



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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SCOTT T. NAGO
CHIEF ELECTION OFFICER

November 20, 2012

To: Elections Commission

From: Scott T. Nago
Chief Election Officer

Re: STATUS OF OPERATIONS

The Office of Elections has completed the 2012 General Election and is currently in the process of debriefing, finalizing payroll, and taking the standard administrative steps to wrap up the election cycle.

ELECTION DAY ISSUES

On the day of the General Election, it was discovered that there was a deficiency in the amount of the ballots that had been ordered for the election.

The initial lack of a sufficient inventory of ballots at various polling places across the state was the result of a deficient model used for ordering ballots, a failure to follow the safeguards that exist to modify the order or to reallocate existing ballots prior to election day, and a failure to deploy additional ballots in a timely manner on election day.

Specifically, the amount of ballots assigned to a precinct are based on a model that factors in various assumptions, such as the voter registration count, the amount of ballots that will be cast by absentee voters, and voter turnout at the polls. These assumptions can be modified as new information is provided.

In regards to voter turnout, one looks to prior comparable elections, and then one factors in an additional percentage to factor in that there could be a higher voter turnout than at the last comparable election. Likewise, one looks at the amount of ballots that were voted by absentee mail and walk associated within that precinct at prior elections.

For the 2012 General Election, the model utilized the 2012 Primary Election turnout as a base and multiplied it by 125%. This was due to the inability to have a direct comparison between our current precincts and the precincts that existed for the 2010 General Election and the 2008 General Election, which was our last presidential election.

As you are aware, after the most recent reapportionment/redistricting process, the Office of Elections needed to establish new precincts through precincting. The precincting process puts voters who share the same ballot type (based on federal, state and county district lines) in the same political subdivision (i.e. a precinct). However, if the amount of voters sharing the same ballot type is significant, then the Office of Elections may establish more than one precinct utilizing the same ballot type. The Office of Elections provides a suitable polling place for each precinct. These polling places can range from 500 to approximately 7,000 registered voters. However, the average polling place is typically within the range of 2,500 to 3,000 registered voters.

This reapportionment/redistricting/represencing process resulted in the inability to make a direct comparison between elections for a specific precinct, other than the 2012 Primary Election, which is substantively different from a General Election, let alone a General Election in a presidential year. The inability to make a direct comparison between comparable elections should have resulted in the consideration of an even higher safeguard percentage than 125% of Primary Election voter turnout that was used.

In addition to the ballot order, there is the safeguard of a reserve ballot order made at the same time. Reserve ballots are ballots that can be used at the polling place in case the precinct runs out. Reserve ballots are a common practice to address the possibility of loss, destruction, or the exhaustion of ballots at a polling place. Additionally, there are ballot inventory and security issues that result from having all of the ballots in one place. Administratively, one needs to weigh this against logistical issues as the amount of time it would take to deploy reserve ballots to a polling place to ensure an uninterrupted supply of ballots if a polling place reports it is running low.

For the County of Hawaii, the Office of Elections administratively decided to issue reserve ballots with the regular precinct ballots at the beginning of the day given the significant logistical issues involved in the deploying of reserve ballots over such vast distances. These logistical issues did not exist for the other counties.

While the reserve ballots are ordered at the same time as all of the other ballots, the vendor delays the printing of the reserve ballots. This acts as a safeguard in two ways. First, the delay in printing the reserve ballots, allow the discovery of any printing problems with the regular ballots, such as the bar code on the ballot that allows it to be recognized by the voting machine as the correct ballot type, to be made before the reserve ballots are printed. Then any corrections to the template used for the reserve ballots can be made and the reserve ballot order can be increased so as to replace the original ballots. Second, the delay in the printing of the reserve ballots allows the Office of Elections to adjust the quantity of its ballot reserve order if it determines that more ballots are in fact necessary. The amount of reserve ballots is generally calculated as approximately 25% of the total number of registered voters in a precinct, with adjustments to that amount being made for various reasons. Third, if it is determined prior to the election that the amount of ballots designated for each precinct is too low, then the determination can be made to send sufficient reserve ballots along with the regular precinct ballots to the precincts before the polls open.

In determining whether to order more reserve ballots or to deploy reserve ballots at the beginning of the day with the regular precinct ballots, we monitor the voter registration count as it increases from the time of the ballot order to the deadline to register to vote for the General Election. For example, if the voter registration count for a particular precinct increases significantly, from the time of the order to the deadline to register to vote for the General Election (i.e. 30 days prior to the election), this could serve as a basis to order additional reserve ballots or to have existing reserve ballots designated to be delivered with the regular ballots on election day.

The other factor in the utilization of reserve ballots is the monitoring of how many ballots have been voted by absentee mail and absentee walk. We are able to determine throughout the time period of absentee voting, on any particular day, how many ballots have been received through the mail or that have been voted at the various absentee walk locations in a county. Specifically, we take the amount of registered voters in a precinct and subtract the amount of people who voted by absentee. The difference is the amount of people who could vote at the polling place on election day. If the amount of precinct ballots is unreasonably low given the amount of potential voters, then one can deploy the reserve ballots to the precincts with the regular precinct ballots at the beginning of the election day. If for some reason, there is a belief that the reserves are not enough, then we can even look to use unissued absentee ballots.

This monitoring of the absentee walk and absentee mail return of ballots was not properly implemented in the days leading up to the General Election.

The implementation of this monitoring and the utilization of this information would have reflected several precincts that were unnecessarily low and that the deployment of the reserve ballots to the precincts with the regular precinct ballots would be appropriate. It would have also caused us to review whether there was a systemic problem with the model used to order ballots and whether the reserve ballots should be deployed with the regular precinct ballots prior to the opening of polls.

On election day, when the polls started to report that they were getting low on ballots we attempted to deliver reserve ballots to all impacted polling places. Additionally, as a safeguard, we had the vendor immediately start printing additional ballots, in the event the reserve ballots were to run out, and we also had the unissued absentee ballots as a resource.

The Office of Elections proceeded to deliver reserve ballots to a number of polling places before they ran out. However, as the day went on, the amount of polling places experiencing this problem outstripped the Office of Elections' ability to deliver ballots in a timely manner before various polling places ran out of paper ballots and were forced to direct voters to use the traditionally less utilized direct recording electronic voting machines, while they waited for the reserve ballots to be delivered.

In the end, we received approximately 70 calls from 51 polling places about their ballot inventory, and 24 of them actually ran out paper ballots before our delivery of ballots to them. Significant delays were experienced at various polling places given that the direct recording electronic voting machine could be used by only one voter at a time, compared to paper ballots which can be quickly issued to voters, who can then go to separate voting booths to fill them out, and then quickly have them read by the standard precinct counter for paper ballots. A copy of the chart showing which polling places were impacted is attached.

By state law, all voters in line at the close of polls are able to vote. As such, in talking to the media, we encouraged all impacted voters to remain in line as they would be permitted to vote and that they should utilize the electronic voting machines. In the end, all voters in line at the close of polls were permitted to vote. However, as previously noted, there were significant delays.

As part of the urgency of getting the ballots out to the polling places, the ballots for two polling places were accidentally delivered to the wrong polling places towards the end of the day. Specifically, Hokulani Elementary School (District Precinct 20-04) and Waiālae Elementary School (District Precinct 19-03) received each other's reserve ballots.

The precinct counters are programmed to only read ballots of the specific ballot type associated with that precinct. As such, the precinct counters rejected the ballots and would not read them. In situations where the precinct counter will not read a ballot, the voter is able to have it deposited in the emergency ballot bin, where it will be scanned at a later time. This is what occurred at Hokulani Elementary School and Waialae Elementary School for those voters provided the incorrect ballot at the end of the day. These ballots were eventually counted at the State Capitol. However, only the contests that the voters were eligible to vote on were counted. Specifically, the voters at Hokulani Elementary School (District Precinct 20-04) were not eligible to vote on the State Representative, 19th District, State Senate, 9th District, and Council District IV contests on the Waialae Elementary School ballots (District Precinct 19-03). Similarly, the voters at Waialae Elementary School (District Precinct 19-03) were not eligible to vote on the State Representative, 20th District, State Senate, District 10, and Council District V contests on the Hokulani Elementary School ballots (District Precinct 20-04). A total of 46 ballots at Hokulani Elementary School and 11 at Waialae Elementary School had to be treated in this manner.

In reviewing the impacted contests of State Representative, 19th and 20th Districts, State Senate 9th and 10th Districts, and Council Districts IV and V, the margins of victory were significant and would not have been impacted by these ballots. The Hawaii Supreme Court has determined that “[i]n the absence of facts showing that irregularities exceed the reported margin between the candidates, the complaint is legally insufficient because, even if its truth were assumed, the result of the election would not be affected.” *Akaka*, 84 Hawai`i at 388 (internal citations omitted). In the present case, these irregularities do not appear to be legally sufficient to change the election results.

The neighbor islands did not experience the ballot inventory issue in the same way. Specifically, the County of Kauai and County of Maui did receive calls about low ballot inventories but were able to deploy and deliver ballots to the polling places in a timely manner.

The County of Hawaii had sufficient ballots at their polling places. As previously noted, due to the distances involved in the County of Hawaii, the reserve ballots were deployed at the same time as the regular precinct ballots. While the County of Hawaii had no ballot inventory issues, there was one notable incident at Kahakai Elementary School (District Precinct 06-02). Specifically, not all of the assigned precinct officials appeared to work on election day. This required the precinct to see if any voter would be willing to volunteer as a precinct official. One individual, volunteered to be a precinct official and had stated that he had previously served as a precinct official.

This well meaning individual was stationed at the ballot issuing station. Instead of reviewing the poll book to see if the voter was on the list or if a call had to be made to control center to see if the voter needed to go to another polling place, the precinct official wrote the voter's name at the bottom of the poll book and authorized the issuing of a ballot to the voter.

A total of 11 ballots were issued in this manner before the problem was discovered and the precinct official removed. A review of the 11 entries in the poll book reflects that all of them were registered voters, but only one of them was properly assigned to Kahakai Elementary School (District Precinct 06-02). Of the remaining 10 individuals, 9 were supposed to have voted at Kona Vistas Recreation Center (District Precinct 05-08). The final individual was supposed to have vote at Kealakehe Elementary (District Precinct 06-04).

We reviewed all of the impacted contests and found that the margins of victory were significant and would not have been impacted by these ballots. The impacted contests were State Representative, Districts 5 and 6 and Council Districts 7 and 8.

COUNTY OF HAWAII

On October 2, 2012, the Office of Elections informed the Clerk of the County of Hawaii that it would be taking on a greater role in conducting the 2012 General Election in the County of Hawaii. Specifically, the Office of Elections was rescinding its prior delegation of state responsibilities for this election. This would permit the County of Hawaii to focus its resources on its core responsibilities of voter registration and absentee voting. HRS §§ 11-11 & 15-4.

This left the operation of the polling places, control center, and the counting center to the Office of Elections. We coordinated with the County of Hawaii to turn over all relevant materials and to facilitate a smooth transition. Our office made arrangements to utilize the State Office Building in Hilo as a base of operations. Staff was hired to work in Hilo and numerous members of our staff in Honolulu flew to Hilo in the weeks leading up to the election to set up the counting center and control center operations and to coordinate with the voting system vendor and to train the new staff. Additionally, one of our section heads was tasked with being the point person for all our operations in the County of Hawaii.

The conduct of the General Election in the County of Hawaii was successful and a credit to all involved, including but not limited to, all of the hardworking precinct officials, control center operators, counting center workers, and assorted volunteers that make an election possible.