]

[Sec. 212. Duties.

[Sec. 213. Membership of Standards Board.

[Sec. 214. Membership of Board of Advisors.

[Sec. 215. Powers of Boards; no compensation for service.

[Sec. 216. Status of Boards and members for purposes of claims against Board.]

PART 2—GUIDELINES REVIEW BOARD

Sec. 211. Establishment.

Sec. 212. Duties.

Sec. 213. Membership.

Sec. 214. Powers; no compensation for service.

Sec. 215. Status of Board and members for purposes of claims against Board.

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PART 3—TECHNICAL GUIDELINES DEVELOPMENT COMMITTEE

* * * * *

Sec. 223. Transfer of authority to Federal Election Commission.

SUBTITLE B—TESTING, CERTIFICATION, DECERTIFICATION, AND RECERTIFICATION OF VOTING SYSTEM HARDWARE AND SOFTWARE

* * * * *

Sec. 232. Transfer of authority to Federal Election Commission.

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TITLE IX—MISCELLANEOUS PROVISIONS

* * * * *

TITLE X—TERMINATION OF COMMISSION

SUBTITLE A—TERMINATION

Sec. 1001. Termination.

Sec. 1002. Transfer of operations to Office of Management and Budget during transition.

Sec. 1003. Savings provisions.
Sec. 1004. Commission termination date.

SUBTITLE B—TRANSFER OF CERTAIN AUTHORITIES

Sec. 1011. Transfer of election administration functions to Federal Election Commission.
Sec. 1012. Effective date.

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TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

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[PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

[SEC. 211. ESTABLISHMENT.

【There are hereby established the Election Assistance Commission Standards Board (hereafter in this title referred to as the “Standards Board”) and the Election Assistance Commission Board of Advisors (hereafter in this title referred to as the “Board of Advisors”).

[SEC. 212. DUTIES.

【The Standards Board and the Board of Advisors shall each, in accordance with the procedures described in part 3, review the voluntary voting system guidelines under such part, the voluntary guidance under title III, and the best practices recommendations contained in the report submitted under section 242(b).

[SEC. 213. MEMBERSHIP OF STANDARDS BOARD.

【(a) COMPOSITION.—

【(1) IN GENERAL.—Subject to certification by the chair of the Federal Election Commission under subsection (b), the Standards Board shall be composed of 110 members as follows:

【(A) Fifty-five shall be State election officials selected by the chief State election official of each State.

【(B) Fifty-five shall be local election officials selected in accordance with paragraph (2).

【(2) LIST OF LOCAL ELECTION OFFICIALS.—Each State’s local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select (under a process supervised by the chief election official of the State) a representative local election official from the State for purposes of paragraph (1)(B). In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official for purposes of such paragraph, except that under such a procedure the individual selected may not be a member of the same political party as the chief election official.

[(3) REQUIRING MIX OF POLITICAL PARTIES REPRESENTED.—
The two members of the Standards Board who represent the same State may not be members of the same political party.

[(b) PROCEDURES FOR NOTICE AND CERTIFICATION OF APPOINTMENT.—

[(1) NOTICE TO CHAIR OF FEDERAL ELECTION COMMISSION.—
Not later than 90 days after the date of the enactment of this Act, the chief State election official of the State shall transmit a notice to the chair of the Federal Election Commission containing—

[(A) the name of the State election official who agrees to serve on the Standards Board under this title; and

[(B) the name of the representative local election official from the State selected under subsection (a)(2) who agrees to serve on the Standards Board under this title.

[(2) CERTIFICATION.—Upon receiving a notice from a State under paragraph (1), the chair of the Federal Election Commission shall publish a certification that the selected State election official and the representative local election official are appointed as members of the Standards Board under this title.

[(3) EFFECT OF FAILURE TO PROVIDE NOTICE.—If a State does not transmit a notice to the chair of the Federal Election Commission under paragraph (1) within the deadline described in such paragraph, no representative from the State may participate in the selection of the initial Executive Board under subsection (c).

[(4) ROLE OF COMMISSION.—Upon the appointment of the members of the Election Assistance Commission, the Election Assistance Commission shall carry out the duties of the Federal Election Commission under this subsection.

[(c) EXECUTIVE BOARD.—

[(1) IN GENERAL.—Not later than 60 days after the last day on which the appointment of any of its members may be certified under subsection (b), the Standards Board shall select nine of its members to serve as the Executive Board of the Standards Board, of whom—

[(A) not more than five may be State election officials;

[(B) not more than five may be local election officials;

and

[(C) not more than five may be members of the same political party.

[(2) TERMS.—Except as provided in paragraph (3), members of the Executive Board of the Standards Board shall serve for a term of 2 years and may not serve for more than 3 consecutive terms.

[(3) STAGGERING OF INITIAL TERMS.—Of the members first selected to serve on the Executive Board of the Standards Board—

[(A) three shall serve for 1 term;

[(B) three shall serve for 2 consecutive terms; and

[(C) three shall serve for 3 consecutive terms,

as determined by lot at the time the members are first appointed.

[(4) DUTIES.—In addition to any other duties assigned under this title, the Executive Board of the Standards Board may

carry out such duties of the Standards Board as the Standards Board may delegate.

【SEC. 214. MEMBERSHIP OF BOARD OF ADVISORS.

【(a) IN GENERAL.—The Board of Advisors shall be composed of 37 members appointed as follows:

【(1) Two members appointed by the National Governors Association.

【(2) Two members appointed by the National Conference of State Legislatures.

【(3) Two members appointed by the National Association of Secretaries of State.

【(4) Two members appointed by the National Association of State Election Directors.

【(5) Two members appointed by the National Association of Counties.

【(6) Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.

【(7) Two members appointed by the United States Conference of Mayors.

【(8) Two members appointed by the Election Center.

【(9) Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.

【(10) Two members appointed by the United States Commission on Civil Rights.

【(11) Two members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

【(12) The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee.

【(13) The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.

【(14) The director of the Federal Voting Assistance Program of the Department of Defense.

【(15) Four members representing professionals in the field of science and technology, of whom—

【(A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and

【(B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.

【(16) Eight members representing voter interests, of whom—

【(A) four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and

【(B) four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

【(b) MANNER OF APPOINTMENTS.—Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

【(c) TERM OF SERVICE; VACANCY.—Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any

vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

[(d) CHAIR.—The Board of Advisors shall elect a Chair from among its members.

[SEC. 215. POWERS OF BOARDS; NO COMPENSATION FOR SERVICE.

[(a) HEARINGS AND SESSIONS.—

[(1) IN GENERAL.—To the extent that funds are made available by the Commission, the Standards Board (acting through the Executive Board) and the Board of Advisors may each hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as each such Board considers advisable to carry out this title, except that the Boards may not issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence.

[(2) MEETINGS.—The Standards Board and the Board of Advisors shall each hold a meeting of its members—

[(A) not less frequently than once every year for purposes of voting on the voluntary voting system guidelines referred to it under section 222;

[(B) in the case of the Standards Board, not less frequently than once every 2 years for purposes of selecting the Executive Board; and

[(C) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with this title.

[(b) INFORMATION FROM FEDERAL AGENCIES.—The Standards Board and the Board of Advisors may each secure directly from any Federal department or agency such information as the Board considers necessary to carry out this Act. Upon request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the head of such department or agency shall furnish such information to the Board.

[(c) POSTAL SERVICES.—The Standards Board and the Board of Advisors may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government.

[(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the Administrator of the General Services Administration shall provide to the Board, on a reimbursable basis, the administrative support services that are necessary to enable the Board to carry out its duties under this title.

[(e) NO COMPENSATION FOR SERVICE.—Members of the Standards Board and members of the Board of Advisors shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

[SEC. 216. STATUS OF BOARDS AND MEMBERS FOR PURPOSES OF CLAIMS AGAINST BOARD.

[(a) **IN GENERAL.**—The provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the Standards Board, the Board of Advisors, and their members for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the Board.

[(b) **EXCEPTION FOR CRIMINAL ACTS AND OTHER WILLFUL CONDUCT.**—Subsection (a) may not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of a member of the Standards Board or the Board of Advisors.]

PART 2—GUIDELINES REVIEW BOARD

SEC. 211. ESTABLISHMENT.

There is established the Guidelines Review Board (hereafter in this part referred to as the “Board”).

SEC. 212. DUTIES.

The Board shall, in accordance with the procedures described in part 3, review the voluntary voting system guidelines under such part.

SEC. 213. MEMBERSHIP.

(a) **IN GENERAL.**—*The Board shall be composed of 82 members appointed as follows:*

(1) *One State or local election official from each State, to be selected by the chief State election official of the State, who shall take into account the needs of both State and local election officials in making the selection.*

(2) *2 members appointed by the National Conference of State Legislatures.*

(3) *2 members appointed by the National Association of Secretaries of State.*

(4) *2 members appointed by the National Association of State Election Directors.*

(5) *2 members appointed by the National Association of County Recorders, Election Administrators, and Clerks.*

(6) *2 members appointed by the Election Center.*

(7) *2 members appointed by the International Association of County Recorders, Election Officials, and Treasurers.*

(8) *2 members appointed by the United States Commission on Civil Rights.*

(9) *2 members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).*

(10) *The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief’s designee.*

(11) *The director of the Federal Voting Assistance Program of the Department of Defense.*

(12) *The Director of the National Institute of Standards and Technology or the Director’s designee.*

(13) *4 members representing professionals in the field of science and technology, of whom—*

- (A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
 (B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
- (14) 4 members representing voter interests, of whom—
 (A) one each shall be appointed by the chair and ranking minority member of the Committee on House Administration of the House of Representatives; and
 (B) one each shall be appointed by the chair and ranking minority member of the Committee on Rules and Administration of the Senate.
- (b) **MANNER OF APPOINTMENTS.**—
 (1) **IN GENERAL.**—Appointments shall be made to the Board under subsection (a) in a manner which ensures that the Board will be bipartisan in nature and will reflect the various geographic regions of the United States.
 (2) **SPECIAL RULE FOR CERTAIN APPOINTMENTS.**—The 2 individuals who are appointed as members of the Board under each of the paragraphs (2) through (9) of subsection (a) may not be members of the same political party.
- (c) **TERM OF SERVICE; VACANCY.**—Members of the Board shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board shall be filled in the manner in which the original appointment was made.
- (d) **EXECUTIVE BOARD.**—
 (1) **IN GENERAL.**—Not later than 60 days after the day on which the appointment of its members is completed, the Board shall select 9 of its members to serve as the Executive Board of the Guidelines Review Board, of whom—
 (A) not more than 5 may be State election officials;
 (B) not more than 5 may be local election officials; and
 (C) not more than 5 may be members of the same political party.
 (2) **TERMS.**—Except as provided in paragraph (3), members of the Executive Board of the Board shall serve for a term of 2 years and may not serve for more than 3 consecutive terms.
 (3) **STAGGERING OF INITIAL TERMS.**—Of the members first selected to serve on the Executive Board of the Board—
 (A) 3 shall serve for 1 term;
 (B) 3 shall serve for 2 consecutive terms; and
 (C) 3 shall serve for 3 consecutive terms,
 as determined by lot at the time the members are first appointed.
 (4) **DUTIES.**—The Executive Board of the Board shall carry out such duties of the Board as the Board may delegate.
- (e) **BYLAWS; DELEGATION OF AUTHORITY.**—The Board may promulgate such bylaws as it considers appropriate to provide for the operation of the Board, including bylaws that permit the Executive Board to grant to any of its members the authority to act on behalf of the Executive Board.

SEC. 214. POWERS; NO COMPENSATION FOR SERVICE.

- (a) **HEARINGS AND SESSIONS.**—
 (1) **IN GENERAL.**—To the extent that funds are made available by the Federal Election Commission, the Board may hold such hearings for the purpose of carrying out this Act, sit and act at

such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out this title, except that the Board may not issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence.

(2) *MEETINGS.—The Board shall hold a meeting of its members—*

(A) not less frequently than once every 2 years for purposes selecting the Executive Board and voting on the voluntary voting system guidelines referred to it under section 222; and

(B) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with this title.

(b) *INFORMATION FROM FEDERAL AGENCIES.—The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out this Act. Upon request of the Executive Board, the head of such department or agency shall furnish such information to the Board.*

(c) *POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government.*

(d) *ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Executive Board, the Administrator of the General Services Administration shall provide to the Board, on a reimbursable basis, the administrative support services that are necessary to enable the Board to carry out its duties under this title.*

(e) *NO COMPENSATION FOR SERVICE.—Members of the Board shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.*

SEC. 215. STATUS OF BOARD AND MEMBERS FOR PURPOSES OF CLAIMS AGAINST BOARD.

(a) *IN GENERAL.—The provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the Board and its members for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the Board.*

(b) *EXCEPTION FOR CRIMINAL ACTS AND OTHER WILLFUL CONDUCT.—Subsection (a) may not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of a member of the Board.*

PART 3—TECHNICAL GUIDELINES DEVELOPMENT COMMITTEE

SEC. 221. TECHNICAL GUIDELINES DEVELOPMENT COMMITTEE.

(a) * * *

* * * * *

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Development Committee shall be composed of the Director of the National Institute of Standards and Technology (who shall serve as its chair), together with a group of 14 other individuals appointed jointly by the Commission and the Director of the National Institute of Standards and Technology, consisting of the following:

(A) An equal number of each of the following:

(i) Members of the Standards Board.

(ii) Members of the Board of Advisors.

(i) *Members of the Guidelines Review Board.*

[(iii)] (ii) Members of the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

* * * * *

(D) Two representatives of the National Association of State Election Directors selected by such Association who are not members of the [Standards Board or Board of Advisors] *Guidelines Review Board*, and who are not of the same political party.

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SEC. 222. PROCESS FOR ADOPTION.

(a) * * *

(b) CONSIDERATION OF RECOMMENDATIONS OF DEVELOPMENT COMMITTEE; SUBMISSION OF PROPOSED GUIDELINES TO [BOARD OF ADVISORS AND STANDARDS BOARD] *GUIDELINES REVIEW BOARD*.—

(1) * * *

[(2) BOARD OF ADVISORS.—The Executive Director of the Commission shall submit the guidelines proposed to be adopted under this part (or any modifications to such guidelines) to the Board of Advisors.

[(3) STANDARDS BOARD.—The Executive Director of the Commission shall submit the guidelines proposed to be adopted under this part (or any modifications to such guidelines) to the Executive Board of the Standards Board, which shall review the guidelines (or modifications) and forward its recommendations to the Standards Board.]

(2) *GUIDELINES REVIEW BOARD.—The Executive Director of the Commission shall submit the guidelines proposed to be adopted under this part (or any modifications to such guidelines) to the Guidelines Review Board.*

(c) REVIEW.—Upon receipt of voluntary voting system guidelines described in subsection (b) (or a modification of such guidelines) from the Executive Director of the Commission, [the Board of Advisors and the Standards Board shall each review] *the Guidelines Review Board shall review* and submit comments and recommendations regarding the guideline (or modification) to the Commission.

(d) FINAL ADOPTION.—

(1) IN GENERAL.—A voluntary voting system guideline described in subsection (b) (or modification of such a guideline) shall not be considered to be finally adopted by the Commission unless the Commission votes to approve the final adoption of the guideline (or modification), taking into consideration the comments and recommendations submitted by [the Board of

Advisors and the Standards Board] *the Guidelines Review Board* under subsection (c).

(2) MINIMUM PERIOD FOR CONSIDERATION OF COMMENTS AND RECOMMENDATIONS.—The Commission may not vote on the final adoption of a guideline described in subsection (b) (or modification of such a guideline) until the expiration of the 90-day period which begins on the date the Executive Director of the Commission submits the proposed guideline (or modification) to [the Board of Advisors and the Standards Board] *the Guidelines Review Board* under subsection (b).

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SEC. 223. TRANSFER OF AUTHORITY TO FEDERAL ELECTION COMMISSION.

(a) TRANSFER.—Effective on the Commission termination date described in section 1004, the Federal Election Commission (hereafter in this section referred to as the “FEC”) shall be responsible for carrying out the duties and functions of the Commission under this part.

(b) ROLE OF EXECUTIVE DIRECTOR.—The FEC shall carry out the operation and management of its duties and functions under this part through the Office of the Executive Director of the FEC.

Subtitle B—Testing, Certification, Decertification, and Recertification of Voting System Hardware and Software

SEC. 231. CERTIFICATION AND TESTING OF VOTING SYSTEMS.

(a) * * *

* * * * *

(c) CONTINUING REVIEW BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—

(1) IN GENERAL.—In cooperation with the Commission and in consultation with [the Standards Board and the Board of Advisors] *the Guidelines Review Board*, the Director of the National Institute of Standards and Technology shall monitor and review, on an ongoing basis, the performance of the laboratories accredited by the Commission under this section, and shall make such recommendations to the Commission as it considers appropriate with respect to the continuing accreditation of such laboratories, including recommendations to revoke the accreditation of any such laboratory.

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SEC. 232. TRANSFER OF AUTHORITY TO FEDERAL ELECTION COMMISSION.

(a) TRANSFER.—

(1) IN GENERAL.—Effective on the Commission termination date described in section 1004, the Federal Election Commission (hereafter in this section referred to as the “FEC”) shall be responsible for carrying out the duties and functions of the Commission under this subtitle.

(2) ROLE OF EXECUTIVE DIRECTOR.—The FEC shall carry out the operation and management of its duties and functions

under this subtitle through the Office of the Executive Director of the FEC.

(b) TRANSFER OF OFFICE OF VOTING SYSTEM TESTING AND CERTIFICATION.—

(1) IN GENERAL.—There are transferred to the FEC all functions that the Office of Voting System Testing and Certification of the Commission (hereafter in this section referred to as the “Office”) exercised under this subtitle before the Commission termination date.

(2) TRANSFER OF PROPERTY, RECORDS, AND PERSONNEL.—

(A) PROPERTY AND RECORDS.—The contracts, liabilities, records, property, appropriations, and other assets and interests of the Office, together with the unexpended balances of any appropriations or other funds available to the Office, are transferred and made available to the FEC.

(B) PERSONNEL.—

(i) IN GENERAL.—The personnel of the Office are transferred to the FEC, except that the number of full-time equivalent personnel so transferred may not exceed the number of full-time equivalent personnel of the Office as of January 1, 2011.

(ii) TREATMENT OF EMPLOYEES AT TIME OF TRANSFER.—An individual who is an employee of the Office who is transferred under this section shall not be separated or reduced in grade or compensation because of the transfer during the 1-year period that begins on the date of the transfer.

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TITLE VII—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

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SEC. 703. REPORT ON ABSENTEE BALLOTS TRANSMITTED AND RECEIVED AFTER GENERAL ELECTIONS.

(a) * * *

(b) DEVELOPMENT OF STANDARDIZED FORMAT FOR REPORTS.—The Election Assistance Commission, working with [the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board] *the Guidelines Review Board*, shall develop a standardized format for the reports submitted by States and units of local government under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act (as added by subsection (a)), and shall make the format available to the States and units of local government submitting such reports. *Effective on the Commission termination date described in section 1004, the Federal Election Commission shall be responsible for carrying out the duties and functions of the Commission under this subsection.*

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TITLE IX—MISCELLANEOUS PROVISIONS

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TITLE X—TERMINATION OF COMMISSION

Subtitle A—Termination

SEC. 1001. TERMINATION.

Effective on the Commission termination date, the Commission (including the Election Assistance Commission Standards Board and the Election Assistance Commission Board of Advisors under part 2 of subtitle A of title II) is terminated and may not carry out any programs or activities.

SEC. 1002. TRANSFER OF OPERATIONS TO OFFICE OF MANAGEMENT AND BUDGET DURING TRANSITION.

(a) IN GENERAL.—The Director of the Office of Management and Budget shall, effective upon the Commission termination date—

(1) perform the functions of the Commission with respect to contracts and agreements described in subsection 1003(a) until the expiration of such contracts and agreements, but shall not renew any such contract or agreement; and

(2) shall take the necessary steps to wind up the affairs of the Commission.

(b) EXCEPTION FOR FUNCTIONS TRANSFERRED TO OTHER AGENCIES.—Subsection (a) does not apply with respect to any functions of the Commission that are transferred under subtitle B.

SEC. 1003. SAVINGS PROVISIONS.

(a) PRIOR CONTRACTS.—The termination of the Commission under this subtitle shall not affect any contract that has been entered into by the Commission before the Commission termination date. All such contracts shall continue in effect until modified, superseded, terminated, set aside, or revoked in accordance with law by an authorized Federal official, a court of competent jurisdiction, or operation of law.

(b) OBLIGATIONS OF RECIPIENTS OF PAYMENTS.—

(1) IN GENERAL.—The termination of the Commission under this subtitle shall not affect the authority of any recipient of a payment made by the Commission under this Act prior to the Commission termination date to use any portion of the payment that remains unobligated as of the Commission termination date, and the terms and conditions that applied to the use of the payment at the time the payment was made shall continue to apply.

(2) SPECIAL RULE FOR STATES RECEIVING REQUIREMENTS PAYMENTS.—In the case of a requirements payment made to a State under part 1 of subtitle D of title II, the terms and conditions applicable to the use of the payment for purposes of the State's obligations under this subsection (as well as any obligations in effect prior to the termination of the Commission under this

subtitle), and for purposes of any applicable requirements imposed by regulations promulgated by the Director of the Office of Management and Budget, shall be the general terms and conditions applicable under Federal law, rules, and regulations to payments made by the Federal government to a State, except that to the extent that such general terms and conditions are inconsistent with the terms and conditions that are specified under part 1 of subtitle D of title II or section 902, the terms and conditions specified under such part and such section shall apply.

(c) PENDING PROCEEDINGS.—

(1) NO EFFECT ON PENDING PROCEEDINGS.—The termination of the Commission under this subtitle shall not affect any proceeding to which the Commission is a party that is pending on such date, including any suit to which the Commission is a party that is commenced prior to such date, and the applicable official shall be substituted or added as a party to the proceeding.

(2) TREATMENT OF ORDERS.—In the case of a proceeding described in paragraph (1), an order may be issued, an appeal may be taken, judgments may be rendered, and payments may be made as if the Commission had not been terminated. Any such order shall continue in effect until modified, terminated, superseded, or revoked by an authorized Federal official, a court of competent jurisdiction, or operation of law.

(3) CONSTRUCTION RELATING TO DISCONTINUANCE OR MODIFICATION.—Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any proceeding described in paragraph (1) under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if the Commission had not been terminated.

(4) REGULATIONS FOR TRANSFER OF PROCEEDINGS.—The Director of the Office of Management and Budget may issue regulations providing for the orderly transfer of proceedings described in paragraph (1).

(d) JUDICIAL REVIEW.—Orders and actions of the applicable official in the exercise of functions of the Commission shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been issued or taken by the Commission. Any requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function of the Commission shall apply to the exercise of such function by the applicable official.

(e) APPLICABLE OFFICIAL DEFINED.—In this section, the “applicable official” means, with respect to any proceeding, order, or action—

(1) the Director of the Office of Management and Budget, to the extent that the proceeding, order, or action relates to functions performed by the Director of the Office of Management and Budget under section 1002; or

(2) the Federal Election Commission, to the extent that the proceeding, order, or action relates to a function transferred under subtitle B.

SEC. 1004. COMMISSION TERMINATION DATE.

The “Commission termination date” is the first date following the expiration of the 60-day period that begins on the date of the enactment of this subtitle.

Subtitle B—Transfer of Certain Authorities

SEC. 1011. TRANSFER OF ELECTION ADMINISTRATION FUNCTIONS TO FEDERAL ELECTION COMMISSION.

There are transferred to the Federal Election Commission (hereafter in this section referred to as the “FEC”) the following functions of the Commission:

(1) The adoption of voluntary voting system guidelines, in accordance with part 3 of subtitle A of title II.

(2) The testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories, in accordance with subtitle B of title II.

(3) The maintenance of a clearinghouse of information on the experiences of State and local governments in implementing voluntary voting system guidelines and in operating voting systems in general.

(4) The development of a standardized format for reports submitted by States under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act, and the making of such format available to States and units of local government submitting such reports, in accordance with section 703(b).

(5) Any functions transferred to the Commission under section 801 (relating to functions of the former Office of Election Administration of the FEC).

(6) Any functions transferred to the Commission under section 802 (relating to functions described in section 9(a) of the National Voter Registration Act of 1993).

(7) Any functions of the Commission under section 1604(a) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107—107; 115 Stat. 1277; 42 U.S.C. 1977ff note) (relating to establishing guidelines and providing technical assistance with respect to electronic voting demonstration projects of the Secretary of Defense).

(8) Any functions of the Commission under section 589(e)(1) of the Military and Overseas Voter Empowerment Act (42 U.S.C. 1973ff—7(e)(1)) (relating to providing technical assistance with respect to technology pilot programs for the benefit of absent uniformed services voters and overseas voters).

SEC. 1012. EFFECTIVE DATE.

The transfers under this subtitle shall take effect on the Commission termination date described in section 1004.

FEDERAL ELECTION CAMPAIGN ACT OF 1971

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TITLE III—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

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ADMINISTRATIVE PROVISIONS

SEC. 311. (a) The Commission shall—

(1) * * *

* * * * *

(8) prescribe rules, regulations, and forms to carry out the provisions of this Act, in accordance with the provisions of subsection (d); **and**

(9) transmit to the President and to each House of the Congress no later than June 1 of each year, a report which states in detail the activities of the Commission in carrying out its duties under this Act, and any recommendations for any legislative or other action the Commission considers appropriate~~l.~~;

(10) provide for the adoption of voluntary voting system guidelines, in accordance with part 3 of subtitle A of title II of the Help America Vote Act of 2002 (42 U.S.C. 15361 et seq.);

(11) provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories, in accordance with subtitle B of title II of the Help America Vote Act of 2002 (42 U.S.C. 15371 et seq.);

(12) maintain a clearinghouse of information on the experiences of State and local governments in implementing voluntary voting system guidelines and in operating voting systems in general;

(13) carry out the duties described in section 9(a) of the National Voter Registration Act of 1993;

(14) develop a standardized format for reports submitted by States under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act, make such format available to States and units of local government submitting such reports, and receive such reports in accordance with section 102(c) of such Act, in accordance with section 703(b) of the Help America Vote Act of 2002;

(15) carry out the duties described in section 1604(a)(2) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107—107; 115 Stat. 1277; 42 U.S.C. 1977ff note); and

(16) carry out the duties described in section 589(e)(1) of the Military and Overseas Voter Empowerment Act (42 U.S.C. 1973ff—7(e)(1)).

* * * * *

(g) Subject to applicable laws, the Commission may enter into contracts with private entities to carry out any of the authorities that are the responsibility of the Commission under paragraphs (10) through (16) of subsection (a).

(h) Nothing in paragraphs (10) through (16) of subsection (a) or any other provision of this Act shall be construed to grant the Commission the authority to issue any rule, promulgate any regulation, or take any other actions that imposes any requirement on any State or unit of local government, except to the extent that the Commission had such authority prior to the enactment of this subsection or to the extent permitted under section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg—7(a)).

* * * * *

NATIONAL VOTER REGISTRATION ACT OF 1993

UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

* * * * *

TITLE I—REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS IN ELECTIONS FOR FEDERAL OFFICE

SEC. 101. FEDERAL RESPONSIBILITIES.

(a) * * *

(b) DUTIES OF PRESIDENTIAL DESIGNEE.—The Presidential designee shall—

(1) * * *

* * * * *

(11) working with [the Election Assistance Commission] *the Federal Election Commission* and the chief State election official of each State, develop standards—

(A) * * *

* * * * *

SEC. 102. STATE RESPONSIBILITIES.

(a) * * *

* * * * *

(c) REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to [the Election Assistance Commission (established under the Help America Vote Act of 2002)] *the Federal Election Commission* on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

* * * * *

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002

SEC. 1604. ELECTRONIC VOTING DEMONSTRATION PROJECT.

(a) ESTABLISHMENT OF DEMONSTRATION PROJECT.—

(1) * * *

(2) AUTHORITY TO DELAY IMPLEMENTATION.—If the Secretary of Defense determines that the implementation of the demonstration project under paragraph (1) with respect to the reg-

ularly scheduled general election for Federal office for November 2002 may adversely affect the national security of the United States, the Secretary may delay the implementation of such demonstration project until the first regularly scheduled general election for Federal office which occurs after [the Election Assistance Commission] the Federal Election Commission notifies the Secretary that the Commission has established electronic absentee voting guidelines and certifies that it will assist the Secretary in carrying out the project. The Secretary shall notify the Committee on Armed Services and the Committee on Rules and Administration of the Senate and the Committee on Armed Services and the Committee on House Administration of the House of Representatives of any decision to delay implementation of the demonstration project.

* * * * *

MILITARY AND OVERSEAS VOTER EMPOWERMENT ACT

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART B—EMPLOYMENT AND RETENTION

* * * * *

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

* * * * *

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

* * * * *

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) “agency” means an Executive agency, except a Government corporation and the Government Accountability Office, but does not include—

(A) * * *

* * * * *

(C) the Federal Election Commission [or the Election Assistance Commission];

* * * * *

**SUBPART F—LABOR-MANAGEMENT AND
EMPLOYEE RELATIONS**

* * * * *

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

* * * * *

SUBCHAPTER III—POLITICAL ACTIVITIES

* * * * *

§ 7323. Political activity authorized; prohibitions

(a) * * *

(b)(1) * * *

(2)(A) * * *

(B) The provisions of subparagraph (A) shall apply to—

(i) an employee of—

(I) the Federal Election Commission [or the Election Assistance Commission];

* * * * *

INSPECTOR GENERAL ACT OF 1978

* * * * *

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 12 of this Act, as used in this section—

(1) * * *

(2) the term “designated Federal entity” means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Defense Intelligence Agency, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, [the Election Assistance Commission,] the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Geospatial-Intelligence Agency, the National Labor Relations Board, the National Reconnaissance Office, the National Security Agency, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Com-

mission, the Postal Regulatory Commission, and the United States Postal Service;

* * * * *

Appendix A_NASS Resolution 2010



NASS Position on Funding and Authorization of the U.S. Election Assistance Commission

Adopted on February 6, 2005
Extended Until the 2010 Summer Conference on February 1, 2010
Renewed at the 2010 Summer Conference on July 20, 2010

Dear Members of Congress:

The secretaries of state voted at the 2005 National Association of Secretaries of State winter conference to dissolve the U.S. Election Assistance Commission after the 2006 federal general election. The following position statement was passed by a majority of the secretaries in attendance:

Recognizing the U.S. Election Assistance Commission's (EAC) task as a limited one, Congress, in the Help America Vote Act of 2002 (HAVA), wisely authorized the EAC for only three years. Any duties assigned to the EAC can be completed by the National Institute of Standards and Technology or by the state and local election officials who make up the HAVA Standards Board and its Executive Committee. The National Association of Secretaries of State encourages Congress not to reauthorize or fund the EAC after the conclusion of the 2006 federal general election, and not to give rulemaking authority to the EAC.

The secretaries believe that allowing the EAC to evolve into a regulatory body is contrary to the spirit of HAVA, and that by 2006 the EAC will have served its purpose. Congress should preserve the states' ability to serve as independent laboratories of change through successful experiments and innovation in election reform.

Sincerely,

The National Association of Secretaries of State

###

Expires at the Summer Conference 2015

Appendix B_NASS Resolution 2009



NASS Resolution on Help America Vote Act of 2002 (HAVA) Grant and Payment Distinction

Approved July 19, 2009

WHEREAS, the Help America Vote Act of 2002 (“HAVA”) established the Election Assistance Commission (EAC) to assist in the administration of federal elections and charged the EAC with distributing payments to states under its authorized funding programs (Pub. L. No. 107-252, 116 Stat. 1666 (Oct. 29, 2002); 42 U.S.C. sections 15301-15545. See HAVA Sections 101, 251 and 261); and

WHEREAS, the Help America Vote Act of 2002 (“HAVA”) also charged the EAC with distributing grants to other entities under its authorized funding programs (See HAVA Sections 271 and 295); and

WHEREAS, HAVA authorizes the EAC in making a grant or payment to audit or examine the recipient of such a grant or payment made under HAVA, and in so doing makes an express categorical distinction between “grant” and “payment” (See HAVA Section 902); and

WHEREAS, in conducting audits of grants and payments, the EAC has no rule-making authority, and therefore, in performing its functions must act in accordance with the express statutory provisions of HAVA (See HAVA Section 209); and

WHEREAS, in enacting HAVA, Congress expressly used the terms “payments” and “requirements payments” in Sections 101, 251, and 261 of the Act; and

WHEREAS, Congress also used the terms “grants” and authorized the EAC to award “grants” in Sections 271 and 295 of the Act; and

WHEREAS, Congress does not interchange the use of the term “payments” and/or “requirements payments” in Section 101, 251, and 261, with the use of the term “grant” in Sections 271 and 295; and

NOW THEREFORE BE IT RESOLVED that the National Association of Secretaries of State finds that:

1. Under HAVA, a “payment” is not a “grant,” and a “grant” is not a “payment;” and
2. In effectuating its duties under HAVA, the EAC should create an accurate administrative record by using the term “payment” when the federal law means “payment”, and it should use the term “grant” when the federal law means “grant.”

Adopted the 19th day of July 2009
in Minneapolis, MN

EXPIRES: Summer 2014

Appendix C_OSC Press Release



U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

OFFICE OF SPECIAL COUNSEL SETTLES POLITICAL DISCRIMINATION CASE

FOR IMMEDIATE RELEASE

CONTACT: Darshan A. Sheth, (202) 254-3617; dsheth@osc.gov

WASHINGTON, DC/December 2, 2009 – Today, the U.S. Office of Special Counsel (OSC) announced the resolution of a prohibited personnel practice complaint filed against the U.S. Election Assistance Commission (EAC). The complaint alleged that the EAC Commissioners refused to approve an individual's appointment as General Counsel because of his political affiliation, in violation of civil service laws and regulations prohibiting discrimination based on political affiliation and discrimination based on non-merit grounds. Such action could also violate the appointee's Constitutional First Amendment right to freedom of association.

OSC's investigation uncovered evidence indicating that the EAC illegally refused to approve the complainant's appointment because he was a Republican. In late 2008, the four EAC Commissioners selected the complainant as the agency's General Counsel. Shortly after, two of the Commissioners refused to approve his appointment. After the complainant's selection, these Commissioners researched his off-the-job political activity or received contacts about his appointment. The same two Commissioners objected that the complainant's current employer was perceived as politicized or that he was a political appointee. The complainant provided the EAC with additional references and information. The two Commissioners, however, voted to disapprove his appointment.

While the investigation was ongoing, OSC negotiated an informal agreement between the complainant and the EAC. Without admitting fault, the EAC agreed to provide the complainant a substantial monetary settlement to resolve the issues that were the subject of his complaint.

OSC notes that the merit system instructs employers to only consider an individual's qualifications, not an employee's political affiliation. And the Constitutional right to associate with the political party of one's choice means very little if one cannot freely exercise this right. OSC also expressed its appreciation to the EAC for its cooperation in the investigation and willingness to resolve the complaint, thus avoiding the possibility of protracted litigation.

The U.S. Office of Special Counsel is an independent federal agency that investigates and prosecutes complaints alleging the commission of prohibited personnel practices. Pursuant to statute, OSC has authority to seek voluntary corrective action from federal agencies or through administrative litigation before the U.S. Merit Systems Protection

Board. OSC also has jurisdiction over the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act (USERRA). For more information please visit our web site at www.osc.gov or call (800) 872-9855.

Appendix D_Article

- Pajamas Media - <http://pajamasmedia.com> -Click [here](#) to print.**A Superfluous Federal Agency Is Caught Discriminating — Again!**Posted By [Hans A. von Spakovsky](#) On May 24, 2011 @ 8:54 am In [Judiciary, Legal, US News](#) | [19 Comments](#)

Rep. Greg Harper (R-Miss.) has introduced a bill to eliminate one of the least known and most useless agencies in Washington: the U.S. Election Assistance Commission (EAC). The fact that this supposedly temporary \$18 million-a-year agency is apparently on the hook to pay damages for refusing to hire a military veteran provides another sound reason for shutting it down. This is the *second time in less than two years* that the EAC has discriminated in hiring a job applicant — and for the very same position no less.

The Office of Special Counsel (OSC) is the independent agency that investigates prohibited political activity by federal employees. On December 2, 2009, it announced that two EAC commissioners had discriminated against a job-seeker applying for the position of General Counsel, a career civil service post. Although OSC did not identify the discriminators, the two commissioners were Gracia Hillman and Rosemary Rodriguez.

After interviewing the applicant, Hillman and Rodriguez, both Democrats, had voted along with the two Republican commissioners to hire him. He was sent an offer letter. However, according to OSC, when Hillman and Rodriguez discovered the lawyer was a Republican, they refused to approve his appointment as General Counsel. The OSC concluded that Hillman and Rodriguez had engaged in a "prohibited personnel practice" — specifically, they discriminated against the prospective EAC employee "because of his political affiliation, in violation of civil service laws."

The lawyer received a six-figure settlement from the EAC — all of it paid by taxpayers, not those who violated the law. Now the Labor Department has found that the EAC discriminated *again*. And it's the behavior of one of the same commissioners, Gracia Hillman, that was the problem. Neither Hillman nor Rodriguez is on the Commission now, but Hillman was still a commissioner last August when the EAC tried again to fill the still-open General Counsel slot. One of the applicants was a lawyer with extensive experience in voting and election law, as well as election administration. He had perfect qualifications for the job with one exception, at least according to Hillman's point of view — he is a reserve naval officer.

During the interview, Hillman started asking detailed questions about his military service. According to the attorney, Hillman's questioning showed that she believed "that no military reservist could ever be 'objectively' involved with voting issues due to some imaginary legal conflict under attorney bar requirements," an absurd (and offensive) notion. Hillman's questions showed that the lawyer's military service was "a negative in her eyes and [she] sought to convey these negative ramifications to the other Commissioners and staff present." She even discussed "the potential burdens on the Commission in the event [the lawyer] was out of the office on reserve duty," despite the fact that his ordinary schedule involves only one weekend a month (when he would not be working at the EAC) and two weeks a year of active duty training. The lawyer said it was clear to him that Hillman believed his military service "was a valid reason not to hire [him] as General Counsel."

Hillman's (and the EAC's) problem is that this kind of discrimination against a military service member is illegal under federal law. The Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4311, prohibits denying employment to any individual on the basis of membership in the uniformed services. When he wasn't hired, the lawyer complained to the Department of Labor (DOL), which has responsibility for investigating this type of discrimination against members of the military.

On March 14, 2011, DOL informed the Office of Personnel Management (OPM) that the lawyer's claim of discrimination was "meritorious and that the claimant is entitled to the position of General Counsel and compensation for lost wages and other benefits." The DOL letter stated that Hillman asked the lawyer "inappropriate questions regarding his military obligations" during his interview. Even worse, she apparently lied to DOL investigators when she "denied making any

comments about [the lawyer's] military commitments." Witnesses present during the interview confirmed that Hillman had asked these inappropriate questions.

DOL even has a recording of the closed session at the EAC where the commissioners discussed the two finalists for the General Counsel job, which included the reserve officer. To her credit, Republican Commissioner Gineen Bresso confronted Hillman over her inappropriate questions and the fact that they violated USERRA. In that recording, according to DOL's letter, "Hillman admitted that she asked questions about [the lawyer's] reserve duties" — something she later denied to DOL investigators.

DOL's letter tells OPM that if this is not resolved, the claim will be referred to the Office of Special Counsel, the same office that investigated Hillman and Rodriguez in the earlier case. Once again, it looks like the taxpayers will be saddled with large expenses thanks to the misbehavior of an EAC commissioner.

Rep. Harper has the right idea. He wants to get rid of an agency that has outlived its purpose. After all, its work is done. The Help America Vote Act created the EAC in 2002. Its only purpose: To help implement that law and distribute funds to update voting equipment around the country. These tasks have all been accomplished.

In a recent [Pajamas Media](#) ^[1] article, Richard Pollock noted that the EAC is an agency without a mission, yet half of its staff earn six-figure incomes. Only one of every three employees works on real programs, and its internal finances are such a mess that it could not be audited. It can't account for half a million dollars in travel vouchers and wasted \$7,000 in taxpayer funds on t-shirts for its employees. The National Association of Secretaries of State, a bipartisan organization that represents the chief election officials of all the states, has twice passed [resolutions](#) ^[2] calling for the EAC to be phased out.

While I was at the Justice Department, I served on the first Board of Advisors of the EAC. I had many interactions with the EAC and its personnel and it was one of the most dysfunctional federal agencies it has ever been my misfortune to encounter. This latest scandal involving ugly discrimination against a dedicated member of the military is just another outrageous example of why Congress should follow the advice of the states' chief election officials and shut down this unneeded, inept, and discriminatory federal agency.

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[1] recent Pajamas Media: <http://pajamasmedia.com/blog/the-agency-that-would-not-die>

[2] resolutions: http://www.nass.org/index.php?option=com_docman&task=doc_download&gid=88

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RALPH M. HALL, TEXAS
CHAIRMAN

EDDIE BERNICE JOHNSON, TEXAS
RANKING MEMBER

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
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May 27, 2011

The Honorable Daniel E. Lungren
Chairman
Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515

2011 MAY 27 PM 1:07
COMMITTEE
HOUSE ADMINISTRATION

Dear Chairman Lungren:

I am writing to you concerning the jurisdictional interest of the Committee on Science, Space, and Technology in H.R. 672, to terminate the Election Assistance Commission. Introduced on February 11, 2011, H.R. 672 was referred to the Committee on House Administration and the Committee on Science, Space and Technology. The bill contains provisions that fall within the jurisdiction of the Committee on Science, Space, and Technology.

I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, I will waive further consideration of this bill in Committee. This, of course, being conditional on our mutual understanding that language negotiated with the Science, Space, and Technology Committee will be included in the legislation considered on the House floor. However, agreeing to waive consideration of this bill should not be construed as waiving, reducing, or affecting the jurisdiction of the Committee on Science, Space, and Technology.

Additionally, the Committee on Science, Space, and Technology expressly reserves its authority to seek conferees on any provision within its jurisdiction during any House-Senate conference that may be convened on this, or any similar legislation. I ask for your commitment to support any request by the Committee for conferees on H.R. 672 as well as any similar or related legislation.

I ask that a copy of this letter and your response be included in the report on H.R. 672 and also be placed in the Congressional Record during consideration of this bill on the House floor.

I look forward to working with you on matters of mutual concern.

Sincerely,

A handwritten signature in black ink that reads "Ralph M. Hall". The signature is written in a cursive style with a large, prominent "H" and "A".

Ralph M. Hall
Chairman
Committee on Science, Space, and Technology

cc: The Hon. John Boehner, Speaker,
The Hon. Eric Cantor, Majority Leader
The Hon. Eddie Bernice Johnson, Ranking Member, Committee on Science,
Space, and Technology
The Hon. Robert Brady, Ranking Member, Committee on House Administration
Mr. John Sullivan, Parliamentarian

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

GREGG HARPER, MISSISSIPPI
PHIL GINGREY, GEORGIA
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RICH NUGENT, FLORIDA

PHILIP KIKO, STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE ADMINISTRATION

1309 Longworth House Office Building
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<http://cha.house.gov>

ROBERT A. BRADY, PENNSYLVANIA
RANKING MINORITY MEMBER

ZOE LOFGREN, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS

ONE HUNDRED TWELFTH
CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

May 27, 2010

The Honorable Ralph Hall
Chairman
Committee on Science, Space, and Technology
2321 Rayburn House Office Building
Washington, DC 20515

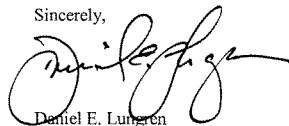
Dear Mr. Chairman:

I write to you regarding your Committee's jurisdictional interest in H.R. 672, to terminate the Election Assistance Commission.

I appreciate your willingness to support expediting floor consideration of this important legislation. I acknowledge that H.R. 672 contains provisions under the jurisdiction of the Committee on Science, Space, and Technology, and understand and agree that your willingness to waive further consideration of the bill is without prejudice to your Committee's jurisdictional interests in this or similar legislation in the future. In the event a House-Senate conference on this or similar legislation is convened, I would support a request from your Committee for an appropriate number of conferees.

I will include a copy of this letter and any response in the Committee on House Administration's report on H.R. 672. Thank you for your cooperation as we work towards enactment of this legislation.

Sincerely,



Daniel E. Lungren
Chairman
Committee on House Administration

MINORITY VIEWS OF RANKING MEMBER ROBERT A. BRADY,
REP. ZOE LOFGREN AND REP. CHARLES A. GONZALEZ

H.R. 672 is an attempt by the Republican majority to disguise as cost-cutting the elimination of an agency which they've never supported, but which has established a strong record of work to enhance Americans' ability to cast their votes. The truth is that eliminating the Election Assistance Commission is more likely to shift costs to another federal agency, to the states, and onto voters. The results will be a return to the election problems that plagued the 2000 presidential race, the disenfranchisement of tens of thousands of voters, and a further diminution of the American people's faith in our election system.

EAC FUNCTIONS

Lost in rhetoric like "bloated bureaucracy" and "outlived purpose" are the very real and very beneficial services provided by the Election Assistance Commission. In fact, even H.R. 672 recognizes the importance of a federal role in the constitutionally mandated regulation of elections, as evidenced by its transfer of election administration functions to the Federal Election Commission. Supporting this decision, however, requires us to forget not only the partisan gridlock that has plagued FEC for years and has only gotten worse, but that it was the FEC's failure to properly handle these duties amid the chaos of the 2000 election that led to the creation of EAC in the first place. We simply cannot afford the risk of removing such critical responsibilities from an agency that is competently fulfilling its role in testing and certification, to return it to one that has never demonstrated a competence in this field and which has been given a much different mandate and focus by the Congress.

In the brief Committee debate on H.R. 672, a couple of issues were barely touched on or skipped altogether. Perhaps the most important is voting equipment security, which had been a topic of great discussion in the wake of the 2000 election. We addressed this issue in the special taskforce set up in 2007 to investigate the contested election in the 13th congressional district of Florida, chaired by Rep. Gonzalez, which turned on the question of whether voting machines had malfunctioned. Ultimately, the Government Accountability Office (GAO) determined that the machines functioned properly. As a result of this work, voting equipment manufacturers have been held accountable through EAC's testing and certification program. This program, as well as EAC's transparency in its implementation, has enhanced public confidence in the commission's value.

Another issue that should be addressed in any legislation that the Congress passes and sends to the President concerns our Armed Forces personnel serving overseas. The EAC has provided

local and state election officials with a wealth of information on how to ensure that deployed military voters can exercise their franchise, including pilot project guidelines for testing remote electronic systems, security “best practices” for using email or the internet to distribute ballots, and threat considerations for the use of a remote electronic system. The EAC is working with the Department of Defense now on a pilot project to develop a full set of testable standards for overseas voters. Elimination of the agency would put the prompt and efficient completion of this and other such projects at risk.

The EAC has compiled and maintains the most comprehensive database on military and overseas voters gathers and provides annual UOCAVA statistics, issues best practices for UOCAVA voters, and provides through its reports the basis on which federal and state legislatures make improvements in election administration for Americans overseas. The EAC’s work in the creation of the Electronic Absentee Voting Pilot Project, which supports civilian and military voters who are abroad at election time, continues to make it faster and easier for millions of Americans to participate in our democratic system.

The EAC’s Election Administration and Voting Survey, the nation’s most comprehensive report on how, where, and when Americans vote, brings together data from the states and American territories into a single source. As EAC puts these surveys, along with countless other resources, online, secretaries of state, local election officials, voter rights groups, and private citizens all have access to the information. This transparency, a hallmark of EAC’s web presence, not only allows the public to monitor how our elections are administered but fosters innovation and improvement across the country as best practices are shared and problems combated cooperatively. We have been told of savings of hundreds of thousands of dollars in a single county as a result of EAC’s online resources.

No other federal agency in history has equaled EAC’s focus on making voting accessible to Americans with disabilities. Projects including the Accessible Voting Technology Initiative and a management guide for elderly or disabled voters in long term care facilities have brought a new focus on ensuring that these voters’ right to participate in our government is protected.

The EAC has been able to provide materials for voters in more than half a dozen languages. As a federal agency representing the interests of voters in all 50 states and the American territories, it brings efficiencies to such language projects which would have cost local election officials vastly more in time and money to respond in isolation to the needs of non-English speaking voters.

And these are only a few of the many services provided by the EAC. H.R. 672 calls for the transfer of none of these services to the FEC. The sole program transferred is the testing and certification of election equipment. EAC is widely recognized as having done a commendable job in this field, even by those who question its other functions.

TRANSFER OF FUNCTIONS TO THE FEDERAL ELECTION COMMISSION:

Provisions of H.R. 672 providing for the transfer of certain functions to the FEC make it clear that the value of these services is

not in question. Proponents suggest that the transfer would save the federal government \$14 million. This figure is simply not credible. FEC Chair Cynthia Bauerly has written that the agency is ready to take on whatever responsibilities the Congress should set for it. This is the right and proper response we would expect.

But Chair Bauerly also made clear, as is proper, that FEC would not be doing this because they had idle resources available to take on new tasks. She writes, rather:

“Should Congress enact this bill **and provide an appropriation that adequately reflects this change**, (emphasis added) we believe that the FEC could absorb the added functions and responsibilities, while continuing to fulfill our current mission successfully.”

The Chair’s point is that FEC would require significant additional spending, including the hiring of additional staff, to meet these new obligations. Further, additional costs may surface in states that once depended on the EAC’s guidance and research.

GONZALEZ SUBSTITUTE TO H.R. 672

During the markup, Representative Gonzalez offered an amendment in the nature of a substitute to reform, enhance and reauthorize the EAC, rather than abolish it. Unfortunately, the amendment failed on a party-line vote. The Gonzalez substitute would have ensured compliance with the Americans with Disabilities Act, making polling places more accessible for handicapped voters. It would have overhauled completely the system of payments and disclosure surrounding the testing and certification of voting equipment. It also called for a comprehensive study of how federal, state and local governments might reduce the costs of election administration, as well as a study to increase the efficiency and cost-effectiveness of the EAC itself.

The complaint most often leveled against EAC during the Subcommittee on Elections’ hearings over the last few months has been that EAC’s administrative costs are too high. H.R. 672 ignores the steps EAC has already taken to address this concern and those it is currently examining. The Gonzalez substitute, in contrast, would have added the resources of the Comptroller General to strengthen EAC’s efforts to lower its administrative costs. It is better to resolve problems than simply to give up on the entire agency.

GONZALEZ PERFECTING AMENDMENT

After his substitute had been defeated, Representative Gonzalez offered a perfecting amendment to the pending Harper substitute text that would have required the Government Accountability Office to conduct a study of the effects of termination of the agency and to report back to Congress. This amendment would have ensured that we had as much information before us as possible before taking the extreme step of destroying the sole agency focused on election assistance. This GAO study would have shown Congress whether the proponents of H.R. 672 are correct in their assertions that the EAC can be eliminated without adverse consequences to the electoral process. If, however, the study showed that the FEC would be unable to meet the new responsibilities required by H.R. 672, or that voters would be disenfranchised by the changes, or if

enactment of H.R. 672 would not have, in fact, resulted in savings to the federal government or would have effected savings only by shifting costs to the states, Congress could have reevaluated the wisdom of this bill. Unfortunately, this reasonable provision was also rejected on a party-line vote.

CONCLUSION

We cannot afford to confuse reckless spending cuts with cost savings, as the majority has done. The importance of the EAC cannot be denied by either party. Local elections officials from across the country and voting rights advocates representing Americans around the world have called for the agency to be protected. Surveys conducted by the Congressional Research Service have shown that, under the oversight of the previous Committee majority, the value of the EAC to local election officials improved dramatically. It is shortsighted to eliminate the agency now because of problems that have already been eliminated. The United States has spent billions of dollars, and sent our military into battle, to encourage and to protect democracy around the world. Eliminating an agency that has improved that access and shows great potential to provide still further improvements, for a dubious savings of \$14 million, would be a grievous error for this Congress to make. We hope that Members will join us in opposing H.R. 672.

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