



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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SCOTT T. NAGO
CHIEF ELECTION OFFICER

January 4, 2012

To: Elections Commission

From: Scott T. Nago
Chief Election Officer

Re: STATUS OF OPERATIONS

The Office of Elections, in addition to its normal preparations for the 2012 Elections, has been focused on the following items since our last meeting: (1) legislation; (2) reapportionment; and (3) personnel.

Legislation

The major focus of the upcoming legislative session will be the obtaining of an emergency appropriation of \$1,725,000 to fund the Office of Elections' share of the voting system contract for the 2012 Elections and the development of an online voter registration bill that will satisfy all relevant stakeholders.

Emergency Appropriation

Currently, the Office of Elections is in a multi-year contract with a vendor to provide a voting system for our elections. As state and county elections are held jointly, the cost of the contract is split equally between the State (50%) and the counties (50%). The share of each county is based on its proportion of the registered voters at the time of the General Election.

Funding for the State's share of the prior 2010 election cycle of the present contract was provided for in a specific budget proviso. Section 52, Act 162, SLH 2009.

However, the current biennium budget for the Office of Elections does not include funding for the 2012 election cycle of the contract. Act 164, SLH 2011.

This was not an oversight but instead an unfortunate consequence of the austere financial situation that the State has been in the last few years.

In 2010 when the Department of Accounting and General Services (DAGS) was preparing the biennium budget (i.e. Fiscal Years 2011-2012 and 2012-2013) for itself and all of its administratively attached agencies, it did not include the necessary funding for the voting system contract in addition to funding for the decennial reapportionment process that the Office of Elections supports.

On October 5, 2010, we brought this to the attention of DAGS by submitting an FB 11-13 Operating Budget Adjustment Request in which we sought \$1,091,370 for reapportionment and \$1,725,000 for the voting system contract. The adjustment request for reapportionment was granted and the request for the voting system funding was denied.

We followed up with the DAGS-Administrative Services Office (DAGS-ASO) about the need for the voting system contract funding and were told unfortunately that we would need to wait until the 2012 legislative session at which time we could seek an emergency appropriation.

Our current budget for Fiscal Year 2011-2012 is \$1,829,851. The Help America Vote Act of 2002 mandates, as a condition of the prior receipt of federal payments, the maintenance of expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000. 42 USC § 15404(a)(7). The level of such expenditures in Fiscal Year 1999-2000 was \$2,299,552. The State of Hawaii has always met this requirement. The present operating budget of the Office of Elections, unless supplemented by an emergency appropriation, will not meet this maintenance of effort requirement, which will result in prior and future federal funding being compromised.

With the approaching legislative session, the Office of Elections has begun the process of requesting an emergency appropriation. As all emergency appropriations must be requested by the Governor, we discussed the matter with his office and submitted a draft bill and justification sheet for its consideration on September 20, 2011.

We were shortly thereafter contacted by the Department of Budget and Finance about the request and it appears that it does not disagree with the necessity of the request. As such, we are hopeful that the Governor will ultimately submit the emergency appropriation and that it will be approved by the Legislature.

Online Voter Registration

As previously reported to the Elections Commission, during the 2011 Legislature, the Governor vetoed HB 545, HD 1, SD 1, CD 1 Relating to Voter Registration. The bill proposed the establishment of a secure, computerized online voter registration system, coordinated between various state and county agencies with no existing relationships or appropriation to plan, design and establish this system. In vetoing the bill, the Governor noted that “[w]hile the goal of this bill is laudable, it creates an unfunded mandate at a time when fiscal resources are scarce, and agencies are fighting to meet their existing responsibilities.” Governor’s Message No. 1341 (July 12, 2012).

Consistent with our position that the Office of Elections has no issue with the intent of online voter registration but has concerns over the development, funding, and implementation of such a system, we will work with interested stakeholders to develop a bill that may address those concerns.

Reapportionment

On September 26, 2011, the Reapportionment Commission filed its reapportionment plan with the Office of Elections. Two lawsuits were subsequently filed in the Hawaii Supreme Court challenging the plan on October 11, 2011 (i.e. *Solomon, et al. v. Abercrombie, et al.*; SCPW-11-0000732 and *Matsukawa v. Reapportionment Commission, et al.*; SCPW-11-0000741).

Unrelated to the litigation, the portion of the plan concerning the staggering of senate terms (i.e. which seats would have an initial two year term and which would have a four year term) was revised on October 13, 2011, due to an earlier calculation error.

Pursuant to HRS § 25-2 and in consultation with the Department of the Attorney General, notice of the reapportionment plan was then published in various newspapers statewide on October 27, 2011.

The Office of Elections provided technical support to the Department of the Attorney General in preparing the Reapportionment Commission’s answer and subsequent Motion for Summary Judgment, which was filed on November 18, 2011 and November 23, 2011, respectively.

Due to the pending litigation and the lack of final house, senate, and congressional district lines to operate from, this has greatly impacted our ability to prepare for the 2012 elections. For example, without the boundaries for each

seat, we will be unable to issue nomination papers to prospective candidates at the beginning of candidate filing season on February 1, 2012. HRS § 12-2.5. Without the boundaries, we also cannot proceed with the drawing of precinct lines. Without precincts, we are not able to determine and design the various ballot types which contain the specific contests that voters in a precinct can vote on. Similarly, without knowing the boundaries of the precincts, we cannot determine where would be the best location to have a polling place for the voters of that precinct. While we have already sent out requests to reserve the polling places we used in 2010, depending on the ultimate precinct lines, we may need to look at other sites.

Personnel

Filling of Vacancies

The vacancy in the position of Warehouse Supervisor was filled on November 1, 2011. Authority has also been obtained to fill our seasonal election positions. The filling of these positions will be staggered throughout the spring in conjunction with our normal preparations for the elections.

Status of Civil Service Conversion

On November 2, 2011, the Department of Human Resources Development (DHRD) had a meeting with the Office of Elections to ask follow up questions it had about the Counting Center Operations and Election Support Services Section Head positions. The Office of Elections has no current estimate as to how long DHRD's review will be for those two positions. However, it is our understanding that after those two positions are converted, the conversion of the other section head positions will benefit from DHRD's acquired familiarity with the operations of the Office of Elections. Additionally, after the section head positions are converted, it will be easier to classify and convert the election specialists that report to those section heads. Finally, the remaining positions such as the warehouse worker and information communication systems analyst positions will be converted.

While no definite commitments have been given as to when the conversion will be completed, it is the Office of Elections' hope that it will be completed prior to the completion of the current fiscal year and prior to the conducting of the 2012 elections, so as not to unduly interfere with the execution of those elections.

Dismissal of Discrimination Complaint

As previously reported to the Elections Commission, a discrimination complaint was filed by a former precinct official alleging that she had not been rehired for the 2010 General Election, due to her being of Puerto Rican ancestry. The complaint was originally dual-filed with the Hawaii Civil Rights Commission (HCRC) and the U.S. Equal Employment Opportunity Commission (EEOC).

Our position in this matter was that the claim had no merit as we were not aware of the complainant's ancestry and the decision to not to use her was triggered by complaints regarding the precinct she had worked at during the 2010 Primary Election. As such, a Motion to Dismiss the complaint was filed with HCRC on the basis that it did not have jurisdiction over stipended volunteers (i.e. she is not considered an "employee") and that the complainant had failed to make out a prima facie case that her not being rehired was due to her national origin or ancestry.

On September 21, 2011, HCRC dismissed the complaint on the basis of no cause. The EEOC subsequently adopted the findings of HCRC and closed its case on November 21, 2011.

If you have any questions, please feel free to contact me at (808) 453-VOTE (8683) or 1-800-422-VOTE (8683).