



**STATE OF HAWAII  
OFFICE OF ELECTIONS**

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SCOTT T. NAGO  
CHIEF ELECTION OFFICER

May 8, 2013

To: Elections Commission

From: Scott T. Nago  
Chief Election Officer

Re: STATUS OF OPERATIONS

The Office of Elections has been focused on the following items since our last meeting: (1) legislation; (2) standard operating procedures; (3) political party status; (4) personnel; and (5) the online voter registration project.

Legislation

The Office of Elections has been testifying and monitoring election related bills this legislative session. The following election related bills, which impact our operations or that of the county clerks, have been passed and are pending approval from the Governor:

1. SB 3, SD 1, HD 2, CD 1 Relating to the Office of Hawaiian Affairs

The purpose of this bill is to provide for the election of Office of Hawaiian Affairs board members through a system of nonpartisan primary and general elections beginning in 2014. Currently board members are only elected through a special election held in conjunction with the General Election.

2. SB 827, SD 1, HD 1 Relating to Election Offenses

The purpose of this bill is to expand the law to prohibit candidates and their agents from assisting voters with completing absentee ballots or ballots in the polling place. Currently, only a voter's employer, agent of the employer, and an agent of a voter's labor union are prohibited to provide direct assistance. Such conduct constitutes an election fraud, punishable by a fine or imprisonment for up to two years, or both. Additionally, the individual would be disqualified from voting, being elected, holding, or occupying any office, either elective or appointive.

The bill also provides that the return envelope for absentee ballots will include an affirmation, to be signed by the voter, stating that the voter's employer or agent of the employer, agent of the voter's labor union, or any candidate listed on the ballot did not assist the voter. The voter will also be provided materials summarizing the criminal provisions related to election offenses.

#### Review of Standard Operating Procedures after the 2012 Election Cycle

We have been updating our standard operating procedures based on our experience in the last election cycle. This includes updating our standard operating procedure for ballot orders, to build in redundancies, to ensure the following: (1) ballots in excess of 100% of our registered voter count will be ordered; (2) utilization of absentee mail and absentee walk ballots by registered voters will be closely monitored; (3) the exact amount of registered voters remaining that are eligible to vote at the polling place will be known; (4) a ballot will be available for every voter who goes to the polling place (i.e. we will assume a 100% turnout rate for all remaining registered voters); and (5) the Chief Election Officer's authorization will be obtained at every step of the process.

#### Status of Political Parties after the 2012 Election Cycle

At the end of each election cycle, the law provides that we review and calculate whether a political party has obtained the requisite amount of votes for specific offices to see if it automatically qualifies for political party status for the next election cycle or if the party should be subject to disqualification. HRS §§ 11-61 & 11-65. A political party can avoid disqualification if it has met the requisite vote requirements or has petitioned to be a political party for three election cycles. If so, then the political party is granted political party status for a ten year period, during which, even if it fails to obtain the requisite amount of votes that would normally be required, it remains a political party and is able to have its candidates placed on the ballot.

In performing this review it was determined that the Democratic Party of Hawaii and the Hawaii Republican Party had received sufficient votes and would continue to be eligible. The Libertarian Party of Hawaii and Americans Elect Party of Hawaii did not receive sufficient votes and as such were disqualified as political parties. The Green Party of Hawaii, while not receiving the requisite amount of votes, continues as a political party, as it successfully petitioned in 2008, 2010, and 2012 to be a political party, resulting in its status as a political party for a ten year period.

With the disqualification of political parties following the 2012 General Election being completed, groups, such as the Libertarian Party of Hawaii, have started contacting the Office of Elections to begin the process of petitioning to form a recognized political party for ballot purposes. The petition process requires that these groups obtain signatures of currently registered voters comprising not less than one-tenth

of one per cent of the total registered voters of the state as of the last preceding General Election (i.e. 705,668 registered in 2012 General Election = 706 signatures required), in addition to filing party officers and party rules, by the statutory deadline, which is February 20, 2014. HRS § 11-62.

Personnel

We have been working with the Department of Accounting and General Services- Personnel Section (DAGS-Personnel) and the Department of Human Resources Development (DHRD) and it is expected that the last of the section head positions will be converted to civil service around the end of the fiscal year. After that DAGS-Personnel and DHRD will turn their attention to the remaining positions scheduled for conversion. It is our understanding that the conversion of those positions will greatly benefit from DAGS-Personnel and DHRD's familiarity with Office of Elections operations acquired through the earlier conversion of the section head positions.

Utilization of Help America Vote Act Funds

The Help America Vote Act of 2002 (HAVA) followed in the aftermath of the 2000 Bush v. Gore presidential election. The law required each state to develop a comprehensive plan for implementing various HAVA mandates related to improving the conduct of elections. Along with these mandates, the federal government authorized grant money to help implement the mandates. The state plan includes a general budget for the utilization of the funds.

For ease of reference, the following is a quick chart of the sections of HAVA that serve as authorization for grant money, along with the permissible uses for the funds associated with each section.

<p>Title I, Section 101 <i>Election Administration Improvement Payments</i></p>	<ul style="list-style-type: none"><li>• Complying with the requirements under Title III (uniform and nondiscriminatory election technology and administration requirements).</li><li>• Improving the administration of elections for Federal office.</li><li>• Educating voters concerning voting procedures, voting rights, and voting technology.</li><li>• Training election officials, poll workers, and election volunteers.</li><li>• Developing the State plan for requirements payments to be submitted under part 1 of</li></ul>
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	<p>subtitle D of Title II.</p> <ul style="list-style-type: none"> <li>• Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.</li> <li>• Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.</li> <li>• Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.</li> </ul>
<p>Title II, Section 251  <i>Requirements Payments</i></p>	<p>Compliance with HAVA Title III requirements for:</p> <ul style="list-style-type: none"> <li>• Equipment that meets voting systems standards;</li> <li>• Provisional voting;</li> <li>• Voting information;</li> <li>• Statewide voter registration list;</li> <li>• Voters who register by mail.</li> </ul>

The federal funds are disbursed by the U.S. Election Assistance Commission, which was established by HAVA to help the states in complying with its mandates. Among its duties is the auditing of states regarding their utilization of HAVA grant monies.

In addition to the responsibility to use HAVA funds for only HAVA purposes, the law requires that as a condition to the receipt of Section 251 Requirements Payments, the state must appropriate matching funds “equal to 5 percent of the total amount to be

spent for such activities (taking into account the requirements payment and the amount spent by the State.” Section 253(b)(5) (i.e. [Requirements Payment + (.05 x Requirements Payment)] x .05 = Matching Funds).

Further, the State is required to establish an election fund to hold the HAVA funds and any interest that may accrue.

Finally, the State is required to comply with a maintenance of effort (MOE) requirement in terms of our utilization of state funds. Essentially, the federal funds are meant to only supplement those state funds that would already be in place for election activities related to the purpose of HAVA. In other words, the utilization of federal funds, cannot serve as a basis to reduce state funding for elections (i.e. federal funds cannot be used to supplant state funds). With this in mind, HAVA makes the acceptance of federal funds contingent on “maintain[ing] 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 Fiscal Year 2000.” Section 254(b)(1). The level of such expenditures in Fiscal Year 2000 was \$2,299,552. As such, the Office of Elections’ general fund budget is always required to meet that amount, in order to retain the previous grant money and to qualify for new disbursement of grants associated with HAVA.

The Office of Elections has been awarded \$18,028,257 in Section 101 and Section 251 funds. The Section 101 award was a one time payment of \$5,000,000 in 2003. The remaining \$13,028,257 in Section 251 funds, is the result of awards in 2003 (\$4,150,000), 2004 (\$7,446,803), 2008 (\$575,000), 2009 (\$500,000), 2010 (\$350,000), and 2011 (\$6,454). While we have been awarded funds for 2010 and 2011, the transfer of said funds has not occurred yet. We expect that it will occur within the next couple of months after the EAC issues the necessary paperwork for the electronic transfer of funds.

The awarding of funds to the states depends on whether Congress appropriates any money in that particular year and the state’s certification that it continues to be in compliance with HAVA. The actual amount awarded to each state is based on a calculation utilizing the voting age population of each state as compared to the overall national voting age population as reported in the last decennial census. However, the minimum amount that any state may receive is ½ of 1 percent of the total appropriation for requirements payments. Section 252. The State of Hawaii, along with Alaska, Delaware, District of Columbia, Idaho, Maine, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, Vermont, and Wyoming, are provided the minimum payment of ½ of 1 percent, given that the size of their voting age population, would have resulted in a smaller payment.

In terms of planning by the states to ensure continued HAVA compliance, it has been frequently stated by the federal government that there should be no expectation

by the states that additional awards will occur in the future. The majority of all of the funds were awarded in 2003 and 2004 to assist states in meeting the large capital costs associated with upgrading their voting systems. The next series of Section 251 awards 2008, 2009, 2010, and 2011 were significantly less, and most recently there have been no awards.

In regard to expenditures, the largest expenditures were in 2004, 2006, and 2008, when the State was solely responsible for the expenses related to the direct recording electronic voting machines (DREs) required for disability access under HAVA. The rest of the voting system contract, consisting of standard precinct counters, central counters, associated hardware, software, and professional services was split equally between the State and counties. Between 2003 and September 30, 2009, a total of \$11,331,064 was spent in HAVA funds.

Since that time, the expenditures have been significantly less, given that the State and counties split the entire cost of the voting system cost, including the DREs. As such, expenditures have been focused on voter education advertising, personnel costs related to voter education and polling places, and some intermittent costs related to special elections. Most recently, in 2012, the State spent \$260,266.65 in HAVA funds.

The current HAVA balance is \$6,354,895. The funds are primarily earmarked for developing a new statewide voter registration system to replace the current statewide voter registration system housed with the City and County of Honolulu. The statewide voter registration system is discussed in greater detail below, as part of the discussion of the status of the online voter registration projection.

#### Status of Online Voter Registration Project (Act 225, SLH 2012)

The 2012 Legislature amended our voter registration laws to permit individuals who have a valid government-issued identification that is capable of electronic confirmation to be able to register electronically. Act 225, SLH 2012.

Essentially, the use of an electronic application “constitute[s] consent for election officials to obtain confirmatory information regarding the applicant from government databases associated with government-issued identification, including the applicant’s signature.” HRS § 11-15.3(c).

It was noted at the time of passage of the bill that there could be various technological issues that would need to be overcome and unknown expenses associated with compliance. As such, the Legislature authorized \$500,000 for fiscal year 2012-2013, for the planning and designing of the system with any remaining funds being permitted to be used to implement the online voter registration system.

Additionally, in recognition of the technological issues that needed to be addressed, the online voter registration requirements of the law are not effective until the 2016 Primary Election.

In regard to government-issued identification, the Department of Transportation is in charge of both driver license and state identification. However, the Department of Transportation has delegated the maintenance of these databases to the City and County of Honolulu (City), where the databases are housed.

The current statewide voter registration system is also housed with the City. The counties, who are statutorily responsible to register voters and to maintain their respective county voter registration rolls, entered into a cooperative agreement with the City, in 1981, to create a statewide system. HRS §§ 11-11 & 11-14.

Essentially, the City offered to include the other counties into its voter registration system. This was beneficial to all counties involved as HRS § 11-14(c) provides that “[v]oter registration information that is collected and maintained by the clerk of each county may be transmitted to a central file for the purpose of correlating registration data to prevent or detect duplicate voter registrations and for the compilation of election reports.”

Another advantage of the current statewide voter registration system being housed and operated by the City on behalf of the State, as previously mentioned, is that the City also maintains the computerized driver licensing application and state identification card system. As such, upon entry, each voter registration record is immediately cross-checked against the driver licensing records.

The current system operated well for at least twenty years before HAVA became law in 2002. Section 303 of HAVA provides that “each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State.” 42 USC § 15483.

Any statewide voter registration system must comply with this section. HAVA is clear that “the specific choices on the methods of complying with the requirements of [Title III of HAVA] shall be left to the discretion of the State.” Federal grant monies were provided to accomplish the various purposes of HAVA. This includes approximately \$4,000,000 which was originally earmarked for a statewide voter registration system.

When HAVA was passed, the State reflected on whether the current statewide voter registration system could be considered “defined, maintained, and administered at the State level” as the system was housed at the City and County of Honolulu on behalf of the State and the other counties. Our position then and now is that the City and

County of Honolulu and the other counties (1) statutorily act as state agents of the Chief Election Officer given our state laws and administrative rules treating voter registration as a matter of state concern; (2) the Chief Election Officer is statutorily authorized to delegate responsibilities to the county clerks; and (3) the Chief Election Officer may promulgate rules and regulations governing elections and election procedures, which includes voter registration. HRS §§ 11-2 & 11-4. With this understanding, the Chief Election Officer, through its agents the county clerks, comply with this provision. We have never been challenged on this matter and the federal government is well aware of our statewide voter registration system.

Given the foregoing, with the passage of Act 225, SLH 2012, the development of an intergovernmental agreement with the City for an online voter registration system appeared the most logical course to explore.

The Office of Information Management Technology (OIMT) for the State was notified of the project and its approval was sought to develop an online voter registration system through an agreement with the City to supplement the current statewide voter registration system, or in the alternative to develop with a private consultant, a new statewide voter registration system that would include an online voter registration system. Approval was granted for the project by OIMT.

With OIMT's approval we were able to have further discussions with the City's Election Administrator about a possible intergovernmental agreement, which would benefit both parties in regards to improving voter registration. These discussions ultimately resulted in a meeting between the Chief Election Officer, City Managing Director, City Department of Information Technology Director, and City Election Administrator. Unfortunately, the City declined our offer as it has had other information technology demands that took priority.

This has resulted in the decision to move forward with the migration of the statewide voter registration system from the City's mainframe to a new system that will be housed with the State, and that will include an online voter registration component.

As a result of this, we have procured a professional services consultant to work with us on developing and designing a new statewide voter registration system, with an online voter registration component, that will be able to communicate with the driver license and state identification card databases, and that will be housed with the State. Given the counties and State's responsibilities regarding voter registration under state and federal law, we will be working closely with the counties in developing the new statewide voter registration system.

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