

112TH CONGRESS  
1ST SESSION

# H. R. 1937

To amend the Help America Vote Act of 2002 to improve the operations of the Election Assistance Commission, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2011

Mr. GONZALEZ (for himself, Mr. BRADY of Pennsylvania, and Ms. ZOE LOFGREN of California) introduced the following bill; which was referred to the Committee on House Administration

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## A BILL

To amend the Help America Vote Act of 2002 to improve the operations of the Election Assistance Commission, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “EAC Improvements  
5 Act of 2011”.

6 **SEC. 2. REAUTHORIZATION OF COMMISSION.**

7 (a) REAUTHORIZATION.—Section 210 of the Help  
8 America Vote Act of 2002 (42 U.S.C. 15330) is amended  
9 by striking “for each of the fiscal years 2003 through

1 2005” and inserting “for each of the fiscal years 2012  
2 through 2016”.

3 (b) TREATMENT OF COMMISSION IN SAME MANNER  
4 AS FEDERAL ELECTION COMMISSION FOR PURPOSES OF  
5 PAPERWORK REDUCTION ACT.—Section 3502(1) of title  
6 44, United States Code, is amended—

7 (1) by redesignating subparagraphs (B), (C),  
8 and (D) as subparagraphs (C), (D), and (E); and

9 (2) by inserting after subparagraph (A) the fol-  
10 lowing new subparagraph:

11 “(B) the Election Assistance Commis-  
12 sion;”.

13 **SEC. 3. REQUIRING STATES TO PARTICIPATE IN POST-GEN-**  
14 **ERAL ELECTION SURVEYS.**

15 (a) REQUIREMENT.—Title III of the Help America  
16 Vote Act of 2002 (42 U.S.C. 15481 et seq.) is amended  
17 by inserting after section 303 the following new section:

18 **“SEC. 303A. REQUIRING PARTICIPATION IN POST-GENERAL**  
19 **ELECTION SURVEYS.**

20 “(a) REQUIREMENT.—Each State shall furnish to the  
21 Commission such information as the Commission may re-  
22 quest for purposes of conducting any post-election survey  
23 of the States with respect to the administration of a regu-  
24 larly scheduled general election for Federal office.

1       “(b) EFFECTIVE DATE.—This section shall apply  
2 with respect to the regularly scheduled general election for  
3 Federal office held in November 2012 and any succeeding  
4 election.”.

5       (b) CONFORMING AMENDMENT RELATING TO EN-  
6 FORCEMENT.—Section 401 of such Act (42 U.S.C. 15511)  
7 is amended by striking “and 303” and inserting “303, and  
8 303A”.

9       (c) CLERICAL AMENDMENT.—The table of contents  
10 of such Act is amended by inserting after the item relating  
11 to section 303 the following new item:

“Sec. 303A. Requiring participation in post-general election surveys.”.

12 **SEC. 4. DETERMINING EXTENT TO WHICH DISABLED INDI-**  
13 **VIDUALS HAVE ACCESS TO POLLING PLACES.**

14       (a) ONGOING SURVEYS OF COMPLIANCE WITH  
15 ADA.—In accordance with section 241 of the Help Amer-  
16 ica Vote Act of 2002 (42 U.S.C. 15381), not later than  
17 180 days after the date of the regularly scheduled general  
18 election for Federal office held in November 2012 and  
19 each succeeding regularly scheduled general election for  
20 Federal office, the Election Assistance Commission, shall,  
21 with the assistance of the Comptroller General, conduct  
22 and publish a survey of each polling place used for the  
23 election to determine the percentage of such polling places  
24 that were in compliance with the standards applicable to

1 such locations under the Americans With Disabilities Act  
2 of 1990.

3 (b) EVALUATION OF NEED TO CONTINUE SUR-  
4 VEYS.—At the time the Election Assistance Commission  
5 publishes the results of the survey conducted under sub-  
6 section (a) with respect to the regularly scheduled general  
7 election for Federal office held in November 2020, the  
8 Commission shall evaluate and make a recommendation  
9 to Congress regarding whether the percentage of polling  
10 places in compliance with the standards applicable to such  
11 locations under the Americans With Disabilities Act of  
12 1990 has increased to such an extent that there is no  
13 longer a need to conduct surveys under subsection (a) with  
14 respect to subsequent elections.

15 **SEC. 5. ESTABLISHMENT OF PROCEDURES AND FEE**  
16 **SCHEDULES FOR CONDUCTING TESTING OF**  
17 **VOTING EQUIPMENT HARDWARE AND SOFT-**  
18 **WARE; PAYMENT OF USER FEES FOR COM-**  
19 **PENSATION OF ACCREDITED LABORATORIES.**

20 (a) IN GENERAL.—Section 231(b) of the Help Amer-  
21 ica Vote Act of 2002 (42 U.S.C. 15371(b)) is amended  
22 by adding at the end the following new paragraphs:

23 “(3) PROCEDURES FOR CONDUCTING TESTING;  
24 PAYMENT OF USER FEES FOR COMPENSATION OF  
25 ACCREDITED LABORATORIES.—

1           “(A) ESTABLISHMENT OF ESCROW AC-  
2           COUNT.—The Commission shall establish an es-  
3           crow account (to be known as the ‘Testing Es-  
4           crow Account’) that will serve as the exclusive  
5           source for making payments to accredited lab-  
6           oratories for the costs of the testing carried out  
7           in connection with the certification, decertifica-  
8           tion, and recertification of voting system hard-  
9           ware and software.

10           “(B) SCHEDULE OF FEES.—In consulta-  
11           tion with the accredited laboratories, the Com-  
12           mission shall establish and regularly update a  
13           schedule of fees for the testing carried out in  
14           connection with the certification, decertification,  
15           and recertification of voting system hardware  
16           and software, based on the reasonable costs ex-  
17           pected to be incurred by the accredited labora-  
18           tories in carrying out the testing for various  
19           types of hardware and software.

20           “(C) REQUESTS AND PAYMENTS BY MANU-  
21           FACTURERS.—A manufacturer of voting system  
22           hardware and software may not have the hard-  
23           ware or software tested by an accredited labora-  
24           tory under this section unless—

1           “(i) the manufacturer submits a de-  
2           tailed request for the testing to the Com-  
3           mission;

4           “(ii) the request provides sufficient in-  
5           formation for the Commission to determine  
6           the applicable fee for the testing under the  
7           schedule established and in effect under  
8           subparagraph (B);

9           “(iii) the Commission approves the re-  
10          quest; and

11          “(iv) the manufacturer pays to the  
12          Commission, for deposit into the Testing  
13          Escrow Account established under sub-  
14          paragraph (A), the applicable fee for the  
15          testing.

16          “(D) SELECTION OF LABORATORY.—Upon  
17          approving a request for testing and receiving  
18          the payment from a manufacturer required  
19          under subparagraph (C), the Commission shall  
20          select at random (to the greatest extent prac-  
21          ticable), from all laboratories which are accred-  
22          ited under this section to carry out the specific  
23          testing requested by the manufacturer, an ac-  
24          credited laboratory to carry out the testing.

1           “(E) PAYMENTS TO LABORATORIES.—

2           Upon determining that a laboratory selected to  
3           carry out testing pursuant to subparagraph (D)  
4           has completed the testing in accordance with  
5           the approved request, the Commission shall  
6           make a payment to the laboratory from the  
7           Testing Escrow Account established under sub-  
8           paragraph (A) in an amount equal to the appli-  
9           cable fee paid by the manufacturer under sub-  
10          paragraph (C)(iv).

11          “(4) DISSEMINATION OF ADDITIONAL INFORMA-  
12          TION ON ACCREDITED LABORATORIES.—

13                 “(A) LIST OF ACCREDITED LABORA-  
14                 TORIES.—The Commission shall maintain and  
15                 publish an updated list of all accredited labora-  
16                 tories under this section.

17                 “(B) INFORMATION ON STATUS OF LAB-  
18                 ORATORIES.—In addition to updating the list  
19                 maintained and published under subparagraph  
20                 (A), the Commission shall promptly notify Con-  
21                 gress, the chief State election official of each  
22                 State, and the public whenever—

23                         “(i) the Commission revokes, termi-  
24                         nates, or suspends the accreditation of a  
25                         laboratory under this section;

1                   “(ii) the Commission restores the ac-  
2                   creditation of a laboratory under this sec-  
3                   tion which has been revoked, terminated,  
4                   or suspended; or

5                   “(iii) the Commission has credible evi-  
6                   dence of a significant security failure at an  
7                   accredited laboratory.

8                   “(C) INFORMATION ON TESTING.—Upon  
9                   completion of the testing of a voting system  
10                  under this section, the Commission shall  
11                  promptly disseminate to the public the identi-  
12                  fication of the laboratory which carried out the  
13                  testing.”.

14                  (b) CONFORMING AMENDMENTS.—Section 231 of  
15                  such Act (42 U.S.C. 15371) is further amended—

16                   (1) in subsection (a)(1), by striking “testing,  
17                   certification,” and all that follows and inserting the  
18                   following: “testing of voting system hardware and  
19                   software by accredited laboratories in connection  
20                   with the certification, decertification, and recertifi-  
21                   cation of the hardware and software for purposes of  
22                   this Act.”;

23                   (2) in subsection (a)(2), by striking “testing,  
24                   certification,” and all that follows and inserting the  
25                   following: “testing of its voting system hardware and

1 software by the laboratories accredited by the Com-  
2 mission under this section in connection with certi-  
3 fying, decertifying, and recertifying the hardware  
4 and software.”;

5 (3) in subsection (b)(1), by striking “testing,  
6 certification, decertification, and recertification” and  
7 inserting “testing”; and

8 (4) in subsection (d), by striking “testing, cer-  
9 tification, decertification, and recertification” each  
10 place it appears and inserting “testing”.

11 (c) DEADLINE FOR ESTABLISHMENT OF ESCROW AC-  
12 COUNT AND SCHEDULE OF FEES.—The Election Assist-  
13 ance Commission shall establish the Testing Escrow Ac-  
14 count and schedule of fees described in section 231(b)(3)  
15 of the Help America Vote Act of 2002 (as added by sub-  
16 section (a)) not later than January 1, 2012.

17 **SEC. 6. STUDIES OF METHODS TO REDUCE COSTS OF AD-**  
18 **MINISTERING ELECTIONS.**

19 (a) ANALYSIS OF FACTORS AFFECTING COSTS OF  
20 ADMINISTERING ELECTIONS.—The Election Assistance  
21 Commission shall conduct a study analyzing various fac-  
22 tors that affect the costs to States and units of local gov-  
23 ernment of administering elections for Federal office, in-  
24 cluding the following specific factors:

1           (1) The durability of the equipment used in vot-  
2           ing systems.

3           (2) The extent to which States and units of  
4           local government must replace existing systems be-  
5           cause such systems are not capable of using en-  
6           hanced software or are not capable of being up-  
7           graded in a cost-effective manner.

8           (3) The lack of competition among vendors and  
9           manufacturers of the equipment used in voting sys-  
10          tems because of consolidation in the voting system  
11          industry.

12          (b) RECOMMENDATIONS FOR STEPS TO REDUCE  
13          COSTS.—The Commission shall include in the study con-  
14          ducted under this section such recommendations as the  
15          Commission shall consider appropriate to reduce the costs  
16          incurred by States and units of local government in ad-  
17          ministering elections for Federal office, including rec-  
18          ommendations for legislative action by Congress or the  
19          States.

20          (c) DEADLINE.—Not later than 180 days after the  
21          date of the enactment of this Act, the Commission shall  
22          submit the study conducted under this section to Con-  
23          gress.

1 **SEC. 7. STUDY OF METHODS FOR INCREASING EFFICIENCY**  
2 **AND COST-EFFECTIVENESS OF ELECTION AS-**  
3 **SISTANCE COMMISSION.**

4 (a) **STUDY.**—The Comptroller General shall conduct  
5 a study of the administrative operations of the Election  
6 Assistance Commission, and shall include in the study an  
7 analysis of various methods for increasing the efficiency  
8 and cost-effectiveness of such operations.

9 (b) **DEADLINE; REPORT.**—Not later than 90 days  
10 after the date of the enactment of this Act, the Comp-  
11 troller General shall submit to Congress a report on the  
12 study conducted under subsection (a), and shall include  
13 in the report such recommendations as the Comptroller  
14 General considers appropriate.

15 (c) **PARTICIPATION OF ELECTION ASSISTANCE COM-**  
16 **MISSION.**—The Election Assistance Commission shall pro-  
17 vide the Comptroller General with such assistance as the  
18 Comptroller General may require to carry out this section.

○

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Congress of the United States  
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ENSURE THE INTEGRITY OF OUR ELECTION SYSTEM  
SUPPORT H.R. 1937

COMMITTEE ON  
ENERGY AND COMMERCE  
SUBCOMMITTEE ON COMMERCE,  
MANUFACTURING AND TRADE  
SUBCOMMITTEE ON  
ENERGY AND POWER  
SUBCOMMITTEE ON HEALTH  
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HOUSE ADMINISTRATION  
SUBCOMMITTEE ON ELECTIONS  
SUBCOMMITTEE ON OVERSIGHT  
CHAIR  
CONGRESSIONAL HISPANIC CAUCUS  
SENIOR WHIP

Dear Colleague:

The integrity of our elections and voting systems is one of the most important and fundamental elements of our system of government. The American People must have complete confidence that their votes count. While our elections are administered at the state level, they affect our federal government, so the Constitution requires Congress to ensure their integrity.

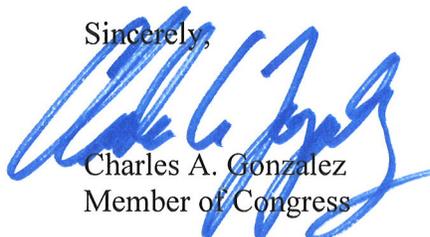
In response to the national embarrassment of the 2000 presidential election, bipartisan majorities in both chambers of Congress passed the Help America Vote Act. HAVA created the Election Assistance Commission (EAC) as the means through which the federal government could provide state and local election officials with analysis, support, and other resources to assist them in their vital duties. The agency accredits testing laboratories and certifies voting systems as well as providing oversight for the adoption of voluntary voting system guidelines and serving as a clearinghouse for election administration information.

Republicans have introduced H.R. 672, legislation that would eliminate the EAC, the only federal agency in history focused on election management, without providing a credible plan for the continuation of its vital research, information sharing, and best practice dissemination. Termination of the agency, and the cavalier and incomplete re-assignment of some of its responsibilities to FEC – an agency that is already struggling to achieve its own mission and has expressed concerns about its ability to effectively execute these functions – would do a grave disservice to the American voter. The legislation I've introduced to revamp EAC is a better alternative.

A number of factors have impaired EAC's effectiveness, including some statutory problems that only we can address. I introduced H.R. 1937, the EAC Improvements Act of 2011, to improve the vital functioning of this important agency. By requiring EAC to prioritize important functions such as ensuring that disabled voters can participate in our elections, ensuring safe and efficient testing of voting equipment, and conducting post-election surveys, this bill would continue to protect our electoral integrity while providing better stewardship of taxpayer resources. H.R. 1937 also includes some realistic efforts to improve the cost-effectiveness of all EAC's functions. This is a common-sense, fiscally responsible approach to ensuring that the important work of this unique agency continues.

Please join me in supporting H.R. 1937. The 2000 debacle cost the American taxpayers millions of dollars and led to fundamental doubts in the effectiveness of our voting systems. A properly focused and funded EAC can not only prevent a repeat of that event but help to ensure that every American citizen's constitutionally-mandated right to vote is protected and upheld.

Sincerely,



Charles A. Gonzalez  
Member of Congress

## **Elections Subcommittee Ranking Member Charles A. Gonzalez Introduces Bill to Improve the Election Assistance Commission**

May 24, 2011 Issues: [Elections](#)

**Washington, DC (May 24, 2011):** Elections Subcommittee Ranking Member Charles A. Gonzalez (D-TX) has introduced H.R. 1937, the EAC Improvements Act of 2011. The legislation is designed to improve the Election Assistance Commission, the only federal agency in history focused on election management. H.R. 1937 better defines the agency's priorities, while highlighting the need to expand efforts to find cost savings and organizational efficiencies.

“By requiring EAC to prioritize important functions such as ensuring that disabled voters can participate in our elections, ensuring safe and efficient testing of voting equipment, and conducting post-election surveys, this bill would continue to protect our electoral integrity while providing better stewardship of taxpayer resources,” said Gonzalez in a statement encouraging Members to support the legislation. “This legislation also includes some realistic efforts to improve the cost-effectiveness of all EAC's functions. This is a common-sense, fiscally responsible approach to ensuring that the important work of this unique agency continues,” he added.

Republicans have introduced H.R. 672, legislation that would eliminate the EAC, without providing a credible plan for the continuation of its vital research, information sharing, and best practice dissemination. “Termination of the agency, and the cavalier and incomplete re-assignment of some of its responsibilities to FEC – an agency that is already struggling to achieve its own mission and has expressed concerns about its ability to effectively execute these functions – would do a grave disservice to the American voter,” said Gonzalez.

H.R. 1937, the EAC Improvements Act of 2011, builds on the agency's existing strengths, while incorporating feedback from the voter advocacy organizations and state/local election officials. “The American People must have complete confidence that their votes count, said Gonzalez. “While our elections are administered at the state level, they affect our federal government, so the Constitution requires Congress to ensure their integrity. The 2000 election debacle cost the American taxpayers millions of dollars and led to fundamental doubts about the effectiveness of our voting systems. A properly focused and funded EAC can not only prevent a repeat of that event but help to ensure that every American citizen's constitutionally-mandated right to vote is protected and upheld.”

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## **EAC and Support of State and Local Election Officials Targeted at House Administration Elections Subcommittee**

*Kyle Anderson*

APR 14, 2011 **Issues: Elections**

**Washington, DC (April 14, 2011):** The Committee on House Administration today convened a hearing to discuss proposed legislation to terminate the Election Assistance Commission (EAC), the bipartisan agency created by the Help America Vote Act and charged with providing resources and support to state and local election officials.

**Democratic and Republican witnesses both expressed concerns that the legislation, HR 672, sponsored by Elections Subcommittee Chairman Gregg Harper, would eliminate the EAC without providing a sufficient plan for the continuation of vital research, information sharing, and best practice dissemination currently undertaken and provided by the agency.**

**In his testimony before the Elections Subcommittee, Democratic Whip Steny Hoyer – one of the chief architects of the Help America Vote Act – provided a clear case for the ongoing existence of the EAC: “The work of the EAC matters to voters, who deserve assurance that their votes will count on Election Day, and to poll workers, who, across the country, are being asked to do more with less and still ensure that polling places operate smoothly,” said Hoyer. “Abolishing the EAC would be an invitation to repeat mistakes that blemished our democracy in 2000,” Hoyer added.**

**“The debacle of the 2000 presidential election embarrassed the United States and showed just how flawed election systems were throughout the United States,” Hoyer continued. “Regardless of their feelings about the controversial outcome of that election, Republicans and Democrats alike agreed that the Federal government had a duty to step in and improve election systems and procedures so that every qualified citizen’s vote is counted: to provide states the financial and informational resources to upgrade their voting and registration systems, train their poll workers, and improve access for disabled voters.”**

**Elections Subcommittee Ranking Member Charles A. Gonzalez acknowledged the importance of fiscal responsibility while indicating that expenses aimed at ensuring the integrity of our election system should be a continuing priority.**

**“...I’m of the opinion that few things are more important in our country and more deserving of our support, including financial support, than ensuring that every American citizen’s right to vote is protected,” said Ranking Member Charles A. Gonzalez (D-TX). “But that doesn’t mean I’ll sit still while a single penny is wasted on an agency that isn’t helping to do that. So is EAC helping America to vote? The answer is Yes.”**

**Gonzalez continued to highlight the importance of involvement by state and local election officials in efforts to reform and better focus the efforts of the EAC. This**

**input has largely been absent from discussions centered on termination of the agency.**

**“It is the local election officials who are on the front lines, dealing directly with the voters and struggling to ensure that our elections, the very foundation of our democracy, run smoothly,” said Gonzalez. “And what do they have to say? At our last hearing, Susan Gill, the Supervisor of Elections of Citrus County, Florida, spoke glowingly of the EAC and how “the Help America Vote Act provided the continuity we” – that is, the country – “needed on the national level but left the states to devise how best to serve their voters.” I’ve never heard a better description of how our federal system is supposed to work. In fact, [House Administration] Chairman Lungren’s local election official, Ms. LaVine, speaks highly of the EAC in her written testimony.”**

**Several witnesses testified as to the value of the research and services EAC provides and expressed concerns about the fate of key functions should the EAC be terminated. John C. Fortier, a political scientist and research fellow at the American Enterprise Institute, who was identified by Majority Committee Member Todd Rokita as a “friendly witness”, expressed concern about the success of transitioning research and data collection functions to other agencies. “.there is significant danger that these issues will be lost if election administration functions are moved to the FEC and then essentially forgotten as the FEC pursues its other activities relating to the financing of campaigns,” said Fortier. “For this reason, my preference would be for a smaller and much more focused independent EAC that would engage in research, produce regular surveys and maintain a knowledge base that would help federal and state office holders and scholars.”**

**Sacramento County Registrar of Voters Jill LaVine pointed to the important role filled and resources provided by the EAC. “The EAC website is the best clearinghouse for information for election officials from all states,” said Lavine. “With the demand to do more with less, the EAC website is valuable in saving time researching and finding answers.”**

**Democratic Whip Hoyer summarized the debate over the future of the EAC in his closing remarks.**

**“The EAC has not been a perfect agency, and I am more than willing to work to reform it,” said Hoyer. “But to abolish the agency would be to demonstrate that Congress has failed to learn from the past—and we would, I fear, be condemned to repeat it. Especially now, with partisan polarization at historic highs and closely contested elections always a possibility, the last thing this nation needs are voting systems and procedures whose reliability causes the losing camp to question the integrity of the outcome. Americans need to know that whoever wins on Election Day won as a result of reliable voting systems and a fair vote.”**

**# # #**