



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

SCOTT T. NAGO
CHIEF ELECTION OFFICER

January 18, 2013

To: Elections Commission

From: Scott T. Nago
Chief Election Officer

Re: STATUS OF OPERATIONS

Since our last meeting, on January 11, 2013, the Office of Elections has been focused on the legislative session and continuing to plan and stage for the 2014 Elections.

Legislature

The Office of Elections has submitted two bills for consideration by the Legislature. The first bill lays out a framework for conducting elections by mail and the second bill makes changes to our permanent absentee ballot law. Copies of the bills are attached for your information.

All Mail Bill

Going into this legislative session, it was our understanding that various bills would be submitted to the Legislature advocating for all mail elections. As we consider it a matter of policy for the Legislature to determine whether it wishes to proceed in the direction of all mail elections, we generally limit our testimony on such bills to providing technical comments on the specifics of each bill. Along the same line of reasoning, we felt it would facilitate discussion on this topic if we laid out, from our perspective, the framework as to how an all mail system could operate, if the Legislature wishes to move in that direction.

The focus of the bill is on HRS § 11-91.5, which presently only authorizes the conducting of all mail elections for special elections, as opposed to regularly scheduled elections. The amendments to HRS § 11-91.5 would provide that any election may be conducted in whole or in part by mail, including the designation

of specific precincts or counties for elections conducted in whole or in part by mail.

The bill provides that the State, in lieu of its normal polling place responsibilities, will instead be responsible for the mailing, receipt, processing, and tabulation of ballots, while the counties will continue to be responsible for voter registration and traditional absentee voting, in addition to operating at least one absentee polling place on the day of the election for voters who choose not to vote by mail or who need to utilize a disability accessible voting machine.

Responsibility for the expenses related to an all mail election will be similar to our standard combined state and county election, involving polling places. Specifically, the counties would be responsible for expenses related to voter registration and absentee voting, while all other expenses would be split in half between the State and counties. The four counties, in determining their individual shares making up the counties' half of expenses, would utilize a proration formula, based on its proportion of the registered voters at the time of the General Election.

The statute, which currently authorizes all mail special elections, also provides that rules will be adopted to provide uniformity in the conduct of federal, state, and county elections by mail. Those administrative rules were promulgated in 2010. To the extent additional rules were necessary, we would need to go through the standard rule making process. A copy of the administrative rules is attached for your information.

Finally, the bill recognizes that making the move from our current system to an all mail system would require a significant expenditure of funds along with the need for an appropriate amount of time to research and plan a statewide election by mail system. In other words, there is a substantive difference between how one conducts a typical all mail special election for a single contest, involving a smaller population, as opposed to a statewide all mail election involving state, federal, and county contests, and over 700,000 registered voters. As such, the bill provides for an appropriation, to be determined, to be made in fiscal years 2013-2014 and 2014-2015 for said research and planning.

Permanent Absentee Voting

In regards to permanent absentee voting, the 2012 Elections were the first elections to fully utilize permanent absentee voting. From that experience, we have administratively found that voters who have applied for permanent absentee ballot status, who subsequently update their voter registration as a result of moving, sometimes forget to separately update the address that they

wish for their absentee ballot to be permanently mailed to, if they want their ballot to be mailed to their new voter registration address. Additionally, others may provide the address of a vacation destination, which was meant to be temporary, but they do not realize that the application will result in ballots being mailed permanently to that address, as opposed to for a single election.

Essentially, the application for permanent absentee voter ballot provides that a voter can have ballots mailed to their voter registration mailing address or to a specific address permanently. If a voter writes down a specific address then, by statute, ballots will be mailed there permanently until the voter specifically informs election officials that absentee ballots should be mailed to a different address.

Against this backdrop, the bill provides that applicants for permanent absentee voter ballot status will have their ballots permanently mailed to their voter registration mailing address. This means that whenever a voter moves and updates their voter registration mailing address, their mailing address for absentee ballots will also be updated. The law also provides that the voter can temporarily authorize for the calendar year that all absentee ballots be mailed to a specific address other than their voter registration mailing address. This allows voters, to still have the option, on an annual basis, to specifically authorize having their ballots mailed to a vacation destination, a college address on the mainland for a student, a military address for someone in the military, or a similarly convenient location, based on the unique circumstances of the voter.

Planning with the Counties for the 2014 Elections

On January 15, 2013, the Office of Elections and the election administrators for the four counties held a meeting to discuss preparations for the 2014 Elections. Discussions included, among other things, whether any polling place locations should be changed for 2014 and that we had sent letters to the Legislature asking for their input as to whether changes to the polling places or precinct boundary lines should be made.

Election Cases

In regard to Kostick v. Nago, Civ. No. 12-00184 JMS-LEK-MMM, on January 14, 2013, a hearing was held on the parties' cross motions for summary judgment in this reapportionment case. The three judge panel of the United States District Court for the District of Hawaii took the matter under advisement. Nothing of note has occurred in any of the other pending election cases.

A BILL FOR AN ACT

RELATING TO ELECTIONS BY MAIL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 11-91.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~{}~~§11-91.5~~{}~~ Federal, state, and county elections by
4 mail. (a) Any federal, state, or county election ~~[held other~~
5 ~~than on the date of a regularly scheduled primary or general~~
6 ~~election]~~ may be conducted in whole or in part by mail~~{}~~,
7 including the designation of specific precincts or counties for
8 elections conducted in whole or in part by mail.

9 (b) The chief election officer shall determine whether a
10 federal ~~[or]~~ election, state election, ~~[other than a regularly~~
11 ~~scheduled primary or general election,]~~ an election for both
12 state and county offices, or an election for both federal and
13 county offices, may be conducted by mail ~~[or]~~, at polling
14 places~~{}~~, or by a combination of mail and polling places.

15 (c) The county clerk shall determine whether a solely
16 county election~~[, held other than on the date of a regularly~~
17 ~~scheduled primary or general election,]~~ may be conducted by mail
18 ~~[or]~~, at polling places~~{}~~, or by a combination of mail and



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1 polling places. An election by mail in the county shall be
2 under the supervision of the county clerk.

3 (d) Voters may vote by absentee ballot at an absentee
4 polling place. For purposes of an election by mail, the county
5 clerk, or the chief election officer in the case of an election
6 by mail for only state or federal offices, shall designate at
7 least one absentee polling place to be open on the day of the
8 election.

9 (e) Expenses for elections by mail shall be shared as
10 follows:

11 (1) Expenses related to an election by mail involving both
12 state and county offices, or both federal and county
13 offices, and unrelated to voter registration and
14 absentee voting, shall be divided in half between the
15 State and the counties. Each county shall pay a
16 proration of expenses as a proportion of the
17 registered voters at the time of the general election.
18 The counties shall separately be responsible for
19 expenses associated with voter registration and
20 absentee voting.

21 (2) All expenses for a county election by mail that does
22 not involve state or federal offices shall be borne by



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1 the county and paid out of such appropriations as may
2 be made by the council.

3 (3) All expenses for a state or federal election that does
4 not involve county offices, including expenses
5 attributable to registration of voters by the county
6 clerk, shall be borne by the State and paid out of
7 such appropriations as may be made by the legislature.

8 (f) Election responsibilities for elections by mail shall
9 be shared as follows:

10 (1) In an election by mail involving both state and county
11 offices, or both federal and county offices, the
12 counties shall be responsible for voter registration
13 and absentee voting, and the State shall be
14 responsible for the mailing, receipt, processing, and
15 tabulation of ballots;

16 (2) The county shall be responsible for elections by mail
17 involving only county offices; and

18 (3) For elections by mail involving only state or federal
19 offices, the counties shall be responsible for voter
20 registration and absentee voting, and the State shall
21 be responsible for the mailing, receipt, processing,
22 and tabulation of ballots.



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1 ~~[(d)]~~ (g) The chief election officer shall adopt rules
2 pursuant to chapter 91 to provide for uniformity in the conduct
3 of federal, state, and county elections by mail."

4 SECTION 2. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$ or so
6 much thereof as may be necessary for fiscal year 2013-2014 and
7 the same sum or so much thereof as may be necessary for fiscal
8 year 2014-2015 to research and plan an election by mail system.

9 The sums appropriated shall be expended by the office of
10 elections for the purposes of this Act.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on July 1, 2013.

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INTRODUCED BY: _____



S.B. NO.

Report Title:

Office of Elections Package; Elections by Mail; Appropriation

Description:

Expands the authority to conduct elections in whole or in part by mail. Specifies state and county responsibilities for conducting elections by mail. Makes an appropriation.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



A BILL FOR AN ACT

RELATING TO ABSENTEE VOTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 15-4, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§15-4 Request for absentee ballot.** (a) Any person
4 registered to vote may request an absentee ballot or permanent
5 absentee ballot in person or in writing from the clerk at any
6 time but not later than 4:30 p.m. on the seventh day prior to
7 the election. Any mailed requests for an absentee ballot or
8 permanent absentee ballot shall be mailed by the person directly
9 to the clerk. The clerk may waive any or all of the foregoing
10 requirements in special cases as provided in the rules adopted
11 by the chief election officer.

12 The request shall include information such as the person's
13 social security number, date of birth, and the address under
14 which the person is registered to vote. The request shall also
15 include the address to which the person wishes the requested
16 ballot to be forwarded. The request, when made for any primary
17 or special primary election, may include an additional request
18 for an absentee ballot to be voted at any election immediately



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1 following the primary or special primary; provided the person so
2 indicates in the person's request.

3 Subsequent to the closing of registration for each
4 election, the clerk may mail a request form for an absentee
5 ballot and permanent absentee ballot to each voter in a remote
6 area who has not already made such a request. The request form
7 shall be accompanied by:

8 (1) A stamped, self-addressed envelope; and

9 (2) Instructions regarding the manner of completing and
10 returning the request form.

11 (b) Notwithstanding subsection (a), the respective clerk
12 shall be allowed to conduct an absentee ballot-only election and
13 may mail an absentee ballot for each primary, special primary,
14 special, general, and special general election to each
15 registered voter who resides in the county of Kalawao or on any
16 island of a county with a population of less than one hundred
17 eighty thousand, except for the island where the county seat of
18 government is located. The chief election officer may adopt
19 rules to carry out this subsection.

20 (c) Notwithstanding any law to the contrary, in the event
21 there are fewer than five hundred registered voters as of the
22 preceding general election in an area covered by a unique ballot



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1 type, the clerk shall mail an absentee ballot to each registered
2 voter who resides in such an area, if the chief election
3 officer, or the clerk in a county only election, determines that
4 an election day polling place will not be established for such
5 voters.

6 (d) For the purposes of this section, "ballot type" means
7 the unique ballot containing the contests, questions, or issues
8 that will be used by the voters of a specific area.

9 (e) When a registered voter requests an absentee ballot,
10 the voter also may [~~include an additional~~] request to receive
11 absentee ballots permanently. After receiving a request for
12 permanent absentee voter status, the clerk shall mail to the
13 voter who requested permanent absentee voter status an absentee
14 ballot for all subsequent elections conducted in that precinct.

15 (f) The absentee ballot for a voter requesting permanent
16 absentee voter status shall be mailed to the mailing address
17 contained on the voter's most recently completed affidavit on
18 application for voter registration. A permanent absentee voter
19 shall be responsible for providing a written authorization to
20 the clerk to temporarily mail a ballot to an address different
21 from that listed on the voter's most recently completed



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1 affidavit on application for voter registration. The temporary
2 mailing authorization shall:

- 3 (1) Include essentially all information required to apply
4 for an absentee mail ballot; and
5 (2) Be valid for all scheduled elections in the year the
6 authorization is received.

7 ~~[(f)]~~ (g) The chief election officer shall inform voters
8 of the option of applying for permanent absentee voter status
9 and shall provide any necessary form to request the permanent
10 absentee ballot option to any registered voter requesting an
11 absentee ballot and any person applying to register to vote.

12 ~~[(g)]~~ (h) A permanent absentee voter shall be responsible
13 for informing the clerk of any changes to personal information,
14 including changes to the voter's forwarding address.

15 ~~[(h)]~~ (i) A voter's permanent absentee voter status shall
16 be terminated if any of the following conditions apply:

- 17 (1) The voter requests in writing that such status be
18 terminated;
19 (2) The voter dies, loses voting rights, registers to vote
20 in another jurisdiction, or is otherwise disqualified
21 from voting;



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1 (3) The voter's absentee ballot, voter notification
2 postcard, or any other election mail is returned to
3 the clerk as undeliverable for any reason; or

4 (4) The voter does not return a voter ballot by 6:00 p.m.
5 on election day in both the primary and general
6 election of an election year.

7 ~~[(i)]~~ (j) If a voter's permanent absentee voter status has
8 been terminated due to one or more of the conditions specified
9 in subsection ~~[(h)]~~ (i), the voter shall be responsible for
10 again requesting permanent absentee status as specified in
11 subsection (e)."

12 SECTION 2. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: _____



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Report Title:

Permanent Absentee Voting; Office of Elections Package

Description:

Requires the absentee ballot for a voter requesting permanent absentee status to be mailed to the mailing address contained on the voter's most recently completed affidavit on application for voter registration, unless the voter submits a temporary mailing authorization for the absentee ballot to be mailed to a different address.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



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.
- \$3-175-3 Board of Registration.
- \$3-175-4 Ballot packet; contents.
- \$3-175-5 Mailing of ballots; date
- \$3-175-6 Absentee polling place.
- \$3-175-7 Voter procedure.
- \$3-175-8 Return of ballots; postage.
- \$3-175-9 Ballot collection sites; private collection sites prohibited.
- \$3-175-10 Ballot cast upon receipt; replacement ballot.
- \$3-175-11 Submittal of ballots; deadline.
- \$3-175-12 Extension of deadline for receiving ballots.
- \$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 09 2010** (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)]

§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

ballot or voting at the absentee polling place.
[Eff JAN 09 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 09 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 09 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 09 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 09 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS

§§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 09 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 09 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 09 2010** (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5, 128-9)

§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 09 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 09 2010**] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§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 09 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 09 2010**] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5, 11-131)