DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

OFFICE OF THE LIEUTENANT GOVERNOR

Repeal Chapters 2-50, 2-51, 2-52, 2-53, and 2-54, and Adopt Chapters 3-171, 3-172, 3-173, 3-174, 3-175, and 3-176

December 17, 2009

SUMMARY

1. Chapters 2-50, 2-51, 2-52, 2-53, and 2-54, Hawaii Administrative Rules, are repealed.

2. Chapters 3-171, 3-172, 3-173, 3-174, 3-175, and 3-176, Hawaii Administrative Rules, are adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 2

OFFICE OF THE LIEUTENANT GOVERNOR

SUBTITLE 4 ELECTIONS

CHAPTER 50

ADOPTION, AMENDMENT, OR REPEAL OF RULES BY CHIEF ELECTION OFFICER

Repealed

§§2-50-1 to 2-50-7 Repealed. [JAN 0 9 2010]

HAWAII ADMINISTRATIVE RULES

TITLE 2

OFFICE OF THE LIEUTENANT GOVERNOR

SUBTITLE 4 ELECTIONS

CHAPTER 51

VOTING

Repealed

§§2-51-1 to 2-51-131 Repealed. [JAN 0 9 2010]

HAWAII ADMINISTRATIVE RULES

TITLE 2

OFFICE OF THE LIEUTENANT GOVERNOR

SUBTITLE 4 ELECTIONS

CHAPTER 52

PRIMARY ELECTIONS

Repealed

§§2-52-1 to 2-52-6 Repealed. [JAN 0 9 2010]

HAWAII ADMINISTRATIVE RULES

TITLE 2

OFFICE OF THE LIEUTENANT GOVERNOR

SUBTITLE 4 ELECTIONS

CHAPTER 53

ABSENTEE VOTING PROCEDURES

Repealed

§§2-53-1 to 2-53-21 Repealed. [JAN 0 9 2010]

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HAWAII ADMINISTRATIVE RULES

TITLE 2

OFFICE OF THE LIEUTENANT GOVERNOR

SUBTITLE 4 ELECTIONS

CHAPTER 54

VOTING SYSTEMS

Repealed

§§2-54-1 to 2-54-6 Repealed. [JAN 0 9 2010]

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HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 13 OFFICE OF ELECTIONS

CHAPTER 171

ADOPTION, AMENDMENT, OR REPEAL OF RULES
BY CHIEF ELECTION OFFICER

§3-171-1 Chief election officer initiates.
§3-171-2 Petitions for the adoption, amendment, or repeal of rules.
§3-171-3 Adoption, amendment, or repeal of rules.
§3-171-4 Conduct of hearing.
§3-171-5 Decision; taking effect of rules.
§3-171-6 Emergency rule making
§3-171-7 Construction of rules

Historical note: This chapter is based substantially upon Title 2, Office of the Lieutenant Governor, "Chapter 2-50, Adoption, Amendment, or Repeal of Rules by Chief Election Officer." [Eff 9/13/82; chapter 2-38 ren and comp 9/16/96; R]

§3-171-1 Chief election officer initiates. When upon the chief election officer's own motion, the chief election officer proposes to adopt, amend, or repeal a rule for state, combined state and county, or county elections, a notice of proposed rule making shall be published as required by law. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 91-6) (Imp: HRS §§11-4, 91-3, 92-41)

§3-171-2 Petitions for the adoption, amendment, or repeal of rules. (a) Any interested person or agency may petition the chief election officer for the

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adoption, amendment, or repeal of any election rule. The petition need not be in any prescribed form, but it shall contain all of the following:

(1) The name, address, zip code, and telephone number of the petitioner;

(2) The signature of the petitioner;

(3) A statement of the nature of petitioner's interest;

(4) A draft or substance of the proposed rule or amendment or a designation of the provisions sought to be repealed;

(5) A statement of the reasons in support of the proposed rule, amendment, or repeal; and

(6) Any other information pertinent to the petition.

(b) An original copy of the petition shall be filed with the chief election officer. Each petition shall be date-stamped upon receipt and shall become a public record upon filing. The chief election officer may require the petitioner to furnish copies of the petition to other persons or governmental agencies known to be interested in the proposed rule making, amendment, or repeal.

(c) The chief election officer, within thirty days after the receipt of the petition, shall either deny the petition in writing, stating the reasons for the denial, or initiate proceedings in accordance with the provisions of §3-171-1 for the adoption, amendment, or repeal of rules. Any petition which does not conform to the requirements specified in this section may be rejected.

(d) No public hearing, oral argument, or other form of proceeding shall be held directly on the granting or denial of the petition. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 91-6) (Imp: HRS §§11-4, 91-2, 91-6)

§3-171-3 <u>Adoption, amendment, or repeal of rules</u>. When, pursuant to a petition therefore, or upon the chief election officer's own motion, the chief election officer proposes to adopt, amend, or repeal a rule, the rule shall be adopted, amended, or repealed

in accordance with the procedures set forth in chapter 91 and section 92-41, HRS. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§91-3, 91-6, 92-41)

§3-171-4 Conduct of hearing. (a) The chief election officer shall afford all interested persons the opportunity to submit data, views, or arguments, orally or in writing.

(1) Written testimony shall be submitted to the chief election officer at least twenty-four hours prior to the hearing.

(2) Any person submitting written testimony on the day of the hearing shall furnish ten copies of such testimony to the chief election officer's staff prior to the hearing.

(3) In addition, or in lieu of written testimony, any person may file with the chief election officer within two days following the close of the public hearing a written protest or other comments or recommendations in support of or in opposition to the proposed rule making. Such persons shall notify the chief election officer at the time of the hearing that they intend to file written materials after the hearing. The period for filing written protests, comments, or recommendations may be extended by the chief election officer for good cause.

(b) The chief election officer or the designated representative shall conduct the public hearing.

(c) The presiding officer shall do all of the following:

(1) Read the notice of hearing and outline briefly
the procedures to be followed;

(2) Receive testimony from any person with respect to the matters specified in the notice of hearing according to the announced procedures. Each person giving testimony

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shall state the person's name, address, and whom the person represents at the hearing before testifying;

(3) Have a concise record of the proceedings kept. Unless otherwise specifically ordered by the presiding officer, testimony given at the hearings shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered at the hearing, and which are considered by the presiding officer to be authentic and relevant, shall be received and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impractical, two copies of exhibits shall be submitted; and

(4) Make any decision concerning the continuance of the hearing. As determined by the presiding officer, the hearing held at the time and place set in the notice of hearing may be continued from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

[Eff JAN 0 9 2010] (Auth: HRS §11-4)(Imp: HRS §§11-4, 91-3)

§3-171-5 Decision; taking effect of rules. (a) At the close of the final public hearing, the presiding officer shall announce the decision or announce the date when the decision shall be published.

(b) The adoption, amendment, or repeal of any rule shall be subject to the approval of the governor as required by law.

(c) Each rule change announced by the governor shall become effective ten days after a certified copy is filed with the lieutenant governor as provided by law. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-4) (Imp: HRS §§11-4, 91-3, 91-4)

§3-171-6 Emergency rule making. The chief election officer may adopt emergency rules as provided in §91-4, HRS. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-4)

§3-171-7 Construction of rules. This subtitle shall be construed to promote meaningful procedure and organization in the administration of the state, combined state and county, and county elections in order to promote public participation and confidence in the electoral process. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-4)

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HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 13 OFFICE OF ELECTIONS

CHAPTER 172

VOTING

Subchapter 1 General Provisions

§3-172-1 Definitions.
§3-172-2 Delegation of authority.
§§3-172-3 to 3-172-9 (Reserved)

Subchapter 2 Voter Education

§3-172-10 Purpose.
§3-172-11 Voter pamphlet.
§3-172-12 Election equipment loans.
§§3-172-13 to 3-172-19 (Reserved)

Subchapter 3 Voter Registration

§3-172-20 Voter registration form.
§3-172-21 Voter registration forms; distribution.
§3-172-22 Voter registration forms; collection.
§3-172-23 Voter registration form; reproduction.
§3-172-24 Clerk's approval; when voter becomes registered.
§3-172-25 Determination of residence.
§3-172-26 Confirmation of residence; questionable address procedure.

§3-172-27 Transfer or change of registration initiated by the voter.
§3-172-28 Transfer or change of registration initiated by the clerk.
§3-172-29 (Reserved).
§3-172-30 Confidential registration.
§3-172-31 Voter registration information; prohibited uses.
§§3-172-32 to 3-172-39 (Reserved)

Subchapter 4 Voter Challenges And Appeals

§3-172-40 Prerequisites for challenge.
§3-172-41 Grounds for challenge.
§3-172-42 Challenge prior to election day; procedure.
§3-172-43 Appeal to the board prior to election day.
§3-172-44 Challenge at the polling place on election day; procedure.
§3-172-45 Appeal to the board from decision at the polling place.
§3-172-46 Challenge to confidential registration; special procedure.
§3-172-47 Correction of errors; appeal to the board of registration from clerk's ruling.
§§3-172-48 to 3-172-49 (Reserved)

Subchapter 5 Political Parties

§3-172-50 Political parties; qualification.
§3-172-51 Party petitions; issuing.
§3-172-52 Party petitions; withdrawal of signatures.
§3-172-53 Party petitions; qualification of signatories.
§3-172-54 Party petitions; verification of signatories.
§§3-172-55 to 3-172-59 (Reserved)

Subchapter 6 Precinct Officials And Watchers

§3-172-60 Precinct officials; selection.
§3-172-61 Precinct officials; gifts and gratuities prohibited.
§3-172-62 Precinct officials; confidentiality of voter information.
§3-172-63 Precinct officials procedure; campaign activities.
§3-172-64 Non-campaign activity within prescribed area of polling place; time, place, and manner.
§3-172-65 Poll watchers; guidelines.
§3-172-66 Compensation for election day officials
§§3-172-67 to 3-172-69 (Reserved)

Subchapter 7 Ballot Printing And Delivery

§3-172-70 Candidate vacancies; filling of by party.
§3-172-71 Official ballots.
§3-172-72 Ballots; delivery; seal certification procedure; delivery and collection team.
§3-172-73 Ballots; transportation and receipt at polling places.
§3-172-74 Ballots; receipt by clerks; procedure.
§3-172-75 Receipt of materials other than ballots.
§§3-172-76 to 3-172-79 (Reserved)

Subchapter 8 Voting Procedures At Polling Places

§3-172-80 Paper ballots voting system; voting procedure at polls.
§3-172-81 Paper ballots; spoiled ballots.
§3-172-82 Demonstration ballots.
§3-172-83 Marksense voting system; voting procedure at the polls.
§3-172-84 Marksense ballots; spoiled.
§3-172-85 Direct recording electronic voting; voting procedure at the polls.
§3-172-86 Collection of voting materials.

§3-172-87 Return of polling place materials.
§3-172-88 Postponement of elections; natural disaster.
§3-172-89 (Reserved)

Subchapter 9 Vote Disposition

§3-172-90 Paper ballot voting system; counting ballots at precinct.
§3-172-91 Paper ballots voting system; tally sheet; results of votes cast; ballots; and records.
§3-172-92 Electronic voting systems; centralized and decentralized counting.
§3-172-93 Electronic voting systems; transmission, receipt, and tabulation of votes.
§3-172-94 Electronic voting systems; marksense ballot voting system results.
§3-172-95 Electronic voting systems; direct recording electronic voting system results.
§3-172-96 Electronic voting systems; inspection, audit, and experimental testing.
§3-172-97 Electronic voting system; counting center procedures.
§3-172-98 Electronic voting system centralized counting; receipt at counting center.
§3-172-99 Electronic voting system counting; duplication procedure.
§3-172-100 Electronic voting system decentralized counting; receipt at counting center.
§3-172-101 Electronic voting system decentralized counting; preparation of uncounted voted ballots, memory cards, precinct counter keys, and zero reports.
§3-172-102 Auditing.
§3-172-103 Challenged voter's ballot; disposition of at counting center.
§3-172-104 Election results; certification of.
§§3-172-105 to 3-172-109 (Reserved)

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Subchapter 10 Presidential Petitions

§3-172-110 Presidential petitions; issuing.
§3-172-111 Presidential petitions; withdrawal of signatures.
§3-172-112 Presidential petitions; qualification of signatories.
§3-172-113 Presidential petitions; verification of signatories.
§§3-172-114 to 3-172-129 (Reserved)

Subchapter 11 Access to Government Records

§3-172-130 Access to election documents; general procedures.
§§3-172-131 to 3-172-139 (Reserved)

Subchapter 12 Provisional Voting

§3-172-140 Provisional voting; general procedures.

Historical note: This chapter is based substantially upon Title 2, Office of the Lieutenant Governor, "Chapter 2-51, Voting." [Eff and comp 9/16/96; comp 9/18/00; R JAN 0 9 2010]

SUBCHAPTER 1

GENERAL PROVISIONS

§3-172-1 Definitions. Unless the context indicates otherwise, as used in chapters 3-172 to 3-176:

"Absentee ballot" means a ballot used in absentee voting or in an all mail election.

"Absentee polling place" means a polling place designated for the conduct of absentee walk-in voting prior to election day.

"ACRA form" means the address confirmation and reregistration affidavit executed by the absentee voter to certify his legal residence address, or to update other voter registration information.

"Active Registered Voter" means a registered voter within the statewide voter registration system whose record does not contain any indication of a questionable residence or questionable voter eligibility.

"Affirmation statement" means a statement on the mail absentee return envelope which the voter subscribes to affirming that the voter requested an absentee ballot, is a resident of the district and precinct in which the voter is registered, and is entitled to vote an absentee ballot.

"Argument" means a statement that complies with the requirements of chapter 3-172 that is either in favor of or opposed to a ballot question.

"Ballot" as defined in HRS §11-1.

"Ballot box" means a securable container in which election officials or voters deposit voted ballots and which is used to transport voted ballots to the counting center.

"Ballot question" means any proposed state

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constitutional amendment, county charter amendment, proposed initiative, or referendum issue that has qualified for placement on the ballot pursuant to HRS §11-112 and which is posed in the form of a question.

"Ballot seal control form" means a consolidated multi-copy form used for the control of ballots from the packing phase through the distribution and collection phase, and provides a record of seals used to secure a ballot transport container, a precinct can, or a ballot box.

"Ballot transport container" means a container used by the chief election officer or the clerk to transport unvoted ballots.

"Board" means the board of registration.

"Candidate" means an individual who has qualified for placement on the ballot.

"Central counter" means a device used to process, count, scan, or tabulate voted ballots at the counting center.

"Centralized counting" means the counting and tabulation of ballots at the counting center.

"Challenged ballot" means the ballot of a voter whose right to vote has been questioned by another registered voter and is appealed to the board of registration or the Supreme Court.

"Chief election officer" means the individual appointed by the elections commission pursuant to §11-1.6 to supervise state elections, or the chief election officer's designee. In regards to a county only election (i.e. a county special election not held in conjunction with a regularly scheduled state primary or general election), the term chief election officer, unless the context of the rule clearly provides otherwise, refers to the clerk of the county in which the election is occurring, or the clerk's designee.

"Clerk" means the respective county clerk for the county of Hawaii, Maui (includes the county of Kalawao), Kauai, and the city and county of Honolulu.

"Closing of the register" means the date for the closing of the general county register in accordance with HRS §11-24.

"Confirmation notice" means the voter notification and address confirmation postcard, letter, or other form of correspondence used to verify voter registration information and to notify the voter of the voter's election district, precinct, and polling place.

"Counting center" means the facilities and surrounding premises designated by the chief election officer or clerk where ballots or other electronic voting system votes are processed, counted, and tabulated.

"Daily reconciliation of absentee ballots issued form" means the form used to provide a daily accounting of absentee ballots issued from the inventory of ballots assigned to the clerk of each county.

"DC Team" means the delivery and collection team consisting of a chairperson, an assistant, and a driver, who together are responsible for the delivery of sealed ballot transport containers and precinct cans to the polling places, and the collection of sealed ballot boxes and precinct cans from the polling places and delivery to the counting center.

"Decentralized counting" means the counting and tabulation of ballots at the polling place on election day.

"Defective ballot" means any ballot delivered to the counting center that cannot be processed and read by a central counter or precinct counter.

"Demonstration ballot" means a ballot used solely for the purpose of practice voting with a voting device.

"Designee" means a person appointed by the chief

election officer to act on the chief election officer's behalf with delegated authority.

"Direct recording electronic voting system" means a voting system whereby cast vote records are captured electronically directly from voters into a voting device.

"District" means representative district.

"Duplicate ballot" means a ballot used solely for the purpose of creating a facsimile of a defective ballot that is reproduced for counting and tabulation.

"Electronic voting system" means any method of recording, counting, and tabulating votes via automatic tabulating equipment. For purposes of these rules, an electronic voting system includes the "marksense ballot voting system" and the "direct recording electronic voting system."

"General county register" means the list of registered voters maintained by the clerk that is available for inspection and use pursuant to HRS §11-14.

"HRS" means Hawaii Revised Statutes.

"Invalid absentee ballot" means an absentee ballot which does not meet the requirements for a ballot to be counted as listed in HRS §15-9.

"Law enforcement person" means a federal, state, or local police, parole, probation, correction, federal agent, prosecutor, judge, or other person duly appointed to enforce any federal, state, or county law.

"Mail absentee return envelope" means the official envelope used by an absentee voter containing the required affirmation statement that is used to return an absentee envelope to the clerk.

"Manual audit" means a procedure by which manual counts of voted ballots from randomly selected precincts are checked against the computer results.

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"Mark" means a mark made by a voter, with a prescribed marking device, in the manner instructed by the chief election officer, within the voting position area next to a candidate's name or a ballot question, indicating the voter's choice or vote. A "mark" in a non-voting context is a signature of an illiterate or physically disabled voter.

"Marksense ballot voting system" means an automatic tabulation system using ballots and optical scanning or similar technology equipment. The voter manually records votes by marking the appropriate voting position on the ballot, with a prescribed marking device, in the manner instructed by the chief election officer. The marks on the ballots are subsequently read by the optical scan or similar technology device, in conformance with the specifications of the voting system selected by the chief election officer. All voting systems are required to comply with the federal voting system standards or guidelines adopted by the chief election officer.

"Mechanical tabulation system" means an automatic tabulation system, including a marksense ballot voting system.

"Official observer" means an individual designated by the chief election officer or the clerk to observe the election process in the counting center.

"OHA" means Office of Hawaiian Affairs.

"Pamphlet" means the voter information pamphlet.

"Paper ballot voting system" means the method of recording votes which are counted manually in accordance with HRS §§16-21 to 16-29.

"Political committee" means any individual, organization, or association defined in HRS §11-191.

"Political party" means any party which satisfies the requirements of HRS §11-61.

"Polling place" means a structure designated by the chief election officer or the clerk as the location in which a precinct conducts voting on election day.

"Precinct can" means a securable container used to transport sensitive election materials that require security.

"Precinct chairperson" means the person designated to manage the operation of a polling place on election day.

"Precinct counter" means a device used to count and tabulate voted ballots in the polling place.

"Precinct officials" means a chairperson and other officials designated by the chief election officer or the clerk to serve in an absentee or regular polling place on election day in accordance with HRS §11-72.

"Precinct supply box" means a box used to hold supplies, signs, and other nonsensitive polling place materials.

"Questionable ballot" means a paper ballot deemed questionable because of improper voting or other reasons provided in HRS §16-26.

"Questionable AB ballot" means a voted ballot received in a mail absentee return envelope where the envelope is torn, taped, or shows signs of tampering, and where the secret ballot envelope is not used or not properly sealed.

"RAF" means the registration affidavit form completed and signed by a voter on election day for the purpose of registering to vote, to certify the voter's legal residence address, or to update other voter information.

"Result of votes cast form" means the form used to record the totals of votes cast for each candidate and ballot question.

"Seal" means a serially numbered nonreusable lock.

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"Secrecy Sleeve" means a device which the voter places a voted ballot in to maintain the secrecy of the voted ballot until it is deposited in a secured ballot box or processed and counted by a precinct counter.

"Secret ballot envelope" means the envelope used by a voter to enclose the voted absentee ballot when voting by a mail absentee ballot or at the precincts.

"Selected district" means the district or districts selected by the chief election officer for purposes of voter education.

"Self-subscribing oath" means the oath or affirmation to be signed and taken by an applicant to affirm the truth of particular statements without the presence of a notary public.

"Service bureau" means a firm registered to do business in the state and whose principle business is furnishing data processing services.

"Spoiled ballot" means a ballot marked incorrectly by the voter, is misprinted, is illegibly printed, or contains some other defect.

"Tabulation sheet" means the sheet used to record the totals shown on the result of votes cast form.

"Tally sheet" means the sheet used to record the number of votes cast for each candidate or ballot question.

"Turnout" means the total number of voters at an election as determined by the number of ballot cards tabulated by the computer or of paper ballots counted by the precinct officials, and shall include ballots that are blank or ballots that are rejected during tabulation for any reason; provided that when there is more than one ballot issued to each voter, "turnout" means the total count of the ballot containing federal contests tabulated by the computer.

"Utility envelope" means the envelope into which a

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spoiled, refused, found, or challenged ballot is placed.

"Voter information pamphlet" means a publication issued by the chief election officer or clerk featuring information on candidates or ballot issues, or both to appear on the ballot at an upcoming primary, general, special primary, special general, or special election.

"Voter registration form" means the affidavit on application for voter registration or other form prescribed by the chief election officer for voter registration.

"Voter verifiable paper audit trail" as defined in HRS § 16-41.

"Votes cast" means, unless otherwise specified, the actual number of votes tallied for a candidate or for or against a ballot question.

"Voting booth" means an enclosure in which voters make voting choices.

"Voting device" means an instrument authorized by the chief election officer or clerk for use in marking of a ballot for voting purposes.

"Voting unit" means a subdivision established in a precinct to facilitate the voting process at the polling place. [Eff] (Auth: HRS §11-4) (Imp: HRS §§11-1, 11-2, 11-191, 15-1, 16-21, 16-22, 16-41, 16-42)

§3-172-2 Delegation of authority. The chief election officer may delegate any authority or duty conferred upon the chief election officer, by statute or administrative rule, to any individual. The chief election officer may revoke any such delegation at any time. [Eff JAN 0 9 2010] (Auth: HRS §§11-2, 11-4) (Imp: HRS §11-2)

§§3-172-3 to 3-172-9 (Reserved).

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SUBCHAPTER 2

VOTER EDUCATION

§3-172-10 Purpose. The chief election officer may establish voter education programs, including publishing voter information pamphlets, conducting voter awareness media campaigns, and employing other voter information methods deemed appropriate by the chief election officer. [Eff JAN 0 9 2010 (Auth: HRS §§11-2, 11-4) (Imp: HRS §11-2)

§3-172-11 Voter pamphlet. (a) The chief election officer or the clerk may produce a voter information pamphlet in printed or web accessible form.

(b) The chief election officer or clerk may select the district or districts to be covered by the voter information pamphlet. The pamphlet may be made available, by mail or other methods, to households within the selected district with one or more registered voters.

(c) A photograph and statement from each candidate who qualifies for the ballot in the selected district or districts may be included in the pamphlet; provided that the candidate submits the appropriate photograph or statement, or both, before the deadline established by the chief election officer.

(1) The voter information pamphlet may include a candidate's information section that may include the following photograph and information to be provided by the candidate:

(A) A black and white photograph of the face or head and shoulders of the candidate; provided that the chief election officer may further prescribe the dimensions of such photograph;

(B) The candidate's name, campaign headquarter address and telephone number, party affiliation or nonpartisanship in partisan elections, the office for which the candidate is running, and the district or districts in which the election is being held; and

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(C) A statement, not to exceed two hundred fifty words, which may include personal background, the candidate's platform, endorsements, or other information related to the candidate's candidacy.

(2) The candidate shall sign a self-subscribing oath or affirmation attesting to the truth of the statements provided. False statements may be punishable under HRS Chapter 19.

(3) Based upon the candidate's oath or affirmation, the chief election officer may rely upon the information provided by the candidate for the pamphlet.

(4) The respective candidate's photograph and statement shall appear in the pamphlet in the same order that they will appear on the ballot in accordance with HRS §11-115.

(d) The chief election officer or the clerk may decide not to include a candidate's photograph or statement in the voter information pamphlet under the following circumstances:

(1) Statements exceeding two hundred fifty words shall be truncated, beginning with the elimination of the sentence that contains the two hundred fifty-first word;

(2) Language or statements that may be considered obscene or defamatory shall not be printed;

(3) The chief election officer or the clerk may edit statements for format but not language if the typeset statement would exceed the space allotted in the pamphlet layout; and

(4) If the candidate does not submit a statement or photograph, or both, before the deadline established by the chief election officer or the clerk, the pamphlet may indicate "No statement submitted" or "No photograph submitted."

(e) The pamphlet may include the verbatim language of every question authorized to appear on the ballot in the district or districts selected.

(f) The pamphlet may also include one argument in favor of and one argument opposed to each ballot question; provided that the arguments are submitted before the

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deadline established by the chief election officer or the clerk. The arguments shall be submitted according to the following:

(1) If the measure originated in the legislature or county council, one legislative proponent and one legislative opponent, to be chosen by the presiding officer of the chamber of origin, will be given the first opportunity to prepare the arguments; or

(2) If the measure originated by petition, one proponent and one opponent may submit an argument.

(g) The chief election officer or the clerk may decide not to include arguments regarding ballot issues in the voter information pamphlet that are deceptive or misleading and may be limited under the following circumstances:

(1) Arguments exceeding two hundred fifty words shall be truncated, beginning with the elimination of the sentence that contains the two hundred fifty-first word;

(2) Language or arguments that are considered obscene or defamatory shall not be printed;

(3) The chief election officer may edit arguments for format but not language if the typeset argument would exceed the space allotted in the pamphlet layout; and

(4) If the arguments have not been submitted in conformance with this section, the pamphlet may state "No argument submitted." [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-2)

§3-172-12 Election equipment loans. (a) The chief election officer or clerk may establish a program to authorize the use of any available election equipment by schools or community organizations at no cost. The chief election officer or clerk may charge a school or community organization for applicable shipping and delivery charges and for the repair or replacement of equipment damaged by the school or community organization.

(b) The following election equipment may be made available: voting booths, and other election equipment.

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(c) The equipment may be available from the chief election officer, clerk, or designated representative.

(d) Organizations under this program shall assign a coordinator who will be the point of contact and who will assume the responsibility for the election equipment.

[Eff JAN 0 9 2010] (Auth: HRS §§11-4, 16-3) (Imp: HRS §11-2)

§§3-172-13 to 3-172-19 (Reserved).

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SUBCHAPTER 3

VOTER REGISTRATION

§3-172-20 Voter registration form. (a) The affidavit on the application for voter registration form shall be in a form prescribed and approved by the chief election officer containing substantially the following information:

(1) A place for the applicant's name, social security number, date of birth, residence address or a description of the location of the residence, and mailing address;

(2) A statement that the residence stated in the voter registration form is not simply because of the applicant's presence in Hawaii, but that the residence was acquired with the intent to make Hawaii the applicant's legal residence with all the accompanying obligations therein;

(3) A statement that the applicant is a U.S. citizen;

(4) A statement that the applicant is at least sixteen years of age at the time of completing the registration form;

(5) A self-subscribing oath that the applicant is swearing or affirming to the truth of the information given in the affidavit;

(6) A space for the signature of a witness when the applicant is unable to write for reason of illiteracy, blindness, or other physical disability; and

(7) A statement which says that the office, site, or location at which an applicant registers to vote, or the declination on the part of the applicant to register to vote will remain confidential and will be used for voter registration purposes only.

(b) The voter registration form may also include other information deemed appropriate by the chief election officer including but not limited to the following information:

(1) A space for the applicant's telephone number;

(2) If the applicant was previously registered in a state other than Hawaii, an authorization by the applicant to cancel the applicant's previous voter registration;

(3) A statement notifying applicants of the penalty for falsifying information on the voter registration form or for falsifying the self-subscribing oath;

(4) A statement regarding voting by persons convicted of a felony; and

(5) Place of birth.

(c) The following forms shall also be accepted for voter registration:

(1) Federal Postcard Application; and

(2) Any other form prescribed by the National Voter Registration Act. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-15, 11-16) (Imp: HRS §11-15)

§3-172-21 Voter registration forms; distribution. (a) Voter registration forms shall be available at the offices of the county clerk and the chief election officer.

(b) Voter registration forms shall be made available at the time of the driver license application or renewal through the examiner of drivers pursuant to HRS §286-108.

(c) The chief election officer shall designate state government agencies that provide public assistance and state funded agencies that provide service to persons with disabilities as voter registration agencies.

(d) Voter registration forms shall be available at federal, state, and county agency offices and other locations specified by law.

(e) Forms may also be distributed in accordance with procedures established by the chief election officer or clerk. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-15, 11-16, 286-108)

§3-172-22 Voter registration forms; collection. (a) Voter registration forms of new voters shall be received by the clerk no later than 4:30 p.m. on the day of the closing of the register for the election for which the applicant seeks to be registered. Voter registration forms received

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after the closing of the register for an election shall not be valid for that election and shall be processed by the clerk to register the applicant for the next election.

(b) Applicants shall submit completed voter registration forms in the following manner:

(1) At drop off points designated by the chief election officer or clerk; provided that only designated representatives of the clerk shall be authorized to collect voter registration forms;

(2) By delivering the completed voter registration form to the clerk or to designated representatives of the clerk; or

(3) By mailing the completed voter registration form to the clerk, provided that the completed voter registration form shall be mailed directly to the clerk and shall be postmarked no later than the day of the closing of the register for the election for which the applicant seeks to be registered. If the postmark is illegible, an otherwise acceptable voter registration form shall be effective for an upcoming election:

(A) If the voter registration form is executed on or before the close of registration for that election; and

(B) The voter registration form is received by the clerk by mail no later than the second business day after the close of registration for that election. [Eff] (Auth: HRS §11-4) (Imp: HRS §§11-15, 11-16, 11-24)

§3-172-23 Voter registration form; reproduction. (a) The voter registration form and instructions may be reproduced. If reproduced, the voter registration form must be:

(1) Reproduced in its entirety;

(2) Shall not be included in, attached to, or affixed to, any campaign or informational literature unrelated to voter registration;

(3) Shall be a 1:1 reproduction of the original form;

(4) Shall not contain a glossy finish; and

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(5) Shall not be reproduced on newsprint quality paper.

(b) A facsimile of the form may be submitted to the clerk, provided that the information supplied by the applicant and the applicant's signature on the facsimile form shall be original. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-15)

§3-172-24 Clerk's approval; when voter becomes registered. (a) An applicant shall not be registered to vote unless the applicant's voter registration form contains all of the information listed in section 3-172-20 (a).

(b) Unless contested by a qualified voter, the clerk may accept, as prima facie evidence, the allegations of the applicant in information required in the voter registration form.

(c) The clerk may require the applicant to furnish substantiating evidence to the allegations in the applicant's voter registration form.

(d) Upon receipt of a properly executed voter registration form, the clerk shall number the registration form and enter the name of the voter in the general county register. At this point the applicant shall be registered to vote. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-15, 11-16)

§3-172-25 Determination of residence. (a) In addition to the rules for determining residency provided in HRS §11-13, the following shall also be applicable in determining the residence of a person for election purposes:

(1) The residence of a person is that place in which the person's habitation is fixed, where the person intends to remain, and when absent intends to return;

(2) When a person has more than one dwelling:

(A) If a person maintains a homeowner's property tax exemption on one of the dwellings, there shall be a rebuttable presumption that the dwelling subject to

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the homeowner's property tax exemption is that person's residence;

(B) If a person claims a renter's tax credit for one of the dwellings, there shall be a rebuttable presumption that the dwelling subject to the renter's tax credit is that person's residence; and

(C) If a person has not physically lived at any one dwelling within the year immediately preceding the election, there shall be a rebuttable presumption that the dwelling in which the person has not lived at is not the person's residence.

(3) When a residence address does not have a street number or a person is considered homeless, the following information shall be required:

(A) A description of the location of the residence sufficient to ascertain a voting district and precinct; and

(B) A mailing address within the state, and where the person is legally entitled and does in fact receive mail.

(4) When a person of this State is employed in the service of the United States, is a student of an institution of learning, or is in an institution, asylum, or prison:

(A) A person does not gain or lose residence in a precinct or this State solely by reason of being present in or absent from a precinct or this State; and

(B) A person once having established residency in a precinct shall be allowed to register and vote and to continue to vote from the address at which the person is registered even though, while residing outside of the precinct or the State, the person no longer has a place of abode in the precinct and the person's intent to return to the precinct may be uncertain.

(b) Should a person's circumstances change and the person takes up a domicile in another precinct or state, there shall be a rebuttable presumption that the new domicile is that person's residence.

(c) For purposes of this section, a rebuttable presumption is a presumption considered true unless proven false by evidence to the contrary. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-13, 11-15)

§3-172-26 Confirmation of residence; questionable address procedure. (a) The following provisions shall be applicable in confirming the voter's address for registration purposes:

(1) The clerk may implement a system of voter residency confirmation to determine that each voter registers and votes in the precinct in which the voter resides; and

(2) The clerk may utilize the U.S. mail for the purpose of confirming a voter's residency for voting.

(b) The clerk shall identify as questionable the voter's address if the confirmation notice mailed to the voter is not deliverable. On or before election day, the clerk shall correct the general county register if the voter completes a voter registration form or other form prescribed by the chief election officer affirming that the voter:

(1) Claims the address listed on the register as the voter's legal residence;

(2) Changed the voter's legal residence after the closing of the register for that election; or

(3) Moved to a new residence within the same precinct.

(c) When a registered voter changes residence address, the voter shall complete a voter registration form or other form prescribed by the chief election officer and shall be allowed to vote in that election at the voter's correct polling place.

(d) A person employed in the armed service of the U.S. or this State, the person's spouse and dependents, a student of an institution of learning, or a person in an institution, asylum, or prison as provided in section 3-172-25, may be exempt from subsequent address confirmation mailings provided that each completes an ACRA form or other form prescribed by the chief election officer. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-12, 11-16,

11-17, 11-18, 11-19)

§3-172-27 Transfer or change of registration initiated by the voter. (a) Once registered to vote, the voter need not register again or change the voter's registration ("reregister") for any succeeding election except upon change of name or address, except that if the voter's name has been removed from the registry, the voter shall be required to register to vote pursuant to Chapter 11 HRS.

(b) A voter shall be allowed to reregister pursuant to the following procedures established by the clerk:

(1) Completes and submits, in person or through the mail, an ACRA, RAF, voter registration form, or application for absentee voter ballot;

(2) Submits a request in writing which contains the voter's:

(A) Name;

(B) Signature;

(C) Previous and current residence address;

(D) Date of birth; and

(E) Social security number;

Provided that any request in writing shall not be valid after the registration deadline for the general election for the succeeding election year following removal from the register. All allegations made in writing as to the person's name, legal residence, social security number, and date of birth, shall have the force and effect as if the person had subscribed to an affidavit on application for voter registration; or

(3) Completes and submits a federal postcard application (FPCA SF-76), or any other form prescribed by the National Voter Registration Act, or other similar form or instrument.

(c) A person shall be allowed to reregister at any time prior to the closing of the polls on election day.

(d) The date of reregistration shall be determined pursuant to sections 3-172-22 and 3-172-24. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§11-17, 11-18, 11-19, 11-20)

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§3-172-28 Transfer or change of registration initiated by the clerk. (a) The clerk shall use all reliable and pertinent information to keep the general county register up to date.

(b) The clerk may request information from the courts, the department of health, utility companies, condominium and apartment associations, and other agencies to gather information to keep the register up to date.

(c) Where the clerk has evidence indicating that a voter's registration should be transferred, the clerk shall notify the registered voter by first class mail of the intent to transfer. The notice shall include:

(1) Any evidence indicating why the transfer or change should be made;

(2) The residence, precinct, and district of the voter according to current registration lists and any alleged new address, precinct, and district;

(3) A reply form for the voter to agree or object to the transfer, to list the voter's reasons for the objection, and to sign; and

(4) A statement informing the voter to complete and return the reply form to the clerk by 4:30 p.m. on the fifteenth day after the form was mailed to prevent the transfer of registration from being completed.

(d) The clerk shall transfer the registration of a voter who does not respond by 4:30 p.m. on the fifteenth day after the form was mailed.

(e) A voter may contest the transfer on or before election day by presenting evidence to rebut the transfer which, if found valid by the clerk or the board, shall entitle the voter to restore the voter's registration to what it was before the transfer. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-20, 11-21, 11-22, 11-23)

§3-172-29 (Reserved).

§3-172-30 Confidential registration. (a) A person can apply to keep confidential the person's residence

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address and telephone number as provided in the person's voter registration form, if the person can show good cause that:

(1) Life threatening circumstances exists to the person or a member of that person's family;

(2) Risk of bodily harm exists to the person or a member of that person's family; or

(3) The person would be subject to an unwarranted invasion of privacy.

(b) An application for confidential registration shall be in the form prescribed and provided by the chief election officer containing substantially the following information:

(1) A sworn certification by self-subscribing oath setting forth the basis for the person's request for confidential registration; and

(2) An optional mailing address which may be released for election or government purposes.

(c) Voter registration information declared confidential pursuant to this section shall not be released, even for election or government purposes; provided that the optional mailing address set forth in the confidential registration application may be released in place of the person's residence address for election or government purposes.

(d) The clerk may request additional information regarding the reasons justifying confidential treatment.

(e) In no event shall confidential registration be released without notifying the person.

(f) Confidential registration shall retain its confidential status for two election cycles, after which time the person must reapply for confidential registration pursuant to this section.

(g) A challenge to the voter registration of a person who has been granted confidential registration shall be processed in accordance with the procedures set forth in section 3-172-46.

(h) A person granted confidential registration pursuant to this section shall vote by mail absentee ballot only. The voter shall be responsible to apply for the mail absentee ballot. [Eff JAN 0 9 2010 (Auth: HRS §§11-4, 11-14.5) (Imp: HRS §11-14.5)

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§3-172-31 Voter registration information; prohibited uses. (a) Voter registration forms, the general county register, or any lists or data prepared therefrom shall be released or used for election or government purposes only, unless otherwise provided by law.

(b) Notwithstanding subsection (a), a voter's full name, district/precinct designation, and voter status is public information available for any purpose.

(c) Voter registration information that is not public under subsection (b), excluding social security number and date of birth, is available for the following election or government purposes, unless otherwise provided by law:

(1) To support or oppose any candidate or incumbent for partisan or nonpartisan office;
(2) To support or oppose any proposed or existing ballot measure, proposition, or issue;
(3) To support or encourage voter registration or the voting process;
(4) To authorized government officials who, by the nature of their official responsibilities, must have access to the voter registration information for legitimate government purposes within the scope of their official duties;
(5) To challenge the right of any person to vote or to seek public office; or
(6) To satisfy the requirements of HRS §11-62 or HRS §11-113.

Social security number and date of birth may also be available to federal, state or county government agencies provided that the requesting agency furnish valid reasons justifying the need for such information.

(d) Voter registration information that is not public under subsection (b) may not be used for any commercial purpose, such as mailing or delivering an advertisement or offer for any property, establishment, organization, product or service, or for the purpose of mailing or delivering any solicitation for money, services, or anything of value; provided that service bureaus may charge a fee for their services involving the use or disclosure of voter registration information that is not public under subsection (b) so long as the underlying election or government purpose is verified.

(e) A request for voter registration information that

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is not public under subsection (b) shall be in a form prescribed and provided by the chief election officer containing substantially the following information:

(1) A sworn certification by self-subscribing oath setting forth the election or government purpose for which the information is sought;

(2) A sworn certification by self-subscribing oath establishing that the information will only be used for election or government purposes;

(3) Where the requesting party additionally seeks social security and date of birth information for government purposes, a statement setting forth reasons why such information is required; and

(4) A sworn certification by self-subscribing oath that the information will not be sold, released, distributed, or used in any way for commercial purposes, provided that service bureaus may charge a fee for their services in accordance with subsection (d). [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§11-14, 11-97, 19-6)

§§3-172-32 to 3-172-39 (Reserved).

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SUBCHAPTER 4

VOTER CHALLENGES AND APPEALS

§3-172-40 Prerequisites for challenge. (a) Prior to election day, any registered voter may challenge the right of a person to be or to remain registered as a voter in any precinct.

(b) At the polling place on election day, any registered voter, including a candidate, poll watcher, or official observer, rightfully in the polling place may challenge the right to vote of any other person at the polling place. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-25)

§3-172-41 Grounds for challenge. (a) Prior to election day, a challenge may be brought for any cause or upon any grounds not previously decided by the board of registration or the appellate courts in respect to the person challenged.

(b) At the polling place on election day, any voter rightfully in the polling place may challenge the right to vote of any person who comes to the precinct to vote only upon the following grounds:

(1) The person is not who the person claims to be; or

(2) The person is not a resident of the precinct.

[Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-25)

§3-172-42 Challenge prior to election day; procedure.

(a) A challenge prior to election day shall be delivered to the clerk in writing, setting forth the grounds upon which it is based and signed by the person making the challenge.

(b) The clerk shall immediately notify the person challenged.

(c) The clerk shall, as soon as possible, investigate and rule upon the challenge.

(d) The clerk shall notify the challenger and the person challenged in writing of the clerk's decision. The

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clerk shall also notify the person ruled against of the person's right to appeal to the board within ten days of service of the adverse decision. Service of the decision shall be made personally or by registered mail, which shall be deemed complete upon deposit in the mail, postage prepaid, and addressed to each party's last known address.

(e) If an appeal is brought, both the challenger and the challenged voter shall be parties to the appeal. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-25, 11-26)

§3-172-43 Appeal to the board prior to election day.

(a) Any appeal of the clerk's ruling shall be made in writing by filing a notice of appeal with the chairperson of the board of registration within ten days of service of the clerk's decision. The notice of appeal shall include a statement of the clerk's decision being appealed, the grounds upon which it is being contended that the clerk's decision is erroneous, and the name of the person challenged. The appeal shall be exempted from the provisions of HRS Chapter 91, regarding contested case hearings.

(b) The board may hold an informal pre-hearing conference for the purpose of:

(1) Simplifying and clarifying issues;

(2) Making necessary or desirable amendments to the notice of the charges, or its answer, if any;

(3) Obtaining admissions of fact or documents to avoid unnecessary proof; limiting the number of expert witnesses; and

(4) Any other materials that may aid in the reasonable and expeditious disposition of the matter;

Notice and opportunity to participate shall be given to each party and each party's attorney. The entire board or one of its members designated for such purpose shall preside at the conference. No attempt at fact finding or argument shall be permitted. Prejudicial comment or conclusion on any issue being controverted shall not be made or stated at any time by any member or the presiding member of the board. Minutes of the conference shall be kept and agreements shall be concisely noted.

(c) The petitioner and the respondent shall have the opportunity to challenge any member of the board.

(d) The chairperson of the board shall be the presiding officer and shall be authorized to make any preliminary determinations necessary for the prompt and efficient management of the appeal hearing.

(e) Before presentation of the case, each party shall have the opportunity to make an opening statement. The usual order of the opening statements shall be:

(1) Opening statement by the petitioner;

(2) Opening statement by the respondent, or respondent may reserve respondent's opportunity to make the opening statement until after the witnesses for the petitioner have been presented; and

(3) Opening statements may be waived by a party.

(f) Witnesses may be called to testify and presented in the following order:

(1) Witnesses for the petitioner;

(2) Witnesses for the respondent;

(3) Witnesses for the petitioner in rebuttal;

(4) Witnesses for the respondent in rebuttal; and

(5) Additional witnesses as the board may deem necessary.

(g) Witnesses may be subpoenaed, and examined in the following order:

(1) Direct examination by the party calling the witness;

(2) Cross examination by the other party;

(3) Redirect examination by the party calling the witnesses;

(4) Recross examination by the other party; and

(5) Examination by the board.

(h) Rules of evidence as specified in HRS §91-10 shall be applicable thereto.

(i) After all the evidence has been presented, the board shall give each party the opportunity to summarize. The usual order of final argument shall be as follows:

(1) Final argument by the petitioner;

(2) Final argument by the respondent; and

(3) Rebuttal argument by the petitioner, which shall be limited to countering whatever may be said by the respondent during the respondent's

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final argument. A reasonable time limit may be imposed by the board for the final arguments. Final arguments may be waived by a party.

(j) At the end of the hearing, the board may give an oral decision or take the matter under advisement with a written decision to be issued at a later date. Regardless of whether the board gives an oral decision, the board shall issue a written decision, including findings of fact and conclusions of law.

(k) The board shall notify the person ruled against that the person may appeal to the state intermediate appellate court within ten days of service of the board's written decision. Service shall be made personally or by registered mail, which shall be deemed complete upon deposit in the mails, postage prepaid, and addressed to each party's last known address. The notification shall contain a copy of part IV of HRS Chapter 11, "Appeal from Board of Registration." The board shall not consider motions for reconsideration.

(l) Unless the board's decision is timely appealed to the intermediate appellate court, the clerk shall make any necessary changes to the register of voters to conform to the decision. The clerk shall notify the challenger and the challenged voter of the voter's status on the register. [Eff JAN 0 9 2010 (Auth: HRS §§11-4, 11-43) (Imp: HRS §§11-25, 11-26, 11-41, 11-43, 11-51 through 11-54)

§3-172-44 Challenge at the polling place on election day; procedure. (a) A challenge at the polling place shall be filed with the precinct chairperson. It need not be in writing.

(b) The challenged voter shall be given the opportunity to make a correction to the voter's registration pursuant to HRS §11-21.

(c) The precinct chairperson shall call a meeting of two other precinct officials, not of the same party, to discuss the challenge and any relevant information. After the challenge has been adequately considered, the precinct chairperson and the two precinct officials shall decide immediately whether the challenged voter may or may not vote. The majority vote of the three officials shall decide the challenge.

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(d) The precinct chairperson shall inform each party of the decision. The precinct chairperson shall inform the person decided against that the person may appeal the decision to the board at that time. The precinct chairperson shall give the challenger and the challenged voter copies of the rules regarding challenges and appeals to the board.

(e) The appeal shall be made either before the challenged voter casts a regular ballot, or before either the challenger or the challenged voter leaves the polling place, whichever is earlier.

(f) If no appeal is made, the decision of the precinct officials shall stand. The challenged voter is allowed to vote on a regular ballot, or is not allowed to vote, in accordance with the decision.

(g) If an appeal is made, the procedures set forth in section 3-172-45 shall be followed. [Eff JAN 09 2010] (Auth: HRS §§11-4, 11-43) (Imp: HRS §§11-16, 11-25, 11-26)

§3-172-45 <u>Appeal to the board from decision at the polling place.</u> (a) In the case of an appeal from a decision rendered by the precinct officials at the polling place, the challenged voter shall vote on a challenged ballot. The precinct chairperson shall collect and submit the facts of the challenge to the board. The voting of the challenged ballot and the board's hearing shall be conducted in accordance with the procedures in subsection (b).

(b) If an appeal is made to the board from a decision rendered by the precinct officials at the polling place, the precinct chairperson shall:

(1) Notify the clerk that a challenged ballot is being deposited in the clerk's envelope and explain the circumstances of the challenge to the clerk or the designated representative;

(2) Direct the voter to vote the challenged ballot and to place the ballot, with stub intact, in the utility envelope provided for this purpose;

(3) Seal the envelope after the voter has voted and print the following information on the face of the envelope: the words "challenged ballot," the voter's name, the district and precinct,

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and the time the ballot was received by the precinct official;

(4) Sign the face of the envelope and enter the required information in the record book; and

(5) Deposit the envelope in the clerk's envelope in the presence of the challenged voter and write the word "challenged" in the remarks column of the pollbook.

(c) The precinct chairperson shall contact the board to hear the appeal. Using telephones, the board member serving as the presiding officer shall swear-in the challenger, the person challenged, the precinct chairperson, and any witnesses present. Each person who testifies before the hearing officer shall state the following for the record:

(1) Name as registered to vote;

(2) Residence address and mailing address;

(3) Social security number and telephone number; and

(4) Role in the challenge.

(d) The board shall listen to the evidence presented by each of the above persons and then shall close the hearing with the exception of the receipt of any documentary evidence any of the parties to the challenge notifies the board that the party is going to submit prior to the closing of the polls.

(e) The board shall discuss the challenge and come to a decision regarding the appeal. A summary of the discussion of the board, the decision of the board, and the reasons for the board's decision shall be included in the board's minutes.

(f) The board shall notify the precinct chairperson and the clerk of its decision. If necessary, the clerk shall issue a correction order to change the register to correspond to the board's decision. The precinct chairperson shall notify each party of the board's decision. The precinct chairperson shall also notify the party ruled against that the party may appeal to an appellate court.

(g) If no appeal is made, the clerk shall immediately notify the county counting center manager or designated representative of the disposition of the challenge. The challenged ballot shall be counted or disposed of pursuant

to section 3-172-101.

(h) If an appeal is made, the ballot shall remain in the sealed envelope to be counted or rejected in accordance with the ruling on appeal and the register shall be corrected to conform with the court's decision.

(i) The secrecy of the challenged voter's ballot shall be safeguarded as provided in subsection (b). [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§11-25, 11-26, 11-41, 11-51)

§3-172-46 Challenge to confidential registration; special procedure. In addition to the conditions and procedures for voter challenges prior to election day set forth in sections 3-172-40, 3-172-41, and 3-172-42, a challenge to the voter registration of a person who has been granted confidential registration pursuant to section 3-172-30, shall be treated as follows:

(1) The clerk shall immediately notify the person being challenged that a challenge to the person's voter registration has been filed, including the charges set forth in the challenge and the challenger's name;

(2) The clerk shall investigate the challenge and if the clerk determines that the challenge is not frivolous, the clerk shall notify the person that the person's voter registration form may be released;

(3) If the person wishes to contest the challenge, the voter registration form may be released for inspection by the challenger. The challenge, and appeal, if any, shall be conducted in accordance with this chapter; and

(4) If the person wishes to withdraw said person's voter registration, the voter registration form shall not be released, and said person shall not be allowed to vote. The challenger shall be notified that said person has not contested the challenge and that said person shall not be allowed to vote. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-14.5)

§3-172-47 Correction of errors; appeal to the board of registration from clerk's ruling. A person claiming to be aggrieved by the refusal of the clerk to correct the person's registration information in those instances set forth in HRS §11-22, may appeal to the board either prior to election day pursuant to section 3-172-43 or on election day pursuant to section 3-172-45. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§11-22, 11-26)

§§3-172-48 to 3-172-49 (Reserved).

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SUBCHAPTER 5

POLITICAL PARTIES

§3-172-50 Political parties; qualification. (a) Any group of persons having qualified as a political party for election ballot purposes by petition, which shall be upon a form prescribed and provided by the chief election officer containing the information required in HRS §11-62, or by vote, pursuant to HRS §11-61(b), for three consecutive general elections shall be deemed a political party for the following ten-year period, or for the following five general elections, provided that the qualified political party continues to field candidates for public office in the elections held during that period and to meet the requirements of HRS §§11-62, 11-63, and 11-64.

(1) The ten-year period will start with the general election immediately following the third consecutive general election in which the party qualified by petition pursuant to HRS §11-62, or by vote, pursuant to HRS §11-61(b).

(2) At the end of the ten-year period, the qualified party which has not been disqualified for other reasons, shall be subject to the requirements of HRS §11-61.

(b) Any party which is not exempt from and which does not meet HRS §11-61(b) shall be subject to disqualification. [Eff JAN 09 2010] (Auth: HRS §11-4) (Imp: HRS §§11-61, 11-62, 11-63, 11-65)

§3-172-51 Party petitions; issuing. (a) Any individual or group wishing to petition to qualify a new political party in the State, pursuant to HRS §11-62, shall complete an application form before receiving the petition forms. An application for petition to qualify a political party shall be in the form prescribed and provided by the chief election officer containing substantially the following information:

(1) A contact person or persons responsible for the petition;

(2) The date the application form is completed; and

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(3) The telephone numbers and mailing address at which the contact person or group can be contacted.

(b) All petitions that have not been filed with the chief election officer by the date specified in HRS §11-62 shall be void upon the one hundred and sixty-ninth day prior to the primary election for which it is issued. [[Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-62) (Imp: HRS §11-62)

§3-172-52 Party petitions; withdrawal of signatures. (a) Any voter who has signed a party petition pursuant to HRS §11-61, may withdraw the voter's signature by submitting a written notice to the chief election officer any time prior to the filing of the petition. The written notice to withdraw shall contain the following:

(1) The date of the notice;

(2) The name, social security number, address, and date of birth of the voter requesting to have the voter's name removed from the petition;

(3) The signature of the voter with the name under which the voter is registered to vote;

(4) The name of the party petition from which the signature should be removed; and

(5) A statement that the voter wishes to withdraw the voter's signature from the petition.

(b) Upon receipt of a written notice to withdraw prior to the filing of the petition containing the appropriate information provided in subsection (a), the chief election officer shall notify the group or individuals to whom the petition was issued that the signature of the voter will not be counted.

(c) Upon receipt of the petition for filing, the chief election officer shall:

(1) Verify that the signature on the written notice to withdraw corresponds with the voter's signature on the petition; and

(2) If the signature corresponds, cross out the voter's signature in black ink and indicate on the petition that the voter has withdrawn the voter's signature.

(d) If the written notice to withdraw is received by

the chief election officer after the petition has been filed, then the chief election officer shall notify the voter, in writing, that the voter's notice was not received in time and was not accepted. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§11-6, 11-61, 11-62)

§3-172-53 Party petitions; qualification of signatories. To determine whether an individual is qualified to sign a party petition, the chief election officer or designated representative shall determine whether the signatory is an active registered voter by checking the statewide voter registration system; provided that a properly executed voter registration form shall be effective if it is received by the clerk and the affiant's name has been entered in the statewide voter registration system on or before the date on which the petition is filed. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §11-62)

§3-172-54 Party petitions; verification of signatories. (a) Upon receipt of a party petition, the chief election officer or designated representative shall verify within the time specified in HRS §11-62 whether the petition has met the requirements of HRS §11-62.

(b) Upon receipt of a petition containing the minimum number of signatures required by HRS §11-62(a)(3), the chief election officer or designated representative shall verify whether the signatory is eligible to sign the petition. To be eligible, the signatory must be a registered voter in Hawaii and must appear in the statewide voter registration system as an active registered voter.

(1) If the signatory on the petition exists as an active registered voter in the statewide voter registration system, then the signatory shall be counted;

(2) If the signatory on the petition does not exist as an active registered voter in the statewide voter registration system, then the signatory shall not be counted;

(3) If there are duplicate signatories on a

party petition, and the signatory is an active registered voter, then the signatory shall be counted once; and

(4) If the signatory does not provide all of the required information on the petition or if the information is not legible, then the signatory may not be counted.

(c) If a voter withdraws the voter's signature from the petition as prescribed in section 3-172-52, the voter's signature shall not be verified or counted.

(d) The chief election officer or designated representative may verify that the voter's signature on the petition corresponds with the voter's signature on the voter's registration form. If the signature does not correspond, then the signatory on the petition shall not be counted. The chief election officer or designated representative shall indicate on the petition that the voter's signature is invalid because it does not match the signature on the voter's registration form.

(e) The chief election officer or designated representative may verify only as many signatories as needed to ensure that the political party has met the signature requirements of HRS §11-62. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §11-62)

§§3-172-55 to 3-172-59 (Reserved).

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SUBCHAPTER 6

PRECINCT OFFICIALS AND WATCHERS

§3-172-60 Precinct officials; selection. (a) Names of otherwise qualified voters timely filed by qualified political parties shall be used to fill positions for precinct officials. In addition to any statutory requirements, the following qualifications shall apply:

(1) The person shall be able to read and write the English language;

(2) The person shall be sixteen years of age or older on or before June 30 of the year of the election for which the person is appointed; and

(3) The person shall be registered to vote in the precinct in which the person serves as a precinct official where possible, except for sixteen or seventeen year old officials.

(b) A precinct official who is under 18 years of age on or before June 30 of the year of the election in which that person is appointed shall not:

(1) Be a chairperson or a voter assistance official of a precinct; and

(2) Comprise the majority of precinct officials in any one precinct.

(c) When a qualified political party fails to submit the required number of precinct officials by the statutory deadline, the chief election officer or clerk may fill the remainder of positions without regard to party apportionment. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-72)

§3-172-61 Precinct officials; gifts and gratuities prohibited. While in a polling place, a precinct official shall not accept any gift of food, beverage, or other gratuity from any political party or candidate. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§19-3, 19-6)

§3-172-62 Precinct officials; confidentiality of voter information. Except as required by law or as

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directed by the chief election officer or clerk, a precinct official may not disclose whether a voter has:

(1) Voted or not voted;
(2) Requested or received voting assistance;
(3) Requested or cast an absentee ballot; or
(4) Initiated or completed a change of address or other correction to the voter's registration. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§11-75, 11-137, 11-139)

§3-172-63 Precinct officials procedure; campaign activities. (a) No person at a polling place shall be permitted to exhibit on his or her person, or distribute any communication which is in any way intended to directly or indirectly solicit, influence, or address any candidate race or question on the ballot. The precinct chair shall request that any person in violation of this paragraph remove or cover any clothing, button, hat, armband or other campaign material that is being exhibited by the person. Any brochures or other written material being distributed at a polling place in violation of this section shall be confiscated. Any removed or confiscated material shall be returned when the person leaves the polling place. Any person who refuses to comply with the request of the precinct chair shall be required to leave the polling place.

(b) Except when a vehicle is used by a person traveling to or from a polling place for the purpose of voting, a vehicle parked within the area prescribed in HRS §11-132, may not exhibit any sign, bumper sticker, or other campaign material on said vehicle. [Eff JAN 0 9 2010 (Auth: HRS §§11-4, 11-132) (Imp: HRS §§11-132, 19-6)

§3-172-64 Non-campaign activity within prescribed area of polling place; time, place, and manner. The chief election officer may establish procedures to ensure that non-electioneering activities, including exit polling, within the area prescribed in HRS §11-132, do not interfere in any way with the orderly conduct of elections. Such procedures may include:

(1) The prohibition of commercial activity, other

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than those which were pre-existing, involving advertising, solicitation or sales;

(2) Requiring prior notification, ten (10) days before an election, and approval for any organized activity;

(3) Limiting the number and proximity of persons involved or places where the activity takes place;

(4) The prohibition of loudspeakers or other amplification devices;

(5) Requiring that the precinct chairperson be advised of the activity;

(6) The cessation or removal of any activity which interferes with the conduct of the election; and

(7) Prohibiting the solicitation or approaching of persons proceeding to or from a polling place.

[Eff JAN 0 9 2010 (Auth: HRS §§11-4, 11-132) (Imp: HRS §§11-132, 19-6)

§3-172-65 Poll watchers; guidelines. (a) Each qualified political party shall:

(1) Be entitled to appoint no more than one watcher in each precinct and absentee polling place in which the candidates of such party are on the ballot;

(2) Submit a list of watchers not later than 4:30 p.m. on the tenth day prior to any election to the chief election officer or clerk in county elections;

(3) Submit a list of watchers for the absentee polling place to the clerk not later than 4:30 p.m. on the tenth day prior to the commencement of absentee walk in voting.

(b) Each poll watcher shall:

(1) Receive identification from the chief election officer or clerk;

(2) Be permitted to observe the conduct of the election in the precinct to which they are assigned; and

(c) A designated poll watcher may relieve another poll watcher as long as there is not more than one

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represented at the poll at a time.

(d) The poll watcher shall not interfere with the orderly process of the election.

(e) The poll watcher may turn the pages of the pollbook after obtaining permission from the precinct chairperson. The precinct chairperson shall grant such permission at times when there is a reasonable break in voting activity.

(f) Any violation of the election law shall be reported to the chief election officer, clerk, or designated representative. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-77)

§3-172-66 Compensation for election day officials. (a) All election day officials shall be compensated in accordance with a stipend schedule approved by the chief election officer containing substantially the following information:

(1) County designation;
(2) Position title; and
(3) Stipend amount per election.

(b) The stipend schedule is as follows:

ELECTION DAY OFFICIAL
Stipend Schedule

COUNTY	POSITION		STIPEND PER ELECTION SERVED
COUNTING CENTER			
O	Chairperson:	Base Pay	105.00
H, M	Chairperson:	Base Pay	95.00
K	Chairperson:	Base Pay	90.00
O	Assistant:	Base Pay	100.00
H, M	Assistant:	Base Pay	90.00
K	Assistant:	Base Pay	85.00
O	Member:	Base Pay	95.00

COUNTY	POSITION		STIPEND PER ELECTION SERVED
H, M	Member:	Base Pay	85.00
K	Member:	Base Pay	80.00
	CONTROL CENTER		
O, H, K, M	Board of Registration Member		85.00
O, H, K, M	Board of Registration Secretary		100.00
O, H, K, M	Computer Terminal Operator		85.00
O	Control Center Assistant Manager		140.00
O, H, K, M	EIS Multilingual		85.00
O	Electioneering Chairperson		70.00
O	Electioneering Member		60.00
O, K	Messenger		60.00
O, H, K, M	Phone Operator		85.00
O, H, K, M	Troubleshooter		145.00
	DELIVERY/COLLECTION (D/C)		
O, H, K, M	D/C Chairperson	00-10 miles	70.00
O, H, K, M	D/C Chairperson	11-20 miles	75.00
O, H, K, M	D/C Chairperson	21-30 miles	80.00
O, H, K, M	D/C Chairperson	31-40 miles	85.00
O, H, K, M	D/C Chairperson	41-50 miles	90.00
O, H, K, M	D/C Chairperson	51-60 miles	95.00
O, H, K, M	D/C Chairperson	61-70 miles	100.00
O, H, K, M	D/C Chairperson	71 + miles	105.00
O	D/C Controller		90.00
K	D/C Driver	00-10 miles	75.00
K	D/C Driver	11-20 miles	80.00

COUNTY	POSITION		STIPEND PER ELECTION SERVED
K	D/C Driver	21-30 miles	85.00
K	D/C Driver	31-40 miles	90.00
K	D/C Driver	41-50 miles	95.00
K	D/C Driver	51-60 miles	100.00
K	D/C Driver	61-70 miles	105.00
K	D/C Driver	71-80 miles	110.00
O, H, K, M	D/C Member	00-10 miles	65.00
O, H, K, M	D/C Member	11-20 miles	70.00
O, H, K, M	D/C Member	21-30 miles	75.00
O, H, K, M	D/C Member	31-40 miles	80.00
O, H, K, M	D/C Member	41-50 miles	85.00
O, H, K, M	D/C Member	51-60 miles	90.00
O, H, K, M	D/C Member	61-70 miles	95.00
O, H, K, M	D/C Member	71 + miles	100.00
O	D/C Standby		50.00
O, H, K, M	Election Support		100.00
PRECINCT			
O, H, K, M	Alternate Standby Precinct Official		5.00
O, H, K, M	Precinct Chair: One Unit		115.00
O, H, K, M	Precinct Chair: Two Unit		130.00
O, H, K, M	Precinct Chair: Three Unit		145.00
O, H, K, M	Precinct Chair: Four Unit		160.00
O, H, K, M	Precinct Chair: Five Unit		175.00
O, H, K, M	Facility Official: One Unit		60.00
O, H, K, M	Facility Official: Two Unit		80.00

COUNTY	POSITION	STIPEND PER ELECTION SERVED
O, H, K, M	Facility Official: Three Unit	100.00
O, H, K, M	Facility Official: Four Unit	120.00
O, H, K, M	Facility Official: Five Unit	140.00
O, H, K, M	Precinct Officials	85.00
O, H, K, M	Standby Precinct Official	85.00
O, H, K, M	Voter Assistance Officials	100.00
SUPPLY COLLECTION (SC)		
O	Supply Collection Chair	60.00
O	Supply Collection Coordinator	65.00
O	Supply Collection Custodian	10.00
O	Supply Collection Member	50.00

O = City & County of Honolulu H = County of Hawaii
K = County of Kauai M = County of Maui

(c) The stipend amount per election may vary based on workloads and time differentials or at the discretion of the chief election officer; provided that the stipend amount be established prior to election day. This includes the ability to authorize split shifts if necessary.

(d) The stipend amounts shall be considered minimum stipends, subject to possible increase, in the event of available legislative appropriations. Any such increased stipend amount will be established prior to election day. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §11-76)

§§3-172-67 to 3-172-69 (Reserved).

SUBCHAPTER 7

BALLOT PRINTING AND DELIVERY

§3-172-70 Candidate vacancies; filling of by party .
(a) In case of death, withdrawal, or disqualification of any party candidate after filing, the vacancy so caused may be filled by the party. If the party chooses to fill the vacancy, the party chairperson or the chair's designated representative, shall submit a written notice to the chief election officer, or clerk in the case of a county office, not later than 4:30 p.m. on the third day after the vacancy occurs, but not later than 4:30 p.m. on the fiftieth day prior to a primary or special primary or not later than 4:30 p.m. on the fortieth day prior to a special, general, or special general election.

(b) The written notice from the party chairperson, or chair's designated representative, shall contain:

(1) The name of the party;
(2) The office to be filled;
(3) A statement that the party nominates the candidate named to fill the vacancy;
(4) The name, address, and telephone number(s) of the candidate being nominated;
(5) The candidate's name as it should appear on the ballot;
(6) An acknowledgment that the candidate accepts the nomination; and
(7) The signature and title of the person submitting the notice.

(c) Any candidate nominated by a party to fill a candidate vacancy shall not be required to file nomination papers or to pay a filing fee.

(d) If the third day after the vacancy occurs is a Saturday, Sunday, or holiday, then the chief election officer, or clerk in the case of a county office, shall open the office to receive the written notices to fill the vacancy from the parties. The chief election officer shall notify the party chairperson that the office will be open to receive the notice. No extension of time will be allowed.

(e) If the party fails to fill the vacancy within the

time specified in HRS §11-118, then no candidate's name shall be printed on the ballot for the party for that race. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-117, 11-118)

§3-172-71 Official ballots. The design and arrangement of the ballot shall meet the requirements of the voting system. The maximum number of candidates or ballot questions for which the voter is legally entitled to vote in any given case shall be clearly indicated. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-112, 11-119)

§3-172-72 Ballots; delivery; seal certification procedure; delivery and collection team . (a) Ballots shall be delivered to and from the polling places by a delivery and collection (DC) team or by two election officials designated by the chief election officer or clerk. Each DC team shall be comprised of two election officials not of the same political affiliation.

(b) Whenever the custody of ballots is transferred, the election officials delivering and receiving the ballots shall conduct the following seal certification procedure:

(1) Ensure that the ballot transport containers and ballot boxes are properly closed and sealed;

(2) Compare the seal numbers on the ballot transport containers and ballot boxes with the seal numbers recorded on the ballot seal control form or other appropriate form as prescribed by the chief election officer;

(3) Record discrepancies on the ballot seal control form, or other appropriate form prescribed by the chief election officer; and

(4) Report discrepancies to the chief election officer, clerk, or designated representative.

(c) After the closing of the polls, the precinct chairperson or the chair's designated representative shall return the unvoted ballots from the polling place to secured sites designated by the chief election officer or clerk.

(d) The DC team shall be organized, recruited, and

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trained in accordance with the procedures established by the chief election officer, clerk, or designated representative. [Eff JAN 0 9 2010 (Auth: HRS §§11-4, 11-120) (Imp: HRS §§11-120, 11-134, 16-43)

§3-172-73 Ballots; transportation and receipt at polling places . (a) Ballots shall be transported to the polling places on election day by the DC Team in sealed ballot transport containers in accordance with the procedure and schedule established by the chief election officer, clerk, or designated representative; provided that when emergency or reserve ballots are required, ballots may be transported to the polling place by two designated representatives of the chief election officer or clerk.

(b) A precinct official shall be at the polling place at least one hour before the time set for opening the polls, or according to such other schedule prepared by the chief election officer, clerk, or designated representative, to receive the ballots which shall be delivered by the DC Team.

(c) Ballots transported to the precinct by the DC Team may be left at the polling place provided that at least one precinct official is present to receive and sign for the sealed ballot transport containers.

(d) Upon receipt of the sealed ballot transport containers, the receiving officials shall conduct the seal certification process defined in section 3-172-72.

(e) The ballot transport containers shall be unsealed and opened at the polling place prior to the opening of the polls on election day and only in the presence of two precinct officials not of the same political party.

(f) The precinct officials shall compare the ballot serial numbers with the ballot seal control form to determine the quantity of ballots. Discrepancies shall be reported immediately to the chief election officer, clerk, or designated representative and shall be recorded on the ballot seal control form.

(g) In a precinct which cannot be reached by road within one hour from the clerk's office in each county, as may be determined by the chief election officer, clerk, or designated representative, the ballots may be delivered by representatives of the chief election officer or clerk, to

the chairperson of the precinct officials or designated election officials prior to election day; provided that the ballot transport containers shall remain sealed and shall be unsealed only at the polling place prior to the opening of the polls and in the presence of at least two precinct officials not of the same political party. The precinct chairperson shall be responsible to have the ballot transport containers at the polling place prior to the opening of the polls. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-120) (Imp: HRS §§11-75, 11-120, 11-134, 16-43)

§3-172-74 Ballots; receipt by clerks; procedure . (a) The clerk or clerk's designated representative shall receive the ballots which shall be delivered by the chief election officer or designated representatives in accordance with the procedure and schedule established by the chief election officer. Absentee ballots may be delivered directly to the clerks by the ballot production contractor.

(b) When ballots are delivered in sealed ballot transport containers, the clerk or designated representative shall compare the numbers on the seals with the ballot transport container shipping form. Discrepancies shall be recorded on the ballot transport container shipping form and reported immediately to the ballot delivery contractors and the chief election officer or designated representative.

(c) The clerk or designated representative shall compare the ballot serial numbers with the ballot transport container shipping form to determine the quantity of ballots. Discrepancies shall be recorded on the ballot transport container shipping form and reported immediately to the chief election officer or designated representative.

(d) After the ballot transport containers are inventoried and verified, the clerk or designated representative shall sign the ballot transport container shipping form signifying that all ballots were received and all seals, other than those noted, are intact. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-120) (Imp: HRS §§11-75, 11-120, 11-134, 16-43)

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§3-172-75 Receipt of materials other than ballots. (a) Each precinct chairperson shall receive the supply box in accordance with the system and schedule determined by the chief election officer or clerk.

(b) The chief election officer, the clerk, or a designated representative shall also provide an inventory form reflecting the types and quantity of polling place materials transferred.

(1) Immediately upon receiving the materials, the chairperson shall compare with the inventory form the types and quantity of materials received.

(2) The chairperson shall report any discrepancy immediately to the chief election officer, the clerk, or a designated representative and shall record the discrepancy in the record book.

[Eff JAN 0 9 2010 (Auth: HRS §§11-4, 11-120) (Imp: HRS §11-120)

§§3-172-76 to 3-172-79 (Reserved).

SUBCHAPTER 8

VOTING PROCEDURES AT POLLING PLACES

§3-172-80 Paper ballot voting system; voting procedure at the polls. (a) A demonstration of the proper method to use in marking a paper ballot, utilized in the paper ballot voting system, shall be available to all voters at the polling place. A card of instruction detailing the method of marking ballots and voting shall be posted outside the polling place and in each voting booth.

(b) The voter shall present valid identification to the official in charge of the pollbook.

(c) The serial number of the ballot stub shall be entered by the official in the appropriate column in the pollbook.

(d) Before the ballot is issued to the voter, the voter shall:

(1) Sign the pollbook; or

(2) Make the voter's mark in the appropriate place in the pollbook if the voter is unable to write for reasons of illiteracy, blindness, or other physical disability. The precinct official shall print "witnessed by" next to the voter's mark and sign the precinct official's name.

(e) Before issuing a ballot to a voter, the precinct official shall fold the ballot in the manner prescribed by the chief election officer or clerk so as to conceal the contents.

(f) Upon receiving the folded ballot, the voter shall proceed into the voting booth and shall mark the ballot in the manner and color of ink or grade of softness of pencil graphite prescribed by the chief election officer as described in the card of instruction. Within the voting booth the voter shall designate each choice by marking an "X", "+", or "%" in the voting position area next to the name of the candidate for whom the voter desires to vote or the question on the ballot for which the voter desires to vote. The voting position area will be designated by the chief election officer on the ballot. The voting position area may include, but not be limited to circles, squares, rectangles, or other shapes. In addition, the chief

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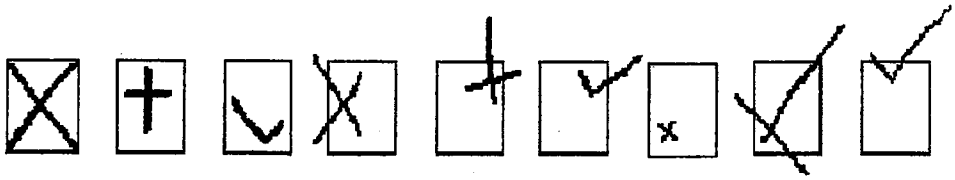
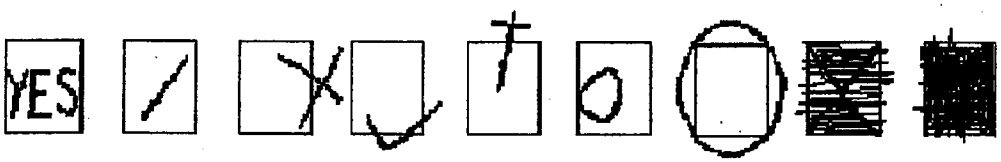
election officer will determine whether the voting position area is on the right or left hand side of a candidate's name or the ballot question.

(1) Examples of proper marks are:



(2) Examples of improper marks are:



(g) The voter shall then refold the ballot using the same folds as when handed to the voter by the precinct official and shall give the folded ballot to the ballot box official. The official shall not open or unfold the ballot, but shall ensure that the correct number of ballots are deposited in the ballot box.

(h) The ballot box official shall give the voter a receipt.

(i) Voter assistance shall be provided at the polling place.

(1) For voters covered by the Voting Rights Language Assistance Act amendments of 1992, 42 U.S.C. §1973aa-1a, the chief election officer shall provide bilingual assistance in voting procedures.

(2) For all voters, the precinct officials shall provide assistance as needed or required by HRS §11-139. [Eff JAN 09 2010] (Auth: HRS §§11-4, 16-22, 42 U.S.C. §1973aa-1a) (Imp: HRS §§11-136, 11-139, 12-31, 16-22, 16-23, 42 U.S.C. §1973aa-1a)

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§3-172-81 Paper ballots; spoiled ballots. (a) If a voter spoils a ballot in the process of voting, or receives a spoiled ballot, the voter shall be issued another ballot, properly folded, by the precinct officials.

(b) Before issuing the new ballot, the precinct officials shall:

(1) Give the voter a utility envelope, ask the voter to place the spoiled ballot in the envelope, and seal the envelope;

(2) Write "spoiled" across the face of the envelope and sign the precinct official's name;

(3) Deposit the utility envelope in the spoiled ballot envelope;

(4) If the paper ballot has a stub number, line out the voter's previously issued stub number and record the new stub number;

(5) Write in the pollbook in the remarks column on the same line as the voter's name, "spoiled ballot"; and

(6) Have the voter place the voter's initials next to the words "spoiled ballot."

(c) The precinct officials shall, after the above procedures in subsection (b) are completed, give the voter a new ballot properly folded. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-140)

§3-172-82 Demonstration ballots. (a) At each election using the paper ballot voting system or electronic voting system, there shall be provided as many demonstration ballots as the chief election officer, clerk, or designated representative deems appropriate.

(b) The demonstration ballots shall be designed to prevent tabulation by the computer programmed to count the ballots in the election.

(c) The demonstration ballots shall not contain the names of candidates or ballot questions to be voted on in the election. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§11-2, 11-120, 11-133)

§3-172-83 Marksense voting system; voting procedure at the polls. (a) A demonstration of the proper method to

use in marking a marksense ballot shall be available to all voters at the polling place. A card of instruction detailing the method of marking ballots and voting shall be posted outside the polling place and in each voting booth.

(b) The voter shall present valid identification to the official in charge of the pollbook.

(c) The serial number of the ballot stub shall be entered by the official in the appropriate column in the pollbook.

(d) Before the ballot is issued to the voter the voter shall:

(1) Sign the pollbook; or

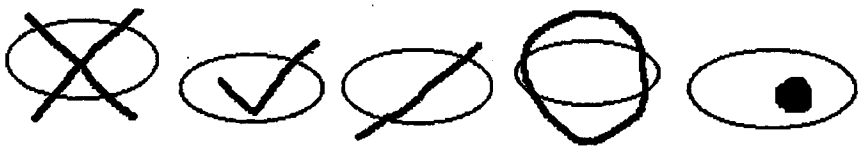
(2) Make the voter's mark in the appropriate place in the pollbook if the voter is unable to write for reasons of illiteracy, blindness, or other physical disability. The precinct official shall print "witnessed by" next to the voter's mark and sign the precinct official's name.

(e) Before issuing the ballot to a voter, the precinct official shall insert the ballot into a secrecy sleeve prescribed by the chief election officer or clerk so as to conceal the contents.

(f) Upon receiving the ballot, the voter shall proceed into the voting booth and shall properly mark the ballot in the manner and color of ink or softness of pencil graphite prescribed by the chief election officer as described in the card of instruction. Within the voting booth the voter shall designate each choice by completely filling in the voting position area next to the name of the candidate for whom the voter desires to vote or the question on the ballot for which the voter desires to vote. The voting position area will be designated by the chief election officer on the ballot. The voting position area may include, but not be limited to circles, squares, rectangles, or other shapes. In addition, the chief election officer will determine whether the voting position area is on the right or left hand side of a candidate's name or the ballot question.

(1) Example of a proper mark

(2) Examples of marginal marks are:



(3) Examples of improper marks are:

(g) The voter shall remove the ballot stub(if any) from the ballot.

(h) The voter shall then deposit the ballot into the ballot box or the precinct counter.

(i) Voter assistance shall be provided at the polling place:

(1) For voters covered by the Voting Rights Language Assistance Act amendments of 1992, 42 U.S.C. §1973aa-1a, the chief election officer shall provide bilingual assistance in voting procedures.

(2) For all voters, the precinct officials shall provide assistance as needed or required by HRS §11-139. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 16-22, 42 U.S.C. §1973aa-1a) (Imp: HRS §§11-136, 11-139, 12-31, 16-22, 16-23, 42 U.S.C. §1973aa-1a)

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§3-172-84 Marksense ballots; spoiled. (a) If a voter spoils a ballot in the process of voting, or receives a spoiled ballot, the voter shall be issued another ballot, properly inserted into a secrecy sleeve, by the precinct officials.

(b) Before issuing the new ballot, the precinct officials shall:

(1) Give the voter a utility envelope, ask the voter to place the spoiled ballot in the envelope, and seal the envelope;

(2) Write "spoiled" across the face of the envelope and sign the precinct official's name;

(3) Deposit the utility envelope in the spoiled ballot envelope;

(4) If the ballot has a stub number, line out the voter's previously issued stub number and record the new stub number;

(5) Write in the pollbook in the remarks column on the same line as the voter's name, "spoiled ballot"; and

(6) Have the voter place the voter's initials next to the words "spoiled ballot."

(c) The precinct officials shall, after the above procedures in subsection (b) are completed, give the voter a new ballot properly folded. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-140)

§3-172-85 Direct recording electronic voting; voting procedure at the polls. (a) A card of instruction detailing the method of using the direct recording electronic voting device shall be made available in the polling place and for each direct recording electronic voting device,

(b) The voter shall present valid identification to the official in charge of the pollbook.

(c) The voter shall:

(1) Sign the pollbook; or

(2) Make the voter's mark in the appropriate place in the pollbook if the voter is unable to write for reasons of illiteracy, blindness, or other physical disability. The precinct official shall

print "witnessed by" next to the voter's mark and sign the precinct official's name.

(d) The voter shall proceed to the direct recording electronic voting device and utilize it as described in the card of instruction. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-136, 16-42)

§3-172-86 Collection of voting materials. (a) The chief election officer, clerk, or designated representative may authorize the collection of voted ballots, memory cards, voter verifiable paper audit trails, and similar items before and after the polls close.

(b) The voting materials from the polling places shall be transported to the counting center or designated locations in sealed ballot boxes with sealed lid locks and or sealed ballot transport containers by the DC Teams in accordance with procedures established by the chief election officer, clerk, or designated representative.

(c) Other election materials will be sealed and returned in accordance with procedures established by the chief election officer, clerk, or designated representative. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-154) (Imp: HRS §11-135)

§3-172-87 Return of polling place materials. After the polls close on election day, the precinct officials shall follow the procedures for closing the polls. The precinct chairperson or designated representative shall return all of the following materials to the designated supply collection center:

(1) Sealed ballot transport containers containing unissued ballot packets or ballots;
(2) Precinct supply box; and
(3) Other election documents and materials as specified by the chief election officer or clerk. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-154)

§3-172-88 Postponement of elections; natural disaster. (a) The conducting of an election may be postponed in any precinct, district, or county by the chief election officer or the clerk of a county in the case of county elections if:

(1) Flooding, high winds, earthquake, tsunami, volcanic eruption, or other natural disaster has occurred in, or in the proximity of, the precinct, district, or county; and

(2) Access to polling places are restricted due to:

(A) Damage to, or closing of, roads;

(B) The absence or suspension of public transportation;

(C) The absence of electricity, telephone, or other public telecommunications or utilities;

(D) Extensive property damage or personal injury throughout the affected area;

(E) Damage to a polling place or polling places which endangers the health or safety of voters or precinct workers; or

(F) Damage to a polling place or polling places which makes it impracticable for such locations to function as election sites.

(b) An election may be postponed no more than seven calendar days from its scheduled date. The chief election officer, or clerk in the case of county elections, may, subject to applicable law, alter the method or manner of voting or counting to accommodate the conditions which necessitated the postponement.

[Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-92.3)

§3-172-89 (Reserved).

SUBCHAPTER 9

VOTE DISPOSITION

§3-172-90 Paper ballot voting system; counting ballots at precinct. (a) All counting shall be conducted by the precinct officials at the polling place in accordance with HRS §§11-152 and 16-25.

(b) Insofar as the limits of the room in which the voting takes place reasonably allow, no person shall be prevented from attending the counting of the ballots on election day, unless it is necessary to restrict access to preserve the peace.

(c) All tallying shall be done on the official tally sheet, and no one but a precinct official shall be permitted to assist in calling, tallying, or performing any other work involved in counting the votes cast. The precinct officials shall also tally the number of:

(1) Questionable ballots, as defined in HRS §16-26, which shall be placed in an envelope provided for that purpose; and

(2) Totally blank ballots.

(d) When tallying is completed, the chairperson, in the presence of at least one precinct official not of the same political party, shall circle the last block containing the last tally mark with a red pen.

(1) Immediately to the right of the circled block, the chairperson shall record the total number of tally marks including those in that block, and the chairperson and the precinct officials shall affix their initials.

(2) The total count shown on the tally sheet shall be recorded on the results of votes cast form.

(3) The precinct officials shall then complete and sign the certification on the tally sheet and the results of votes cast form.

(e) When the precinct officials have ascertained the number of votes given for each candidate and ballot question, they shall make public declaration of the whole number of votes cast, the names of the persons voted for, the ballot questions, and the number of votes for each person and ballot question. [Eff JAN 0 9 2010] (Auth: HRS

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§11-4) (Imp: HRS §§11-152, 11-153, 11-154, 16-24 through 16-29)

§3-172-91 Paper ballot voting system; tally sheet; results of votes cast; ballots; and records. (a) The chairperson shall place the official tally sheet and the results of votes cast form in the envelope provided for that purpose, seal the envelope, and complete and sign the certification on the envelope.

(b) Voted ballots shall be placed in envelopes provided for voted ballots. Spoiled, unissued, blank, and questionable ballots shall be kept separate from the voted ballots and placed in envelopes provided for such ballots. The envelopes shall be sealed and placed in the ballot transport containers along with the pollbooks and the ballot inventory and certification form. The ballot transport containers shall then be sealed and a seal record made.

(c) All other polling place materials shall be returned to the container in which they were received.

(d) The chairperson, accompanied by at least one precinct official not of the same political party, shall deliver to the sending official (the chief election officer, clerk, or designated representative) the envelope containing the tally sheet, the results of votes cast form, the ballot transport containers, and other polling place materials.

(e) On the islands of Molokai, Lanai, and Niihau, the envelope containing the tally sheet and the results of votes cast form shall be transported by the method and schedule determined by the sending official. The ballot transport containers and other polling place materials shall be delivered to the transportation point designated by the sending official and transported by the method and schedule determined by the sending official.

(f) Upon receipt of the ballot transport containers, the chief election officer, clerk, or designated representative shall compare the number of ballots returned and the information recorded on the results of votes cast form with the ballot inventory and certification form. Any discrepancy shall be investigated immediately.

(g) Upon receipt of the envelope containing the tally sheet and results of votes cast form, the chief election officer, clerk, or designated representative shall do all of the following:

(1) Compare the totals for each candidate or ballot question on the tally sheets with the number of tally marks for the respective candidate or ballot question on the same sheets. If there is a discrepancy, the incorrect totals shall be crossed out, the correct total immediately entered above the total crossed out, and each corrected entry initialed;

(2) Compare the totals for each candidate or ballot question on the tally sheet with those for the respective candidate or ballot question on the results of votes cast form. If there is a discrepancy, the receiving official shall cross out the incorrect total on the results of votes cast form, enter the correct total immediately above the total crossed out, and initial the corrected entry;

(3) Immediately upon completion of the comparison in paragraphs (1) and (2), securely lock the tally sheet or sheets in metal containers during the entire period of the count;

(4) Record all votes for the candidates and the ballot questions from the results of votes cast form on a tabulation sheet;

(5) Seal the metal containers holding the tally sheets immediately after the count is complete and keep the containers sealed until the results of the election have been certified. The containers may be unsealed and opened by the chief election officer, clerk, or designated representative prior to certification, but only in the presence of official observers not from the same political party and shall be immediately sealed thereafter; and

(6) Maintain a seal record for the containers holding the tally sheets.

(h) The chief election officer, clerk, or designated representative shall allow the appointed official observers

to be present during the compiling procedure, space and facilities permitting. Under no circumstances shall the official observers be allowed to impede the counting procedure or handle the tally sheets or results of votes cast form.

(i) In county elections, the clerk or designated representative may transport the tally sheets and the results of votes cast forms to the chief election officer in accordance with a system and schedule determined by the chief election officer or designated representative. [Eff JAN 0 9 2010] (Auth: HRS §§11-4,11-154,16-29)(Imp: HRS §§11-153, 11-154, 11-155)

§3-172-92 Electronic voting systems; centralized and decentralized counting. (a) Centralized counting involves the receipt of ballots which are counted at a counting center designated by the chief election officer.

(b) Decentralized counting involves ballots which are counted at the polling place by the voting device or voting devices associated with the polling place, including marksense voting devices or similar technology at the polling place. Additionally, this includes the use of direct recording electronic voting devices.

(c) A "counting center" means the facilities and surrounding premises designated by the chief election officer or the clerk where ballots or other electronic voting system votes are processed, counted, and tabulated.

(d) The chief election officer may utilize centralized counting, decentralized counting, or a combination thereof. [Eff JAN 0 9 2010] (Auth: HRS §§11-4)(Imp: HRS §§16-2, 16-41 through 16-47)

§3-172-93 Electronic voting systems, transmission, receipt, and tabulation of votes. (a) The transmission or receipt of data, including but not limited to votes, vote tabulation, or similar information, shall be permitted between locations authorized by the chief election officer or county clerk in the case of county elections. Election results accumulated from said transmissions may be distributed to the general public while awaiting receipt of the ballots, memory cards, or other materials associated

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with the transmissions and the completion of any procedures intended to verify the proper transmission and accumulation of data.

(b) General requirements. The following requirements shall be employed for voting systems and when transmitting election data electronically:

(1) The voting system shall be self-contained and not connected to any network infrastructure that is not under the direct control of the Office of Elections or the County Clerk in the case of county elections;

(2) The transmission and accumulation of election results data shall be subject to a blind test and verification prior to the election;

(3) The electronic transmission of official election data shall occur via virtual private network or other secured network. Where possible and to the extent that the voting system's design permits, data transfers between system components should incorporate the use of digital signatures or encryption to authenticate the data for the particular election.

(4) Accumulated election results shall be considered uncertified unless it can be independently verified prior to transmission and following receipt and until certified by the chief election officer. Independent verification may be accomplished via manual inspection of election results prior to and following electronic transmission or by employing the use of a cryptographic hashing algorithm on randomly selected data files prior to and after transmission.

(c) Use of modems. Any election results transmitted by modem shall be considered "uncertified" unless transmitted via a virtual private network or until compiled directly from the source media.

(d) Distributed tabulation. In elections where voting results are tabulated at multiple locations and accumulated at a central location, election results tabulated and produced at the distributed counting center locations shall be considered the source election results for verification purposes. [Eff JAN 0 9 2010] (Auth: HRS §§11-4)(Imp: HRS §§16-2, 16-41 through 16-47)

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§3-172-94 Electronic voting systems; marksense ballot voting system results. Uncertified results from a marksense ballot voting system may be distributed to the general public, while awaiting the completion of any audit under HAR §3-172-102, and any other procedures required by law. [Eff JAN 09 2010] (Auth: HRS §§11-4)(Imp: HRS §§16-2, 16-41 through 16-47)

§3-172-95 Electronic voting systems; direct recording electronic voting system results. The chief election officer, county clerk, or designees may distribute electronic tallies created directly from a direct recording electronic voting device, while the requirements of HRS §16-42(b) are being met. In the event the chief election officer, county clerk or designee determines that the electronic tallies are not reliable, the chief election officer, county clerk or designee shall promptly notify the public and count the generated ballots or voter verifiable paper audit trails by hand or a mechanical tabulation system, as defined in HAR §3-172-1. [Eff JAN 09 2010] (Auth: HRS §§11-4)(Imp: HRS §§16-2, 16-41 through 16-47)

§3-172-96 Electronic voting systems; inspection, audit, and experimental testing. Prior to election day, the chief election officer, county clerk, or designees shall test the electronic voting system in compliance with HAR § 3-176-5. If, as a result of the initial testing, the chief election officer determines additional inspection, auditing or testing is required, the chief election officer shall notify the official observers so that they can witness the additional inspection, auditing or resting needed to ensure that the voting system is working properly. If, after election day, the post-election, pre-certification audit indicates misreporting within the system, the chief election officer shall notify the official observers so that they can witness the additional inspection, auditing or resting performed to ascertain the nature of the problem. [Eff JAN 09 2010] (Auth: HRS §§11-4)(Imp: HRS §§16-2, 16-41 through 16-47)

§3-172-97 Electronic voting system; counting center procedures. (a) The handling of ballots, memory cards, and voter verifiable paper audit trails shall be observed at the counting center by at least two official observers not of the same political party or organizational affiliation, except in cases where technical knowledge and skill is required when authorized by the chief election officer, clerk, or designated representative.

(b) The official observers shall observe the processes within the counting center, and shall report any changes or deviations from the rules or procedures to the chief election officer, clerk, or designated representative. The observers shall also participate in all certifications that may be required by the chief election officer, clerk, or designated representative.

(c) No person shall be permitted into the counting center without the authorization of the chief election officer, clerk, or designated representative.

(d) There shall be no printout by the computer or other disclosure of the number of votes cast for a candidate or on a ballot question prior to the closing of the polls as specified in HRS §11-131.

(e) If a computer becomes inoperative, the chief election officer, clerk, or designated representatives shall evaluate and determine the extent of the malfunction. Provisions for backup procedures shall be available and may be put into effect. All tests and operational procedures stated in chapter 75 of these rules shall apply to any standby computer used.

(f) After all ballots are counted, the computer ballot counting programs, the logic and accuracy tests and test results, the election results, and the voted ballots shall be sealed in containers or cabinets.

(g) Subsequent audits may be conducted by the chief election officer, clerk, or designated representative in accordance with established procedures.

(h) A written record shall be maintained of each opening and sealing of these storage containers or cabinets. The record shall include all of the following:

(1) Date and time;

(2) Name of each person requesting opening and reasons for opening;

(3) Seal numbers; and

(4) Signatures of two or more witnesses attesting to the opening and closing of these containers or cabinets and certifying that ballots were handled in their presence at all times.

(i) The containers or cabinets shall be sealed and stored for twenty-two months in accordance with federal law. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-154, 16-44) (Imp: HRS§§ 16-2, 16-41 through 16-45)

§3-172-98 Electronic voting system centralized counting; receipt at counting center. (a) The receiving team at the counting center shall receive and sign for the sealed ballot boxes and precinct cans for each precinct. The boxes and precinct cans shall be unsealed and opened in accordance with established procedures and in the presence of at least two official observers not of same political party or organizational affiliation.

(b) The ballots in the ballot boxes shall be placed in containers with appropriate district and precinct identification and forwarded to the inspection team.

(c) The contents of the precinct cans shall be forwarded as follows:

(1) The pollbook and record book shall be forwarded to the pollbook audit team;

(2) The spoiled ballot envelope shall be forwarded to the counting center manager to be consolidated with the appropriate district and precinct ballots;

(3) The payroll authorization sheet shall be forwarded to the counting center manager;

(4) The clerk's envelope containing any RAF forms, challenged ballots or unvoted mail absentee ballots shall be forwarded to the counting center manager; and

(5) Any other contents shall be forwarded to the counting center manager for appropriate action. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-154) (Imp: HRS §§16-2, 16-41 through 16-45)

§3-172-99 Electronic voting system counting; duplication procedure. (a) The control packet team shall reconcile the number of defective ballots in the control packet with the number indicated on the control packet. The packet shall be sent to the duplication team for duplication.

(b) The duplication team, in the presence of at least two official observers not of the same political party or organizational affiliation, shall prepare a duplicate ballot to replace each defective ballot. Unvoted ballots for duplication and voting devices shall be authorized in the counting center for this purpose.

(c) The duplication team shall prepare a reconciliation of the number of duplicated ballots used to replace the defective ballots. The defective ballots shall be invalid and stored in accordance with subsection (f).

(d) Duplicated ballots shall be returned to the appropriate originating team for final verification.

(e) All valid ballots shall be read and counted by the computer. If, during the computer processing of the ballots additional defective ballots are rejected, the defective ballots shall be placed in a designated control packet and returned to the control packet team.

(f) After the ballots are counted, the counted ballots and the invalid ballots shall be forwarded to the storage teams to be logged and sealed. The ballots shall be stored in containers or cabinets which shall be sealed. The storage of the ballots and sealing of the cabinets shall be done in the presence of at least two official observers not of the same political party or organizational affiliation. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 16-46) (Imp: HRS §§16-2, 16-41 through 16-46)

§3-172-100 Electronic voting system decentralized counting; receipt at counting center. (a) The receiving team at the counting center shall receive and sign for the sealed ballot transport containers (containing voted ballots that have already been counted by the precinct counters), sealed ballot transport containers (containing voted ballots that have not been counted by the precinct counters), if any, and precinct cans for each precinct.

(b) The containers (containing voted ballots that

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have been counted by the precinct counters) shall be transferred to the ballot storage team area in accordance with established procedures and in the presence of at least two official observers not of the same political party or organizational affiliation.

(c) The containers (containing voted ballots that have not been counted by the precinct counters) and precinct cans shall be unsealed and opened in accordance with established procedures and in the presence of at least two official observers not of the same political party or organizational affiliation.

(d) The contents of the containers (containing voted ballots that have not been counted by the precinct counters) shall be placed in containers with appropriate district and precinct identification and forwarded to the computer operations team in the presence of at least two official observers not of the same political party or organizational affiliation.

(e) The contents of the precinct can shall be forwarded as follows:

(1) The pollbook and the record book shall be forwarded to the pollbook audit team;

(2) The memory devices, precinct counter keys, and zero reports shall be forwarded to the computer operations team in the presence of at least two official observers not of the same political party or organizational affiliation;

(3) The spoiled ballot envelope shall be forwarded to the counting center manager to be consolidated with the appropriate precinct ballots;

(4) The voted ballot mail absentee ballot return envelope shall be forwarded to the counting center manager to be processed by the absentee ballot team.

(5) The payroll authorization sheet shall be forwarded to the counting center manager;

(6) The clerk's envelope containing any RAF forms, challenged ballots or unvoted mail absentee ballots shall be forwarded to the counting center manager; and

(7) Any other contents shall be forwarded to the counting center manager for appropriate action.

[Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-154) (Imp:

HRS §§16-2, 16-41 through 16-45)

§3-172-101 Electronic voting system decentralized counting; preparation of uncounted voted ballots, memory cards, precinct counter keys, and zero reports. (a) The computer operations team shall process uncounted voted ballots as follows:

(1) The district and precinct number that the uncounted voted ballots came from shall be logged; and

(2) The uncounted voted ballots shall be readied for counting;

(b) The computer operations team shall process the memory devices, precinct counter keys, and zero reports as follows:

(1) Receipt of the memory cards, precinct counter keys, and zero reports shall be logged; and

(2) The memory card is readied for processing:

(A) The district and precinct number that the memory device came from shall be logged; and

(B) The serial number of the memory device shall be logged. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-154) (Imp: HRS §§16-2, 16-41 through 16-45)

§3-172-102 Auditing. (a) The chief election officer or the clerk shall conduct a manual audit on election day during the ballot tabulating to verify the results of the election. A manual audit may also be conducted after election day.

(1) The manual audit shall be conducted by the manual audit team which shall contain at least four members, provided that no team shall have members of only one political party. There may be more than one team per counting center.

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(2) The manual audit team may follow the following guidelines of precincts to audit: at least ten percent of the total precincts; at least one large precinct and at least one small precinct; and at least one precinct with a statewide, a countywide, or a districtwide contest. Reasonable permutations of these requirements shall be allowed for counties with fewer than 30 precincts.

(3) The manual audit team shall select the voting precincts to audit.

(4) Except for the members of the manual audit team, no person shall be permitted to witness the audit without the authorization of the chief election officer, clerk, or designated representative. The area in which the audit is conducted shall be kept secure.

(5) Observers may request to conduct a manual audit.

(6) Whenever ballots are removed from storage, the handling of the ballots shall be witnessed by not less than two members of the manual audit team not of the same political party or organizational affiliation.

(7) The manual audit shall be concluded when a majority of the team members so decide.

(8) The manual audit shall not be considered a recount pursuant to the election contest provisions of the law; provided that the results of the audit shall be filed in the office of the chief election officer and shall be considered a public record.

(b) In the event discrepancies are found in the audit, the chief election officer may authorize an expanded audit to determine the extent of misreporting within the system.

(1) The chief election officer may utilize official observers, election day officials, county or state election employees, or other designated individuals as part of the expanded audit.

(2) The chief election officer will consult with the initial manual audit team to determine how best to continue the audit.

(3) The chief election officer will determine when

the expanded audit is concluded.

(4) The results of the expanded audit will be filed with the Office of Elections.

(c) In lieu of relying on the initial results from an electronic voting system, the chief election officer may count ballots or voter verifiable paper audit trails by hand or with a mechanical tabulation system, as defined in HAR §3-171-1, or a combination therof.

(1) Any counting of ballots or voter verifiable paper audit trails, through the use of a mechanical tabulation system, will conform to the marking and vote disposition rules relating to the voting system that the ballot or voter verifiable paper audit trails were associated with.

(A) As the marksense ballot voting system, is a mechanical tabulation system, and the ballots were intended to be read by the devices associated with that system, the chief election officer, will to the extent possible, utilize those voting devices of the system that did not experience misreporting problems;

(B) In the event there are inadequate voting devices that did not experience misreporting problems, the chief election officer, in consultation with the official observers, may utilize voting devices that have been repaired to the satisfaction of the chief election officer.

(2) Any counting by hand of ballots or voter verifiable paper audit trails will conform to the marking and vote disposition rules relating to the voting system that the ballot or voter verifiable paper audit trails were associated with.

(A) Ballots that were marked for use by a marksense ballot voting system, will be counted in accordance with those rules associated with that system to the extent reasonably possible. Any hand count of marksense ballots will not utilize any

statute or rules associated with the paper ballot voting system, as those marking instructions and vote disposition rules are uniquely different from those statutes and rules associated with other voting systems.

(B) Voter verifiable paper audit trails from a direct recording electronic device voting system will be counted in accordance with the ballot selections indicated on them.

(d) The chief election will, to the extent possible, resolve any misreporting problem, prior to the end of the contest period stated in HRS §11-173.5, in the case of a primary, or special primary election, or HRS §11-174.5, in the case of a general, special general, or special election. Any resolution of a misreporting problem shall be documented and filed with the Office of Elections.

(e) The chief election officer or the clerk shall conduct a pollbook audit to verify the number of precinct ballots received in the counting center. The pollbook audit shall be conducted prior to the end of the contest period stated in HRS §11-173.5, in the case of a primary, or special primary election, or HRS §11-174.5, in the case of a general, special general, or special election.

(1) The pollbook audit team shall count the number of signatures in each pollbook and compare the number with the precinct turnout as produced by the computer to determine overages and underages.

(2) An overage shall exist when the number for the precinct turnout, according to the computer, is greater than the turnout the pollbook indicates. If the precinct turnout, according to the computer, is less than the turnout the pollbook indicates this shall constitute an underage. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-4, 11-153, 16-2, 16-41, 16-42)

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§3-172-103 Challenged voter's ballot; disposition of at counting center. (a) The board of registration shall notify the clerk and the counting center manager of the disposition of each challenge immediately after the board makes its decision provided that if an appeal is made to an appellate court, or the opportunity for an appeal exists, pursuant to HRS §11-51, the ballot shall remain in the sealed envelope to be counted or rejected in accordance with the supreme court's ruling.

(b) If the board rules that a challenged voter is not entitled to vote and the opportunity for appeal to an appellate court has elapsed, pursuant to HRS §11-51, the voted ballot shall remain in the unopened envelope and shall be stored as provided by law.

(c) If the board rules that a challenged voter is entitled to vote and the opportunity for appeal to an appellate court has elapsed, pursuant to HRS §11-51, the counting center manager shall instruct the ballot preparation team to prepare the ballot for processing. The ballot shall be inserted into the ballot deck of the appropriate precinct using procedures established by the chief election officer. In all cases, the secrecy of the ballot must be preserved. If the secrecy of the ballot cannot be preserved, the challenged ballot shall not be processed except to break a tie vote, as ordered by the appellate court. It shall be disposed of as provided by law. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-25, 11-54)

§3-172-104 Election results; certification of. The chief election officer or clerk, as the case may require, shall prepare a certified statement of the results of votes cast for the election.

(1) In the case of a county general, county special general, or county special election, the clerk shall send a copy of the certified statement to the chief election officer and to the county committee of each political party.

(2) In the case of a state primary or special primary election, the chief election officer shall send a copy of the certified statement to the state committees of each political party.

(3) In the case of a state general, special general, or special election, the chief election officer shall send a copy of the certified statement to the United States Congress, if there is a congressional election; to the Hawaii state legislature, if there is a state legislative race; and to the state committee of each political party.

(4) In the case of a combined state and county general, special general, or special election, the chief election officer shall send a copy of the results to the United States Congress, if there is a congressional election; to the Hawaii state legislature, if there is a state legislative race; to the clerks, if there is a county race; and to the state and county committees of each political party.

[Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §11-155)

§§3-172-105 to 3-172-109 (Reserved).

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SUBCHAPTER 10

PRESIDENTIAL PETITIONS

§3-172-110 Presidential petitions; issuing. (a) Any group wishing to petition to place the names of candidates for president and vice president on the State's general election ballots, pursuant to HRS §11-113, shall submit a notarized statement of intent from the presidential and vice presidential candidates to the chief election officer before receiving the petition forms. The statement of each candidate shall be substantially in the following form:

(1) I, _____ (name of candidate), hereby declare that I intend to be a candidate for

_____

(president or vice president) of the United States on the _____ (year) general election ballot in the State of Hawaii; and

(2) Shall be subscribed and sworn or affirmed to before a notary public.

(b) The party or group shall also provide basic information to the chief election officer by filling out an application form before receiving the petition forms. An application for petition to place the names of candidates for president and vice president on State of Hawaii general election ballot shall be in the form prescribed and provided by the chief election officer containing substantially the following information:

(1) The name of a contact person to be responsible for the petition;

(2) The group's telephone numbers and mailing address;

(3) The year of the election for which the petition is being requested; and

(4) The party or group name and the names of the candidates for president and vice president.

(c) The petition form shall be prescribed and provided by the chief election officer. The petition form shall contain the name of the candidates, a statement that the persons signing intend to support those candidates, the address of each signatory, the date of the signer's

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signature, and any other information determined by the chief election officer. This information may include, but not be limited to, the provision of information that the voter was required to provide when registering to vote under HRS §11-15.

(d) Before issuing the petition forms, the chief election officer shall place on the petition the names of the presidential and vice presidential candidates and the party or group name. A petition will not be issued unless the chief election officer receives the notarized statement of intent from the presidential candidate and the vice presidential candidate.

(e) The petition shall be void upon the fifty-ninth day prior to the general election for which it is issued. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §11-113)

§3-172-111 Presidential petitions; withdrawal of signatures . (a) Any voter who signed a presidential petition pursuant to HRS §11-113, may withdraw the voter's signature by submitting a written notice to the chief election officer any time prior to the filing of the petition. The written notice to withdraw shall contain the following:

(1) The date of the notice;
(2) The name, social security number, address, and date of birth of the voter requesting removal of the signature from the petition;
(3) The signature of the voter under the name in which the voter is registered to vote;
(4) The name of the presidential petition from which the signature should be removed; and
(5) A statement that the voter wishes to withdraw the voter's signature from the petition.

(b) Upon receipt of a written notice to withdraw containing the information provided in subsection (a) prior to the filing of the petition, the chief election officer shall notify the group or individuals to whom the petition was issued that the signature of the voter will not be counted.

(c) Upon receipt of the petition for filing, the chief election officer shall:

(1) Verify that the signature on the written notice

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to withdraw corresponds with the voter's signature on the petition; and

(2) If the signature corresponds, cross out the voter's signature in black ink and indicate that the voter has withdrawn the voter's signature.

(d) If the written notice to withdraw is received by the chief election officer after the petition has been filed, then the chief election officer shall notify the voter, in writing, that the voter's notice was not received in time and was not accepted. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-6, 11-113)

§3-172-112 Presidential petitions; qualification of signatories . To determine whether an individual is qualified to sign a presidential petition, the chief election officer or designated representative shall determine whether the signatory is an active registered voter by checking the statewide voter registration system; provided that a properly executed voter registration form shall be effective if it is received by the clerk and the affiant's name has been entered in the statewide voter registration system on or before the date on which the petition is filed. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-113)

§3-172-113 Presidential petitions; verification of signatories . (a) Upon receipt of a presidential petition, the chief election officer or designated representative shall verify within ten business days whether the petition has met the requirements of HRS §11-113.

(b) Upon receipt of a petition containing at least the minimum number of signatures required pursuant to HRS §11-113(c)(2)(b), the chief election officer or designated representative shall verify whether the signatory is eligible to sign the petition. To be eligible, the signatory must be a registered voter in Hawaii and must appear in the statewide voter registration system as an active registered voter.

(1) If the signatory on the petition exists as an

active registered voter in the statewide voter registration system, then the signatory shall be counted;

(2) If the signatory on the petition does not exist as an active registered voter in the statewide voter registration system, then the signatory shall not be counted;

(3) If there are duplicate signatories on a party petition, and the signatory is an active registered voter, then the signatory shall be counted once; and

(4) If the signatory does not provide all of the required information on the petition or if the information is not legible, then the signatory may not be counted.

(c) A voter who withdraws the voter's signature from the petition in accordance with section 3-172-111 shall not be verified or counted.

(d) The chief election officer or designated representative may verify that the voter's signature on the petition corresponds with the voter's signature on the voter's registration form. If the signature does not correspond, then the voter's signature on the petition shall not be counted. The chief election officer or designated representative shall indicate on the petition that the voter's signature is invalid because it does not match the signature on the voter's registration form.

(e) The chief election officer or designated representative may verify only as many signatories as needed to ensure that the presidential and vice presidential candidates has met the signature requirements of HRS §11-113. [Eff JAN 0 9 2013] (Auth: HRS §11-4) (Imp: HRS §11-113)

§§3-172-114 to 3-172-129 (Reserved).

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SUBCHAPTER 11

ACCESS TO GOVERNMENT RECORDS

§3-172-130 Access to election documents; general procedures. (a) Access to government records shall be provided in accordance with chapter 92F, Hawaii Revised Statutes, and the rules adopted under that chapter, unless public inspection of said records is prohibited by state or federal law; provided that the legal counsel for the chief election officer may determine which records may be released from public inspection when the records pertain to the preparation of the prosecution or defense of any action or proceeding to which the chief election officer is or may be a party or to maintain the attorney-client and attorney work product privileges.

(b) Copying of government records maintained by the office of elections are governed by section 92-21, Hawaii Revised Statutes, unless otherwise provided by law. Copies shall be provided upon the furnishing of the payment of the reasonable cost of reproducing such copies. [Eff JAN 09 2010] (Auth: HRS §11-4) (Imp: HRS §§11-2, 11-97, 92-21, 92F-19, ch. 92F)

§§3-172-131 to 3-172-139 (Reserved).

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SUBCHAPTER 12

PROVISIONAL VOTING

§3-172-140 Provisional voting; general procedures. (a) If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to a cast a provisional ballot as follows:

(1) An election official shall notify the individual that the individual may cast a provisional ballot in that election;

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation, by the individual before an election official, stating that the individual is

(A) a registered voter in the jurisdiction in which the individual desires to vote;

(B) eligible to vote in that election; and

(3) The written affirmation shall be in a form prescribed by the chief election officer and shall contain substantially all the information required to register to vote under HRS §11-15 and shall document that the individual is requesting a provisional ballot.

(b) An election official shall transmit the provisional ballot to the county clerk for prompt verification.

(c) The adjudication of provisional ballots shall be as follows:

(1) If any part of the provisional ballot application form or affirmation statement is incomplete, not executed, or altered, the provisional ballot shall be not be counted.

(2) If the county clerk determines the individual is eligible under state law to vote in the precinct the individual wishes to vote in, the individual's provisional

ballot shall be counted in accordance with state law.

(3) If county clerk determines the individual is not eligible to vote in the precinct where the provisional ballot was cast, the provisional ballot shall not be counted.

(d) The individual will be able to access for free a system by which the individual may discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

(e) The term "jurisdiction" for purposes of provisional voting refers to the specific voting precinct that an individual must be a registered voter in, in order to vote on the ballot designated for that voting precinct. It does not refer to a county, state, or federal jurisdiction. As such, if an individual casts a provisional ballot in a precinct the individual is not properly registered in, no portion of the provisional ballot will be counted.

(f) All provisions of 42 USC §15482 regarding provisional voting in federal elections shall be followed. [Eff JAN 0 9 2010] (Auth: HRS §11-4, 42 USC §15482) (Imp: HRS §§11-15, 11-20, 11-21, 11-24, 42 USC §15482)

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 13 OFFICE OF ELECTIONS

CHAPTER 173

PRIMARY ELECTIONS

§3-173-1 Nomination papers; when available.
§3-173-2 Nomination papers; qualification of signatories.
§3-173-3 Nomination papers; verification of signatories.
§3-173-4 Nomination papers; candidate name on ballot.
§3-173-5 Nomination papers; political party affiliation or nonpartisan designation.
§3-173-6 Filing fee; payment of.

Historical note: This chapter is based substantially upon Title 2, Office of the Lieutenant Governor, "Chapter 2-52, Primary Elections." [Eff and comp 9/16/96; am and comp 9/18/00; R JAN 0 9 2010]

§3-173-1 Nomination papers; when available. (a) Any individual wishing to take out nomination papers to file for candidacy, pursuant to HRS §12-3, shall complete an application form before receiving the nomination papers. The application for nomination papers shall be in the form prescribed and provided by the chief election officer containing substantially the following information:

(1) Legal Name;
(2) Name commonly known as (if different from legal name);
(3) Legal residence address in Hawaii;
(4) If no street address, a description of location of residence;
(5) Mailing address (if different from previously

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provided address);
(6) Telephone number;
(7) Date Birth;
(8) Gender;
(9) Social Security number;
(10) Statement of United States citizenship;
(11) Statement of legal residence in the State of Hawaii;
(12) Statement of being a registered voter of the State of Hawaii;
(13) Statement regarding whether the applicant has a current felony conviction;
(14) Contest title;
(15) Jurisdiction or district;
(16) Party affiliation or nonpartisan;
(17) Party membership;
(18) Name of candidate's contact person;
(19) Relationship of contact person;
(20) Contact person's telephone numbers; and
(21) An affirmation by the application that the information is true and correct and that the Chief Election Officer and/or the City/County Clerk may verify the information on the application.

(b) Nomination papers shall be upon a form prescribed and provided by the chief election officer containing the information required in HRS § 11-113. The nomination papers shall be available from the first working day of February in every even-numbered year for the regularly scheduled election contests for that year.

(c) In the case of a special primary or special election, nomination papers shall be made available at least ten days prior to the close of filing.

(d) If a special primary or special election to fill a vacancy is required by law, nomination papers shall be available only after the vacancy occurs. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§12-3, 12-4)

§3-173-2 Nomination papers; qualification of signatories. (a) To determine whether an individual is qualified to sign a nomination paper, the chief election officer, clerk, or designated representative shall

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determine whether the signatory fulfills the requirements of section 3-173-3; provided that a properly executed voter registration form shall be effective for such verification purposes if it is received by the clerk and the affiant's name is entered in the statewide voter registration system on or before the date on which the nomination paper is filed.

(b) If a voter signs more than one nomination paper for the same office, then the signature on the nomination paper that is filed first will be accepted; provided that a voter may sign as many nomination papers for an office as there are seats available. The chief election officer or clerk shall use the date and time filed that is recorded on each nomination paper to determine which was filed first. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§12-3, 12-4, 12-5)

§3-173-3 Nomination papers; verification of signatories. (a) Upon receipt of a nomination paper, the chief election officer, clerk, or their designated representatives, shall count and determine whether the nomination paper has met the signature requirements pursuant to HRS §12-5.

(b) If the nomination paper contains at least the required number of signatures pursuant to HRS §12-5, then the chief election officer, clerk, or designated representative may verify whether the signatory is eligible to sign the nomination paper. A nomination paper containing less than the required amount of signatures shall be summarily rejected without verification of signatories. To be eligible, the signatory must:

(1) Reside and be registered to vote in the district from which the candidate is running for office;

(2) Be eligible to vote for the candidate when the nomination paper is filed; and

(3) Be an active voter registered at the residence address appearing on the nomination paper.

(c) The chief election officer, clerk, or designated representative shall use the statewide voter registration system to verify whether the signatory is eligible to sign the nomination paper.

(1) If the signatory is an eligible voter pursuant to

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subsection (b), then the signatory shall be counted;

(2) If the signatory is not an eligible voter pursuant to subsection (b), then the signatory shall not be counted;

(3) If there are duplicate signatures on a nomination paper, and the signatory is an eligible voter pursuant to subsection (b), then the signatory shall be counted once; and

(4) If the signatory does not provide all of the information required by HRS §12-3(a)(5) or if the information is not legible, then the signatory may not be counted.

(d) The chief election officer or clerk may verify that the signature on the nomination paper corresponds with the signature on the voter's registration form. If the signature does not correspond, the signatory shall not be counted. The chief election officer, clerk, or designated representative shall indicate on the nomination paper that the signature is invalid because it does not match the signature on the voter's registration form.

(e) The chief election officer, clerk, or designated representative shall verify only as many signatories as needed to ensure that the nomination paper has met the signature requirements of HRS §12-5. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§12-3, 12-4, 12-5)

§3-173-4 Nomination papers; candidate name on ballot.

(a) A candidate's name, including the Hawaiian or English equivalent or nickname, shall be limited to twenty-seven characters; provided that the twenty-seven characters shall include punctuation and blank spaces, and shall be set on one line.

(b) The name of the candidate appearing on the ballot may be the candidate's legal name or the name by which the candidate is most commonly known. If a candidate seeks to have a name other than the candidate's legal name, its commonly recognized equivalent, or maiden name, appear on the ballot, the candidate, at the time of filing nomination papers shall also file a notarized affidavit in which the candidate attests to the fact that the name to appear on the ballot is the name by which the candidate is most

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commonly known throughout the district from which the candidate seeks election.

(c) The ballot shall contain the names of the candidates in the format and order specified as follows:

(1) Last name in capital letters followed by a comma; followed by a blank space;

(2) First name in upper and lower case letters followed by a blank space;

(3) Middle initial or initials; provided that each initial shall be followed by a period;

(4) Suffix such as "Jr." or "III" preceded by a blank space and a comma; and

(5) Nickname or Hawaiian equivalent if requested by the candidate in parenthesis.

(6) An example of a correct format is:

HAWAII, Jon T., Jr. (Keoni)

(d) Titles including titles that are part of nicknames, such as Doctor, Senator, Reverend, MD, or Major, shall not be printed on the ballot.

(e) Slogans shall not be printed on the ballot.

(f) The chief election officer shall be authorized to conform all names printed on the ballot to the format prescribed in subsection (c). [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-112, 12-3)

§3-173-5 <u>Nomination papers; political party affiliation or nonpartisan designation.</u> The political party affiliation or nonpartisan designation of the candidate shall be placed on the nomination paper by the chief election officer or the clerk prior to releasing the form to the candidate. The political party affiliation or nonpartisan designation shall not be changed from that indicated on the nomination paper and separate sheets. If the candidate wishes to change the political party affiliation or nonpartisan designation, the candidate may request the appropriate nomination paper from the chief election officer or the clerk. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 12-3) (Imp: HRS §12-3)

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§3-173-6 Filing fee; payment of. In the case of federal, state, or county offices, payment of filing fees for nomination papers shall be made by cashier's check, certified check, money order, or cash. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§12-3, 12-6)

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HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 13 OFFICE OF ELECTIONS

CHAPTER 174

ABSENTEE VOTING PROCEDURES

§3-174-1 Definitions.
§3-174-2 General provisions.
§3-174-3 Who may vote by absentee ballot.
§3-174-4 Application for absentee voter ballot; content.
§3-174-5 Application for absentee voter ballot; reproduction.
§3-174-6 Waiver of requirement for an application for absentee voter ballot.
§3-174-7 Absentee polling place.
§3-174-8 Administration and operation of the absentee polling place.
§3-174-9 Accountability and security of ballots and ballot boxes.
§3-174-10 Return and receipt of mail absentee return envelopes.
§3-174-11 Mail absentee return envelopes; signature validation.
§3-174-12 Mail absentee return envelopes; processing of damaged, duplicate, or unidentifiable by the clerk.
§3-174-13 Mail absentee return envelope; receipt at the precincts.
§3-174-14 Mail absentee return envelope; procedures after the polls close; paper ballots.
§3-174-15 Walk-in and mail absentee ballots; transfer to the counting center.
§3-174-16 Absentee ballots; receipt at the counting center.
§3-174-17 Mail absentee return envelopes; processing at the counting center; electronic voting

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system.
§3-174-18 Absentee ballots; processing at the counting center.
§3-174-19 Mail absentee ballots; replacement by facsimile transmission.
§3-174-20 Federal write-in ballots, and ballots transmitted by facsimile; processing of.
§3-174-21 Absentee voting in remote areas.
§3-174-22 Voting, registration, and counting of absentee ballots of overseas citizens.
§3-174-23 Absentee ballot for presidential election.

Historical note: This chapter is based substantially upon Title 2, Office of the Lieutenant Governor, "Chapter 2-53, Absentee Voting Procedures." [Eff and comp 9/16/96; comp 9/18/00; R JAN 0 9 2010]

§3-174-1 Definitions. Whenever used in this chapter, the words and phrases, unless the same are inconsistent with the context, shall be construed as follows:

"Absent uniformed services citizen" means: (1) A member of a uniformed service on active duty who is absent from the place of residence where the member is otherwise qualified to vote; (2) A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and (3) A spouse or dependent of a member referred to in definition (1) or (2) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

"Affirmation statement" means a statement on the mail absentee return envelope which the voter subscribes to affirming that the voter requested an absentee ballot, is a resident of the district and precinct in which the voter is registered, and is entitled to vote an absentee ballot.

"Ballot box" means a securable container in which election officials or voters deposit voted ballots and which is used to transport voted ballots to the counting

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center.

"Ballot Seal control form" means a consolidated multi-copy form used for the control of ballots from the packing phase through the distribution and collection phase, and provides a record of seals used to secure a ballot transport container, a precinct can, or a ballot box.

"Daily reconciliation of absentee ballots issued form" means the form used to provide a daily accounting of absentee ballots issued from the inventory of ballots assigned to the clerk of each county.

"Fax ballot" means an absentee mail ballot processed by facsimile transmission.

"Federal election" means any presidential, U.S. senatorial, or congressional election.

"Federal write-in ballot" means a blank absentee ballot which the federal government provides to an overseas voter.

"Mail absentee return envelope" means the envelope used by an absentee voter to return the secret ballot envelope to the clerk.

"Overseas citizen" means: (1) An absent uniformed services citizen who, by reason of active duty or service is absent from the United States on the date of the election involved; (2) A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or (3) A person who resides outside the United States and (but for such residency) would be qualified to vote in the last place in which the person was domiciled before leaving the United States; or (4) a person who has never lived in the United States, and but for such residency, would be qualified to vote in the last place of domicle prior to leaving the United States of that person's parent.

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"Secret ballot envelope" means the envelope used by a voter to enclose the voted absentee ballot when voting by a mail absentee ballot or at the precincts.

"Voter registration form" means the affidavit on application for voter registration or other form prescribed by the chief election officer for voter registration or reregistration purposes.
[Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-1)

§3-174-2 General provisions. (a) Whenever a duty is to be performed by the clerk, the clerk may delegate it to a designated representative or the election officials of the absentee polling place.

(b) The absentee ballot shall be marked in accordance with the procedures established by the chief election officer.

(c) The security of all ballots shall be maintained by the clerk and the election officials of the absentee polling place.

(d) Corrections to the pollbook regarding the absentee voter shall be made only on the order of the clerk or the board of registration. These include instances where:

(1) The pollbook has been incorrectly annotated to show that the voter has either requested or voted an absentee ballot; or

(2) The voter desires to vote at the regular or absentee polling place and the clerk's records show that an absentee ballot has already been mailed to that voter and has not been received by the clerk. The voter shall be allowed to vote and all records shall be annotated to insure that no further ballots shall be accepted for that voter.

(e) Secret ballot envelopes which, when opened, do not contain ballots, shall be considered invalid for auditing purposes.

(f) Mail absentee return envelopes may be accepted at the regular polling places in accordance with HRS §15-9.

(g) The clerk may accept oral requests for an

absentee ballot in an emergency situation to expedite the transmission of ballots, but may require the absentee voter to complete and return a signed application before accepting the transmitted absentee ballot in accordance with HRS §15-5(b).

(h) The clerk may honor requests received after the deadline specified in HRS §15-4, if the clerk believes there is sufficient time to return the ballots by the close of the polls. [Eff JAN 0 9 2010 (Auth: HRS §11-4)(Imp: HRS §§15-4, 15-5, 15-9)

§3-174-3 Who may vote by absentee ballot. (a) In accordance with HRS §15-2, the clerk may issue an absentee ballot to any registered voter.

(b) Individuals who qualify under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§1973ff et seq., as amended, shall be issued absentee
ballots in accordance with provisions of section 3-174-22.

(c) Any voter who is unable to vote at the polls on election day may, by written request, authorize the clerk to deliver the ballot through an intermediary other than the voter's employer or agent of that employer or officer or agent of the voter's union. This request shall contain substantially the same information required of any voter who requests an absentee ballot. [Eff JAN 0 9 2010 (Auth: HRS §§11-4, 15-2, 42 USC §§1973ff et seq.) (Imp: HRS §§11-16, 15-2, 15-5, 42 USC §§1973ff et seq.)

§3-174-4 Application for absentee voter ballot; content. (a) The application for absentee voter ballot shall be in a form prescribed and approved by the chief election officer or clerk.

(b) The application for absentee voter ballot shall contain substantially the following information:

(1) A place for the voter to identify the year of the election and the election or elections for which ballots are being requested;

(2) A place for the applicant's name, social security number, date of birth, place of birth, residence address or a description of the

location of the residence, mailing address, home phone number, business phone number, and gender;

(3) A place for the address to which the voter wishes the absentee ballot to be forwarded for the primary election and the general election;

(4) A self-subscribing oath that the applicant is swearing or affirming to the following:

(A) That the applicant is the person named above;

(B) That the applicant is requesting an absentee ballot for the applicant and no one else; and

(C) That the information given in the affidavit is true and correct;

(5) A space for the signature of a witness when the applicant is unable to write for reason of illiteracy, blindness, or other physical disability; and

(6) A place for the clerk to add the following information:

(A) Application number;

(B) District and precinct;

(C) Ballot stub number;

(D) Date ballot mailed and person who mailed ballot;

(E) Name of clerk; and

(F) Date ballot received and person who received ballot. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 15-2) (Imp: HRS §15-4)

§3-174-5 Application for absentee voter ballot; reproduction. (a) The application for absentee voter ballot and instructions may be reproduced. If reproduced, the application for absentee voter ballot must be:

(1) Reproduced in its entirety;

(2) Shall be a 1:1 reproduction of the original application for absentee voter ballot;

(3) Shall not contain a glossy finish; and

(4) Shall not be reproduced on newsprint quality paper.

(b) A facsimile of the application for absentee

voter ballot may be submitted to the clerk, provided that the information supplied by the applicant and the applicant's signature on the facsimile application for absentee voter ballot shall be original. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §15-4)

§3-174-6 Waiver of requirement for an application for absentee voter ballot. (a) The requirement for an application for absentee voter ballot, prior to mailing out of an absentee ballot, may be waived by the clerk in special cases that arise after the last time to request an absentee mail ballot as provided in HRS § 15-4(a).

(b) The following constitutes a non-exhaustive list of special cases:

(1) Any voter in an assigned polling place, determined not to be opened, due to concerns over the health and safety of voters or precinct officials, pursuant to HRS § 15-2.5(a);

(2) Any registered voter in the county of Kalawao, pursuant to HRS § 15-4(b);

(3) Any voter who has confidential voter registration status pursuant to HRS § 11-14.5;

(4) Under any circumstances the clerk determines may unduly interfere with the ability of a voter to vote at the voter's designated polling place; or

(5) Under any circumstances the clerk determines to constitute an emergency.

(c) Any voter designated to receive an absentee ballot, may request in writing not to be mailed an absentee ballot.

(d) Any voter receiving an absentee ballot may choose instead to vote at his or her designated polling place, if the voter has not already cast the absentee ballot. Under such circumstances, the voter may surrender the absentee ballot to an election official, or the election official must be able to confirm that the absentee ballot has not been received and a cancelation code shall be issued to prevent the subsequent counting of the absentee ballot." [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§ 11-14.5, 15-1, 15-2, 15-2.5, 15-4, and 15-11)

§3-174-7 Absentee polling place. (a) The clerk shall designate locations at which voters may cast an absentee ballot, in person, prior to election day. At each absentee polling place, the clerk shall assign personnel and issue operating instructions which provide for the security of all ballots and secrecy of the voted ballots.

(b) The clerk shall post in a conspicuous place, prior to the opening of the absentee polling place, a map designating an area around the absentee polling place for purposes of HRS §19-6.

(c) The clerk may designate the area of the absentee polling place to encompass an area up to the area prescribed in HRS §11-132.

(d) Admission within the absentee polling place shall be limited to the following:

(1) Election officials;

(2) Pollwatchers, if any, pursuant to HRS §11-77;

(3) Candidates, provided that a candidate engaged in any activity that would otherwise attract attention including, but limited to interviews and press conferences, shall do so outside the non-electioneering boundary set forth pursuant to this section;

(4) Any voters actually engaged in voting, going to vote or returning from voting;

(5) Any person authorized to assist a voter; and

(6) Any person or nonvoter group authorized by the chief election officer or clerk to observe the election for educational purposes provided that they conduct themselves so that the conduct of the person or group does not interfere with the election process. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 15-7) (Imp: HRS §§11-152, 15-7, 19-6)

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§3-174-8 Administration and operation of the absentee polling place. (a) Unless otherwise provided, the clerk shall operate the absentee polling place in substantially the same manner provided by law for the regular polling place.

(b) The clerk shall determine the duration and hours of operation for each absentee polling place, provided that the central absentee polling place at the office of the clerk shall be open for voting pursuant to HRS 15-7. Adequate notice of the hours of operation shall be provided to the voters.

(c) The clerk shall prepare a daily accounting of all ballots (voted, mailed, spoiled, or unissued) in accordance with the procedures set forth in the provisions of section 3-174-8(a). [Eff JAN 09 2010 (Auth: HRS §11-4, 42 USC §1973aa-1a) (Imp: HRS §§11-136, 11-139, 15-7, 42 USC §1973aa-1a)

§3-174-9 Accountability and security of ballots and ballot boxes. (a) The clerk shall maintain a complete and current count of all absentee ballots in the clerk's possession.

(1) This accounting shall be recorded on forms prescribed by the chief election officer.

(2) All ballots shall be safeguarded to prevent any mishandling or misuse.

(b) The procedure for insuring the security of ballot boxes shall be as follows:

(1) Ballot boxes used to contain voted ballots shall be made of suitable materials to prevent breakage or tampering;

(2) A sufficient number of ballot boxes shall be available at each absentee polling place for the election. The boxes shall be marked as valid absentee ballots or invalid absentee ballots. In addition, each ballot container shall be labeled with the words "This container holds absentee ballots and shall be opened only pursuant to law;"

(3) The clerk may designate additional ballot boxes to be used at each absentee polling place. The boxes shall be marked as provided in paragraph

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(2);

(4) All ballot boxes, immediately prior to being used at the absentee polling place, shall be opened and shown to be empty to the first voter who casts an absentee ballot in that ballot box. The voter shall witness the sealing of these ballot boxes with a nonreusable seal. The boxes shall remain sealed until opened by the designated officials;

(5) A record shall be maintained to list the seals used to seal the ballot boxes and to provide an accurate chronological posting of the seals used during the closing and opening of each ballot box. A section for witnesses' signatures shall also be provided;

(6) The clerk or a designated representative shall make periodic checks of the seals on the ballot boxes to insure that no tampering has occurred with the seals on the boxes; and

(7) Whenever it is discovered or determined that tampering has occurred with a seal, or that a seal does not match the seal record, the chief election officer, clerk, or designated representative shall conduct an immediate investigation. The counting and disposition of the ballots in this box shall be suspended pending the results of the investigation.

[Eff JAN 09 2010] (Auth: HRS §11-4) (Imp: HRS §§15-7, 15-8)

§3-174-10 Return and receipt of mail absentee return envelopes. (a) Mail absentee return envelopes received in the clerk's office during the absentee voting period and at the regular polling places on election day shall be processed in the manner provided by law.

(b) An absentee ballot received from a voter whose registration has been identified as questionable may be processed only if the voter has completed an ACRA form as provided in section 3-172-26.

(c) The clerk, precinct officials, absentee ballot team officials, and counting center officials shall observe the procedures set forth in this chapter with

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regard to signatures on the affirmation statement, tampering with the mail absentee return or secret ballot envelopes, and the processing of the mail absentee return envelopes at the regular polling places on election day.

(d) An absentee ballot received by the clerk that is validated by the clerk, pursuant to HAR § 3-174-13, shall be deemed cast. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§15-6, 15-9, 15-10, 15-11)

§3-174-11 Mail absentee return envelopes; signature validation. Signatures on the affirmation statement shall be validated.

(1) The mail absentee return envelope shall be valid if the voter's signature on the affirmation statement corresponds with the voter's signature on the absentee request or voter registration affidavit, whether it is in longhand, print, characters, or marked with a voter's mark.
   (A) If the signatures correspond, the return envelope shall be deposited in the valid ballot box.
   (B) If the signatures do not correspond, the return envelope shall be:
      (i) Noted as being "invalid";
      (ii) A note of the invalid condition shall be recorded onto the envelope and the application for absentee voter ballot; and
      (iii) The envelope shall be deposited in the invalid ballot box.

(2) If a voter makes the voter's mark in place of a signature on the affirmation statement, a witness to the making of the mark shall sign the witness' signature and write the witness' address on the affirmation statement. If a witness' signature and address do not appear on the affirmation statement, the return envelope shall be:
   (A) Noted as being "invalid";
   (B) A note of the invalid condition shall be recorded onto the envelope and the

application for absentee voter ballot; and

(C) The envelope shall be deposited in the invalid ballot box.

(3) If the return envelope is returned damaged such that the voter's signature cannot be determined, the return envelope shall be:

(A) Noted as being "invalid";

(B) A note of the invalid condition shall be recorded onto the envelope and the application for absentee voter ballot; and

(C) The envelope shall be deposited in the invalid ballot box.

(4) If the return envelope is returned and the voter's signature does not appear on the appropriate line after the affirmation statement, the return envelope shall be:

(A) Noted as being "invalid";

(B) A note of the invalid condition shall be recorded onto the envelope and the application for absentee voter ballot; and

(C) The envelope shall be deposited in the invalid ballot box.

(5) If an absentee ballot has been invalidated pursuant to this section, the voter may still cast a ballot up until the close of polls on election day either in person or by absentee mail, in accordance with procedures established by the county clerk for absentee ballot voting, and the chief election officer for voting in a polling place. [Eff JAN 09 2010] (Auth:HRS §§11-4, 15-6) (Imp: HRS §§15-6, 15-9, 15-10, 15-11)

§3-174-12 <u>Mail absentee return envelopes; processing of damaged, duplicate, or unidentifiable by the clerk.</u> Damaged, duplicate, or unidentifiable mail absentee return envelopes shall be processed in accordance with the following:

(1) If the return envelope has been torn, cut, resealed, or otherwise mutilated in such a manner as to appear to have been tampered with, the clerk or a designated representative shall write the word "questionable" on the face of

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the return envelope prior to depositing the envelope in the valid ballot box;

(2) If more then one return envelope is received from a voter, only the valid return envelope shall be opened and counted;

(3) If the return envelope contains the ballots of more than one absentee voter the envelope will be noted as being "invalid" and deposited in the invalid ballot box; and

(4) If a return envelope is returned without an address label it shall be:

(A) Noted as being "invalid";

(B) A note of the invalid condition shall be recorded onto the envelope; and

(C) The envelope shall be deposited in the invalid ballot box. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§15-6, 15-9, 15-10, 15-11)

§3-174-13 <u>Mail absentee return envelope; receipt at the precincts.</u> On election day, an absentee voter may return the voter's mail absentee return envelope to any polling place within the voter's county or the clerk's designated representative.

(1) Procedures for the receipt of a voted mail absentee ballot at a polling place shall be as follows.

(A) The clerk or precinct official shall:

(i) Ensure the voter's signature or mark appears on the affirmation statement of the mail absentee return envelope;

(ii) Record the name of the voter and the time of receipt of the mail absentee return envelope in the record book; and

(iii) Deposit the mail absentee return envelope, with the ballots enclosed, into the voted mail absentee ballot return envelope and place in the precinct can;

(B) Precinct officials shall accept mail

absentee return envelopes until the polls close on election day.

(2) Procedures for the receipt of an unvoted mail absentee ballot at a polling place shall be as follows:

(A) The precinct chairperson or voter assistance officer shall telephone the control center and provide the voter's name, social security number, district and precinct numbers and the polling place from which the call is being made; and

(B) Upon confirmation from the clerk that the voter is an absentee voter and in the correct polling place to vote, the precinct official shall:

(i) Collect the unvoted mail absentee ballots and return envelope and place them in the clerk's envelope;

(ii) Write the correction order number issued by the clerk in the voter's "remarks" column of the pollbook;

(iii) Line out the voter's "AB" designation in the pollbook;

(iv) Allow the voter to vote per standard procedure; and

(v) Record the incident in the record book.

(3) If not utilizing a database of voter signature images, the procedure at the clerk's office for the receipt of a voted mail absentee ballot by precinct officials shall be as follows:

(A) The clerk's office shall record on the voter's application for absentee voter ballot the date and time and the fact that the mail absentee return envelope was returned to the regular polling place, and the polling place to which it was returned;

(B) The signature verification process, original or a copy of the voter's absentee ballot application or voter registration form shall be prepared and taken to the

counting center for the purpose of comparing the signature on the affirmation statement with the signature on the application or voter registration form; and

(C) The clerk's office shall prepare the final absentee reconciliation of voted walk-in and mail absentee return envelopes returned to the regular polling place on election day. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§15-6, 15-9, 15-10, 15-11)

§3-174-14 Mail absentee return envelope; procedures after the polls close; paper ballots. In the case of a paper ballot voting system, the procedures after the polls close shall be as follows:

(1) At the polling place, mail absentee return envelopes found in the ballot boxes shall be removed and turned over to the precinct chairperson. The chairperson shall check that the voters name and the time the ballot was dropped off at the precinct is recorded in the record book. The voted absentee mail ballot shall be placed in the voted mail absentee envelope and placed in the precinct can for pick up by the Delivery Collection team; and

(2) At the counting center, the precinct can team shall give the absentee ballot team any mail absentee return envelopes delivered to the counting center. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§15-6, 15-9, 15-10, 15-11)

§3-174-15 Walk-in and mail absentee ballots; transfer to the counting center. When either the paper ballot system or electronic voting system is used for absentee voting, the clerk shall do all of the following:

(1) After the close of the absentee polling place on the day prior to the processing of ballots, the clerk shall prepare a preliminary reconciliation of voted walk-in and mail absentee ballots form. The form shall

summarize the following totals by districts:
(A) Walk-in absentee ballots; and
(B) Valid mail absentee return envelopes;

(2) Prepare a preliminary reconciliation of voted walk-in and mail absentee ballots form;

(3) The clerk shall transport voted absentee ballots to the counting center in sealed ballot boxes in the presence of at least two designated representatives of the chief election officer. When electronic voting system ballots are used, ballots transported to the counting center shall be sent in sealed ballot boxes. Transfer of voted absentee ballots between the chief election officer or designated representative and the respective clerk shall be accomplished using the seal certification process in section 3-172-72 with forms prescribed by the chief election officer; and

(4) In addition, the clerk shall do all of the following:
(A) Continue to allow absentee voting for voters authorized under HRS §§15-2 and 15-9, and section 3-174-3;
(B) Accept mail absentee return envelopes until the polls close according to procedures set forth in sections 3-174-13 and 3-174-14; and
(C) Prepare a final reconciliation of voted walk-in and mail absentee ballots form and the seal certification form for the absentee ballot boxes after the polls close. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§15-6, 15-8, 15-9, 15-10)

§3-174-16 <u>Absentee ballots; receipt at the counting center.</u> Upon arrival of the absentee ballot boxes at the counting center, the ballot boxes shall be verified by at least two official observers not of the same political party or organizational affiliation who shall check the seal number on the ballot box against the number recorded on the seal certification form as follows:

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(1) If the seal number does not match, the chief election officer, clerk, or designated representative shall conduct an immediate investigation. The processing of absentee ballots in the affected ballot box shall be suspended pending the outcome of the investigation;

(2) If the seal numbers match, the absentee ballot team shall cut the seal and remove the walk-in absentee ballots and the mail absentee return envelopes; and

(3) The mail absentee return envelopes and the voted walk-in ballots, if used, shall be processed separately, and may be further segregated according to district and precinct, if necessary. [Eff JAN 0 9 2010] (Auth: HRS §11-4)(Imp: HRS §§15-6, 15-8, 15-9, 15-10)

§3-174-17 Mail absentee return envelopes; processing at the counting center; electronic voting system. In the case of an electronic voting system ballot, the procedures at the counting center shall be as follows:

(1) Mail absentee return envelopes found in the ballot boxes or the precinct can shall be turned over to the absentee ballot team chairperson;

(2) Prior to opening the mail absentee return envelopes and counting the ballots, the return envelopes and the secret ballot envelopes shall be checked in accordance with the provisions of sections 3-174-10 and 3-174-11 and HRS §15-9(b); and

(3) The voted mail absentee ballot counts shall be reconciled. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§15-6, 15-9, 15-10, 15-11)

§3-174-18 Absentee ballots; processing at the counting center. (a) Walk-in absentee voted ballots shall be processed in the following manner:

(1) Voted walk-in absentee ballots and cast vote

records on paper shall be forwarded to the ballot storage team or computer operations team as appropriate; and

(2) Memory devices contained cast vote records shall be forwarded to the computer operations team.

(b) Mail absentee return envelopes and the enclosed secret ballot envelopes shall be processed in the following order and manner:

(1) Absentee return envelopes with the word "questionable" stamped on them shall be separated from the rest of the return envelopes. The "questionable" absentee return envelopes shall be opened by the absentee ballot team chairperson and the clerk's designated representative and the contents shall be removed.

(A) If there is no secret ballot envelope:

(i) The contents shall be placed back into the "questionable" ballot envelope;

(ii) The envelope shall be marked "no secret ballot envelope";

(iii) Noted as being "invalid" ;

(iv) Placed in the invalid ballot box; and

(v) Disposed of in accordance with HRS §11-154.

(B) The "questionable" secret ballot envelopes shall be checked by the absentee ballot team chairperson and the clerk's designated representative for possible tampering. If the secret ballot envelope has been torn, cut, resealed, or otherwise mutilated in such a manner as to appear to have been tampered:

(i) The contents shall be placed back into the "questionable" absentee return envelope;

(ii) Marked "possible tampering";

(iii) The absentee return envelope shall be noted as being "invalid";

(iv) Deposited in the invalid ballot box; and

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(v) Disposed of in accordance with HRS §11-154.

The preliminary or final reconciliation of voted walk-in and mail absentee ballots form, whichever is appropriate, shall be adjusted accordingly;

(2) The valid return envelopes shall be opened and the secret ballot envelopes shall be removed.

(A) Voted ballots shall be removed from the secret ballot envelopes, placed in ballot card containers and forwarded to the computer operations team.

(B) If the voted ballot is not in a secret ballot envelope and the return envelope is not marked "questionable," the voted ballot shall be placed directly from the return envelope into the ballot card container for further processing;

(3) Invalid conditions are:

(A) More than one secret ballot envelope, indicating a ballot from more than one voter;

(B) Secret ballot envelopes containing ballots of more than one voter; and

(C) An absentee ballot is returned defective and cannot be duplicated; and

(4) The secret ballot envelope or ballot that has an invalid condition shall be:

(A) Noted as being "invalid";

(B) The invalid condition noted on the secret ballot envelope; and

(C) The secret ballot envelope placed in the invalid ballot box.

(D) The preliminary reconciliation of voted mail absentee ballots form, shall be adjusted accordingly.

(c) Paper ballot voting system absentee ballots shall be counted according to sections 3-172-90 and 3-172-91.

(d) Mail absentee return envelopes and voted walk-in ballots may be processed for counting prior to election day if the chief election officer determines that the volume warrants early processing. The processing shall be

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performed pursuant to procedures established by the chief election officer. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§15-6, 15-8, 15-9, 15-10)

§3-174-19 Mail absentee ballots; replacement by facsimile transmission. (a) A voter who requested but has not received a mail absentee ballot within five days of the election, may request and receive a replacement ballot by facsimile (fax) transmission or, if available, via uneditable portable document file email attachment from the clerk from whom the original mail absentee ballot was requested.

(b) Upon receipt of a phone or facsimile request for a replacement mail absentee ballot, the clerk or the clerk's designee, shall confirm that the voter previously requested a mail absentee ballot for that election and that a voted mail absentee ballot for that voter has not been received.

(1) If the voter did not previously request a mail absentee ballot for the election, then the clerk or clerk's designee shall notify the voter, by facsimile transmission or by phone, that the voter is not eligible to receive a mail absentee ballot by facsimile transmission.

(2) If the clerk's records indicate that a voted mail absentee ballot has already been received from that voter, then the clerk or clerk's designee shall notify the voter that a replacement ballot shall not be sent by facsimile transmission.

(3) If the clerk's records confirm that a voted mail absentee ballot has not been received by the clerk, a replacement ballot and waiver of secrecy and affirmation statement form and a copy of HRS §11-137, shall be sent to the voter by facsimile transmission within 24 hours of receiving the request or as soon thereafter as practicable.

(c) Before sending the replacement ballot with instructions by facsimile transmission, the clerk or clerk's designee shall:

(1) Remove an appropriate replacement ballot from inventory;
(2) Record the replacement ballot serial number on the voter's request form and other forms required for reconciliation purposes;
(3) Make a copy of the replacement ballot;
(4) Record the replacement ballot serial number on the copied replacement ballot; and
(5) Send the copied replacement ballot and related documents to the voter by facsimile transmission or as an uneditable portable document file if transmitting electronically.

(d) The clerk or clerk's designee shall retain the replacement ballot and copied replacement ballot until the voter returns the waiver of secrecy and affirmation statement form and voted replacement ballot by facsimile transmission.

(e) Upon receipt of a completed waiver of secrecy and affirmation statement form and the voted facsimile ballot, the clerk or clerk's designee shall process the voted ballot in accordance with procedures established in sections 3-174-11 and 3-174-12.

(f) When a waiver of secrecy and affirmation statement form and voted facsimile ballot have been determined to be valid, the following procedures shall apply:

(1) The voted facsimile ballot and the replacement ballot shall be placed in the absentee return envelope and the envelope sealed;
(2) The clerk or the clerk's designee shall note in the affirmation block that a facsimile contained in the sealed absentee return envelope; and
(3) The sealed absentee return envelope shall be deposited in the absentee ballot box.

(g) In lieu of forwarding a replacement ballot to the counting center as prescribed in this section, the clerk may rely upon the duplication team to produce the duplicate ballot. The clerk shall document this situation for ballot inventory purposes and forward all other materials pursuant to subsection (f).

(h) The clerk or clerk's designee shall transport the absentee ballot box to the counting center in

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accordance with procedures established in section 3-174-15(3).

(i) The counting center officials shall copy the votes on the facsimile ballot onto the replacement ballot in accordance with the procedures established by the chief election officer. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 15-2) (Imp: HRS §15-5)

§3-174-20 Federal write-in ballots, and ballots transmitted by facsimile; processing of. Federal write-in ballots or absentee ballots transmitted by facsimile shall be counted as follows:

(1) After all regular absentee ballots are processed the absentee chairperson shall retrieve the federal write-in ballots and absentee ballots transmitted by facsimile from the counting center manager to be duplicated;

(2) In the presence of at least two official observers not of the same political party or organizational affiliation, the duplication team shall prepare a new ballot to replace each federal write-in ballot and absentee ballot transmitted by facsimile;

(3) There shall be a reconciliation of the number of duplicate ballots used to replace the federal write-in ballots and absentee ballots transmitted by facsimile; and

(4) When the replacement is complete, the federal write-in ballot or ballots transmitted by facsimile shall be invalid and shall be stored in accordance with section 3-172-99(f).

[Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§15-6, 15-8, 15-9, 15-10)

§3-174-21 Absentee voting in remote areas. (a) The clerk may designate a representative or representatives to handle absentee voting in remote areas where there is no clerk's office or in areas where past experience has indicated that it would be a hardship on the voters to require them to appear at the clerk's office. The designated representative(s) shall follow all applicable

provisions relating to the operation of an absentee polling place.

(b) The exceptions to this procedure are:

(1) One representative may handle the procedure in an area;

(2) One ballot box may be used to contain all the ballots for an area;

(3) The names of persons voting the absentee ballot shall be given to the clerk on a daily basis;

(4) Voting shall terminate at a time designated by the clerk;

(5) The sealed ballot box containing voted ballots and the unvoted ballots, records, supplies, and other polling place materials shall be returned to the clerk immediately after the close of the absentee voting period; and

(6) The ballot box shall be unsealed and opened and the valid ballots contained therein shall then be counted at the time and place provided by law and section 3-174-17 for the counting of absentee ballots. [Eff JAN 0 9 2010 (Auth: HRS §11-4) (Imp: HRS §§15-4, 15-7, 15-8)

§3-174-22 Voting, registration, and counting of absentee ballots of overseas citizens. (a) The general purpose of the Uniformed and Overseas Citizens Absentee Voting Act (hereinafter referred to as "UOCAVA" or 42 USC §1973ff et seq.)is to:

(1) Permit absent uniformed services citizens and overseas citizens to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for federal office; and

(2) Permit overseas citizens to use a "federal write-in" absentee ballot in general elections for federal office.

(b) The term "federal election" means any presidential, U.S. senatorial, or congressional election.

(c) Citizens shall be regarded as residing overseas if they reside anywhere except the several states of the United States, the District of Columbia, the

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Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(d) The clerk may maintain a separate register for overseas citizens who apply to vote under the provisions of 42 USC §§1973ff et seq., as amended.

(e) An overseas citizen may use the federal postcard (SF-76) form to register to vote and to request an absentee ballot. A federal postcard form used by an overseas citizen to request an absentee ballot which is received in the year of the election will be held and processed sixty days prior to the election.

(f) A duly registered overseas citizen voter who wishes to vote the federal election ballot in person at the clerk's office may do so upon presentation of proper identification.

(g) An overseas citizen who makes timely application for, and does not receive the State's absentee ballot, may use the federal write-in absentee ballot in general elections. In completing the ballot the overseas voter may write-in the name of a qualified candidate or political party and any abbreviation, misspelling, or other minor variation shall be disregarded if the intent of the voter can be ascertained.

(h) The federal election absentee ballot may be a paper ballot or electronic ballot card. The federal election absentee ballot shall be received by the clerk not later than closing of the polls on election day. A federal write-in absentee ballot will be processed according to established procedures for regular absentee ballots only if:

(1) A request for the state absentee ballot was received at least thirty days prior to the election;

(2) A state absentee ballot has not been received; and

(3) There is a valid affirmation signature and no evidence of tampering.

(i) A voter covered by UOCAVA shall be able to request voter registration applications and absentee ballot applications by mail or electronically for general, special, primary, and runoff elections for Federal office. This includes the ability of the voter to designate if the voter wishes to receive the application by mail or

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electronically. The voter registration application or absentee ballot application will be transmitted based on the preference selected by the voter. If the voter does not indicate a preference, the application shall be delivered as otherwise required by state law. To the extent practicable, election officials must :(1) protect the security and integrity of the voter registration and absentee ballot application request process and (2) protect the privacy of the identity and personal data of the UOCAVA when the voter requests, and is sent a voter registration application or absentee ballot application.

(j) Election officials shall designate at least one means of electronic communication for the following purposes: (1) for use by UOCAVA voters to request voter registration applications and absentee ballot applications; (2) for use by election officials to send voter registration and absentee ballot applications to voters; and (3) for providing UOCAVA voters with election and voting information. In addition to the means of electronic communication designated by election officials. Finally, election officials must include the designated means of electronic communication on all information and instructional materials that accompany balloting materials sent by election officials to UOCAVA voters.

(k) Election officials shall provide for transmitting blank ballots to UOCAVA voters by mail and electronically for general, special, primary, and runoff elections for Federal office. Voters will be able to designate if they wish to receive the blank ballot by mail or electronically. Election officials must transmit the ballot based on the preference selected by the voter. If the voter does not indicate a preference, the ballot must be delivered in accordance with state law. To the extent practicable, election officials must :(1) protect the security and integrity of absentee ballots and (2) protect the privacy of the identity and personal data of the UOCAVA voter throughout the transmission process.

(l) Election officials will have a free access system that allows a UOCAVA voter to determine whether his/her absentee ballot was received by the election officials.

(m) Election officials will allow for the use of the federal write-in absentee ballot in accordance with UOCAVA.

(n) Election officials will comply with the provisions

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regarding adequate ballot transmittal time for UOCAVA voters, unless a waiver regarding the ballot transmittal time is granted by the federal government. [Eff JAN 0 9 2010] (Auth: HRS §11-4, 42 USC §§1973ff et seq.) (Imp: HRS §11-16, 42 USC §§1973ff et seq.)

§3-174-23 Absentee ballot for presidential election. (a) The clerk shall require an applicant requesting a presidential absentee ballot to furnish information which verifies the citizen's voting status. The application shall include all of the following:

(1) Citizenship;
(2) Residence address in Hawaii at which the person was previously registered to vote;
(3) A statement that the voter does not qualify in present state of residence to vote the presidential ballot;
(4) The date residence was established in the present state of residence;
(5) The name, address, and signature of applicant;
(6) An acknowledgment by the applicant;
(7) A verification by the voter registrar or clerk of the jurisdiction in which the applicant presently resides that the applicant is ineligible to vote in said jurisdiction; and
(8) Other information as determined by the clerk.

(b) The presidential absentee ballot may be a paper ballot or electronic ballot card.

(c) Counting and disposition of presidential absentee ballots shall be done in accordance with established procedures. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §15-3)

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HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 13 OFFICE OF ELECTIONS

CHAPTER 175

ELECTIONS BY MAIL

§3-175-1 Purpose; general applicability.
§3-175-2 Proclamation.
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§3-175-4 Ballot packet; contents.
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§3-175-10 Ballot cast upon receipt; replacement ballot.
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§3-175-13 Verification of affirmation signatures.
§3-175-14 Processing and tabulation of ballots.
§3-175-15 Receipt and disposition of late ballots.
§3-175-16 Deadlines for all-mail elections.

§3-175-1 Purpose; general applicability. The purpose of these administrative rules is to provide for consistency in the administration of elections by mail. Unless the context indicates otherwise, and where not inconsistent, and to the extent practicable, statutory provisions and administrative rules pertaining to regular elections shall be applicable elections by mail. [Eff JAN 0 9 2010 (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

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§3-175-2 Proclamation. For any federal, state, or county election held other than on the date of a regularly scheduled primary or general election, the chief election officer or clerk, in the case of county elections, shall issue an election proclamation to announce an election administered by mail. The proclamation shall set forth the date of the election, location and hours of operation of the absentee polling place or places, anticipated ballot mailing date, ballot return deadline, and other information for voters. [Eff JAN 09 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-3 Board of Registration. The board of registration shall not be required to convene on election day for an election administered by mail. [Eff JAN 09 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-4 Ballot packet; contents. The chief election officer or clerk shall provide the voter with a ballot, secrecy envelope, return envelope, and any other pertinent information. The return envelope shall contain an affirmation statement that is substantially similar to the affirmation statement required on absentee mail voting materials. [Eff JAN 09 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-5 Mailing of Ballots; date. Vote by mail ballot packets shall be sent by non-forwardable mail to all active registered voters in the general county registry as of the closing of the general county registry specified in HRS §11-24. Vote by mail ballot packets may be mailed out in accordance with any schedule stated in the election proclamation. To the extent a constitutional, charter, statutory, ballot production, logistical, or other basis exists for modifying the schedule, the schedule may be modified. The chief election officer or clerk may mail a ballot to voters transferring voter registration after the closing of the registry. Voters who are unable to receive election mail at the address listed in the general county registry shall be responsible for requesting an absentee

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ballot or voting at the absentee polling place. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-6 Absentee polling place. The chief election officer or clerk in the case of county elections shall establish at least one absentee polling place for servicing voters requiring the use of an accessible voting device. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-7 Voter procedure. When a voter receives the vote by mail materials, the voter shall comply with all written instructions provided, mark the ballot, sign the affirmation statement on the return envelope, and return the ballot by placing the ballot in the return envelope provided by depositing the envelope in the United States mail or delivering the sealed envelope to the election office or ballot collection site. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-8 Return of ballots; postage. If not provided by the election office, ballot return postage shall be borne by the voter. The chief election officer or clerk shall inform voters of the required amount of return postage to ensure proper delivery and of other options for the return of the ballot. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-9 Ballot collection sites; private collection sites prohibited. The chief election officer or clerk may establish ballot collection sites in addition to the county clerk's office for receiving voted ballots. Ballot collection sites for returned ballots shall be established if return postage is not borne by the election office.

It shall be unlawful for any person other than the chief election officer or clerk to establish a ballot collection site.

[Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS

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§§11-4, 11-91.5)

§3-175-10 Ballot cast upon receipt; replacement ballot. A ballot contained in a properly signed return envelope that has been received by the chief election officer or county clerk shall be considered cast and may not be recast for any reason. As such, a voter may not request back a ballot or seek to cancel it, after it has been received by the chief election officer or county clerk.

A voter may receive a replacement ballot if the original ballot is destroyed, spoiled, lost, or not received by the voter. A replacement ballot need not be mailed within five days of the election. [Eff JAN 0 9 2010 (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-11 Submittal of ballots; deadline. The voted ballot shall be returned in the provided return envelope. All voted ballots must be received by the Chief election officer or Clerk in the case of county elections by 6:00 p.m. on election day in order to be counted. [Eff JAN 0 9 2010 (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5, 11-131)

§3-175-12 Extension of deadline for receiving ballots. In the event of a flood, tsunami, earthquake, volcanic eruption, other natural disaster, or other emergency condition, the Governor by written proclamation may extend the deadline for returning ballots for a period of not more than seven days in any state or county election if the Governor receives a written request for the extension from the chief election officer or county clerk. The chief election officer or clerk may request the Governor to extend the deadline for returning ballots under this section if the natural event or disaster makes it impossible or impracticable for voters to return ballots by 6:00 p.m. due to the emergency. [Eff JAN 0 9 2010 (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5, 128-9)

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§3-175-13 Verification of affirmation signatures. Prior to opening the return and ballot envelopes, the signatures on the return envelopes shall be verified with signatures contained on the voter registration affidavit, absentee ballot application, or other reliable source document available to the chief election officer or clerk.

Envelopes with verified affirmation signatures shall be forwarded for processing and tabulation. If the elections office identifies return envelopes where two members of a household signed the other's return envelope, if both signatures are verified, both envelopes may be forwarded for processing and tabulation.

Up to four days prior to the election:

1) Return envelopes that do not contain the required signature on the affirmation statement may be returned to voters for execution and re-submittal by the ballot return deadline.

2) Return envelopes with non-matching signatures shall be segregated and the chief election officer or clerk may attempt to contact the voter to update the signature record on file in the election office. The contacted voter shall be required to appear personally to update the signature record not later than 6:00 p.m. election day for the ballot to be counted.

Within three days of the election, attempts may be made to contact the respective voter to correct the error or deficiency. However, any return envelopes with missing or non-matching signatures that were not updated as of 6:00 p.m. election day shall be invalidated and placed in the invalid ballot box. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-14 Processing and tabulation of ballots. If the requirements of §3-175-13 are met, at the discretion of the chief election officer or clerk, the return and ballot envelopes may be opened and ballots tabulated within seven days prior to the election day. In no case, however, shall the elections results become publicly known before 6:00 p.m. election day. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

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§3-175-15 Receipt and disposition of late ballots. Any return envelopes containing vote by mail ballots received after the deadline shall be kept unopened and disposed of pursuant to HRS §11-154. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-16 Deadlines for all-mail elections. All deadlines of 6:00 p.m. in chapter 175 are based on the prescribed hour for the closing of polls found in HRS §11-131. To the extent that statutory time is ever changed, all references to 6:00 p.m. will be treated as changed to the new statutory time for the closing of polls. [Eff JAN 0 9 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5, 11-131)

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HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 13 OFFICE OF ELECTIONS

CHAPTER 176

VOTING SYSTEMS

§3-176-1 Voting system requirements.
§3-176-2 Voting system requirements; optional requirements.
§3-176-3 Approval of all voting equipment, materials, and procedures.
§3-176-4 County elections; assistance.
§3-176-5 Election services; provision and charges.
§3-176-6 Testing computer program and related equipment; electronic voting systems.
§3-176-7 Experimental voting systems; rules and procedure.
§3-176-8 Experimental voting systems; public information program.

Historical note: This chapter is based substantially upon Title 2, Office of the Lieutenant Governor, "Chapter 2-54, Voting Systems." [Eff and comp 9/16/96; R JAN 0 9 2010]

§3-176-1 Voting system requirements. In addition to, and not in lieu of, any other election processes contained in Title 2 of the Hawaii Revised Statutes, this rule authorizes the chief election officer, or the county clerk in the case of a county only election, to utilize a voting system or voting systems that comply with one, or a combination thereof, of the following:

(a) the federal voting system standards as printed in the Federal Election Commission publication: Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems (1990);

(b) the federal voting system standards as printed in

the Federal Election Commission publication: Voting System Standards, Volumes I & II (April 2002); or

(c) the federal voluntary voting system guidelines as printed in the United States Election Assistance Commission publication: 2005 Voluntary Voting System Guidelines Version 1.0, Volumes I & II (2005), and subsequently published in the Federal Register, Vol. 71, No. 70 (April 12, 2006). [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-4, 16-1, 16-2, 16-11, 16-12, 16-22, 16-41, 16-42, 42 USC §§15361, 15362, 15371.)

§3-176-2 Voting system requirements; optional requirements. So long as the chief election officer or county clerk find that a selected voting system would otherwise meet the requirements of HAR § 3-176-1, the chief election officer or county clerk at his or her option may elect to utilize a voting system that additionally meets some or all of the requirements of any of the following:

(a) any subsequent iteration of the Help America Vote Act, Public Law 107-252, voluntary voting system guidelines adopted by the United States Election Assistance Commission, and published in the Federal Register, pursuant to 42 USC §15362;

(b) any federal guidelines, standards, or specifications developed or adopted by any part of the federal government; or

(c) any guidelines, standards, or specifications associated with a contractual relationship or an award of a grant by the federal government relating to elections or voting. This includes contracts or awards directly between the federal government and the State of Hawaii or any of its counties. Additionally, this includes contracts or awards by the federal government to private entities that, as a result of said grant or contract, provide election or voting services to the to the State of Hawaii or its counties. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-4, 16-1, 16-2, 16-11, 16-12, 16-22, 16-41, 16-42, 42 USC §§15361, 15362, 15371.)

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§3-176-3 Approval of all voting equipment, materials, and procedures. The chief election officer or designated representative shall approve all necessary forms, supplies, and procedures used in the operation of any voting system after consultation with the respective clerks. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-4, 16-1, 16-2)

§3-176-4 County elections; assistance. In county elections, the clerk may request the assistance of the chief election officer and staff in administering and utilizing the voting system. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §11-4)

§3-176-5 Elections services; provision and charges. The chief election officer may provide election related services and equipment to government and private non-profit organizations to assist with the conduct of elections or surveys subject to the following conditions:

(1) A request is made on a form provided by the chief election officer;
(2) The provision of such elections services or equipment does not interfere with the preparation for, or conducting of any primary, special primary, general, or special general election;
(3) The services or equipment are not utilized in connection with any activity or message intended to influence the outcome of any race or question in any primary, special primary, general, or special general election;
(4) The requesting party directly assumes all costs associated with the conducting of the election or survey other than those associated with the personnel and equipment of the chief election officer; and
(5) The requesting party agrees to reimburse the chief election officer for an amount not to exceed the actual costs associated with the personnel and equipment utilized, provided that this requirement may be waived in writing by

the chief election officer for government offices or agencies. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §16-3)

§3-176-6 Testing computer programs and related equipment; electronic voting systems. (a) Prior to election day, the programs prepared for tabulating the votes shall be tested in the presence of all the following persons:

(1) The chief election officer, clerk, or designated representative;

(2) The official observers; and

(3) Other authorized interested persons, as space permits.

(b) The official logic and accuracy test shall include a predetermined number of votes for each candidate and for and against each question and a predetermined number of excess or "over" votes and blank votes for each candidate or question.

(1) Each official observer and other authorized persons may also prepare a logic and accuracy test to test the ballot counting program;

(2) A program shall not be approved unless it produces the exact count of all votes, rejects all improper votes, and meets all other test criteria;

(3) After the official logic and accuracy test has been conducted satisfactorily, all test votes, test results, and the computer programs tested shall be kept in sealed containers and shall not be removed from such containers except in the presence of two or more official observers not of the same political party or organizational affiliation;

(4) The official observers at the test shall sign a certification stating that the program was tested, found accurate, and approved;

(5) The official logic and accuracy test shall be performed on all computers to be used for elections.

(c) In the event of a computer or ballot reader malfunction, the logic and accuracy test shall be rerun

upon completion of the maintenance or corrective work. No further processing shall be processed until the test indicates that the computer or ballot reader is working properly. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§16-42, 16-43, 16-45)

§3-176-7 Experimental voting systems; rules and procedures. In an election where the chief election officer experiments with voting systems of a different kind all rules which can be reasonably applied to that system shall be followed. Temporary procedures shall be used as required for the experimental voting systems only. Nothing herein is to be used to diminish, take away or otherwise impair the rights of the voter. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §16-1)

§3-176-8 Experimental voting systems; public information program. Before elections in which a new voting system is to be used, the chief election officer or clerk shall conduct a public information program to acquaint voters who will be using the voting system with the manner in which votes are cast and counted. [Eff JAN 0 9 2010] (Auth: HRS §11-4) (Imp: HRS §§11-4, 16-1)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

OFFICE OF THE LIEUTENANT GOVERNOR

The repeal of chapters 2-50, 2-51, 2-52, 2-53, and 2-54 and adoption of chapters 3-171, 3-172, 3-173, 3-174, 3-175, and 3-176, Hawaii Administrative Rules, on the Summary Page dated December 17, 2009, was adopted on December 17, 2009, following a public hearing held on December 10, 2009, after public notice was given in the Honolulu Star Bulletin, West Hawaii Today, The Maui News, and The Garden Island on November 9, 2009, and in the Hawaii Tribune Herald on November 10, 2009.

The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

Kevin B. Cronin
Chief Election Officer

LINDA LINGLE
Governor
State of Hawaii

DATE: DEC 3 1 2009

DEC 3 1 2009

Filed