

Implementing Elections by Mail

November 18, 2022

This report has been prepared by the Office of Elections pursuant to Act 136, Session Laws of Hawaii 2019.

For additional information or questions, please contact the Office of Elections by emailing elections@hawaii.gov or by calling (808) 453-VOTE (8683) or toll-free 1-800-442-VOTE (8683).

2022 ELECTIONS CALENDAR

Tuesday, March 1	Pick up nomination paper from the Office of Elections or County Elections Division (HRS §12-2.5)
Tuesday, June 7	Last day to file nomination papers with the Office of Elections or County Elections Division (HRS §12-6)
Wednesday, June 8	Submit a request to withdraw from the Primary Election for any reason to the Office of Elections or County Elections Division (HRS §11-117)
Tuesday, June 14	File written objections to nomination paper with the Office of Elections, County Elections Division, or Circuit Court (HRS §12-8)
Friday, June 24	Submit a request to withdraw from the Primary Election for reasons of ill health to the Office of Elections or County Elections Division (HRS §11-117)
Wednesday, June 29	Mail Primary Election ballots to overseas voters (52 USC §20302 & HRS §15D-9)
Saturday, July 23	Submit names of voter service center watchers for the Primary Election to the County Elections Division (HRS §11-77)
Tuesday, July 26	Voters start receiving Primary Election mail ballot packets at least 18 days prior to the election (HRS §11-102). Places of deposit may open as early as the mailing of ballots, as determined by the County Elections Division (HRS §11-109)
Monday, August 1	Open voter service centers and same day voter registration for the Primary Election (HRS §§11-15.2 & 11-109)

Wednesday, August 3	Deadline to submit paper Voter Registration Application for the Primary Election to the County Elections Division. (HRS §11-24). Paper applications must be postmarked to your County Elections Division by this date. After this date, applicants may continue to register for the Primary Election using the Online Voter Registration System or at a voter service center (HRS §11-15.2)
Saturday, August 6	Last day to request an absentee mail ballot for the Primary Election from the County Elections Division (HRS §15-4)
Saturday, August 13	PRIMARY ELECTION (HRS §12-2) Voter service centers and places of deposit close. Voted ballots must be received by the County Elections Division by 7:00 p.m. (HRS §§11-104 & 11-131)
Thursday, August 25	Submit Constitutional Amendment questions, County Charter Amendment questions, and County Initiative questions to the Office of Elections (HRS §11-119)
Friday, August 26	File complaint on contests for cause in the Primary Election with the Hawaii State Supreme Court (HRS §11-173.5)
Monday, September 19	Submit a request to withdraw from the General Election for reasons of ill health to the Office of Elections or County Elections Division (HRS §11-117)
Friday, September 23	Mail General Election ballots to overseas voters (52 USC §20302 & HRS §15D-9)

Wednesday, October 19	Submit names of voter service center watchers for the General Election to the County Elections Division (HRS §11-77)
Friday, October 21	Voters start receiving General Election mail ballot packets at least 18 days prior to the election (HRS §11-102). Places of deposit may open as early as the mailing of ballots, as determined by the County Elections Division (HRS §11-109)
Tuesday, October 25	Open voter service centers and same day voter registration for the General Election (HRS §§11-15.2 & 11-109)
Monday, October 31	Deadline to submit paper Voter Registration Application for the General Election to the County Elections Division. (HRS §11-24). Paper applications must be postmarked to your County Elections Division by this date. After this date, applicants may continue to register for the General Election using the Online Voter Registration System or at a voter service center (HRS §11-15.2).
Tuesday, November 1	Last day to request an absentee mail ballot for the General Election from the County Elections Division (HRS §15-4)
Tuesday, November 8	GENERAL ELECTION (State Constitution, Article II, Section 8) Voter service centers and places of deposit close. Voted ballots must be received by the County Elections Division by 7:00 p.m. (HRS §§11-104 & 11-131)
Monday, November 28	File complaint on contests for cause in the General Election with the Hawaii State Supreme Court (HRS §11-174.5)

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INTRODUCTION

The Office of Elections' mission is to provide secure, accessible, and convenient election services to all citizens statewide. The goals and objectives of this office are to 1) conduct honest and efficient elections; 2) encourage participation in the electoral process; 3) protect voter rights; and 4) promote elections. Our duties and responsibilities include conducting candidate filing; printing, counting, and tabulating ballots; and providing voter education.

Act 136, Session Laws of Hawaii (SLH) 2019, transitioned the state to elections by mail from a polling place model. Even though elections by mail builds off the prior foundation of absentee mail, absentee walk locations, special elections by mail, and other election administration processes, the transition is understood to involve a significant change in the administration of elections. Given this, Section 59 of the Act requires a report to the Legislature prior to it convening in 2020, 2021, 2022, 2023, and 2024 addressing the following:

- (1) The office's progress in implementing this Act;
- (2) A summary of the office's discussions with the county clerks to determine areas of joint implementation of this Act;
- (3) A summary of the expenditures required to implement this Act and a comparison of those expenditures with the expenditures required to conduct elections or election-related activities before the enactment of this Act;
- (4) Any additional resources the county clerks or the office may require to implement this Act;
- (5) Any developments in assistive technology that may be implemented by the State, the counties, or nonprofit associations to ensure that persons with disabilities are not, on the whole, disadvantaged by implementation of this Act, including the costs associated with such technology;

- (6) Any difficulties encountered in the implementation of this Act;
- (7) Specific steps taken and recommendations necessary to prevent fraud and ensure the integrity of the election process; and
- (8) Any other findings and recommendations, including any proposed legislation necessary to clarify and make consistent chapters 11, 12, 15, 15D, 16, and 19, Hawaii Revised Statutes, in light of the transition to statewide elections by mail.

The prior reports, dated November 6, 2019; December 31, 2019; November 20, 2020; and November 18, 2021; additionally provided the following: 1) an extensive background on the history of voting in our state; 2) a statutory review of Act 136, SLH 2019; 3) a discussion of the planned implementation of elections by mail, including the sharing of responsibilities with the counties and fiscal matters; 4) a summary of the execution of elections by mail, against the backdrop of the COVID-19 pandemic, for the 2020 Elections; and 5) other legislative recommendations to improve on the system. The present report builds off these past reports and is focused on addressing the implementation of elections by mail for the 2022 Elections and making recommendations to improve on the system based on those experiences.

LEGISLATIVE CHANGES TO ELECTIONS BY MAIL

Following the 2020 Elections, various election laws were passed during the 2021 and 2022 sessions of the Legislature (i.e., 2021 Legislative Session - Acts 7, 14, 126, and 213; and 2022 Legislative Session - Acts 4, 47, 164, and 166). Many of these laws were discussed in detail in *Implementing Elections by Mail*, dated November 18, 2021. However, for purposes of this report, we will highlight the main changes that impacted the implementation of elections by mail for the 2022 Elections.

Act 7, SLH 2021, repealed the requirement that election proclamations contain a statement of the time and places where an election is to be held and specified that the county clerk, not the chief election officer, shall issue the election proclamation listing information on voter service centers and places of deposit. This was consistent with the statutory authority the county clerks already had to operate the voter service centers and

places of deposit. Additionally, it permitted the county clerks to promptly inform voters of any changes to the voting and ballot drop box locations, especially in the case of a natural disaster when time is of the essence, as opposed to requesting the Office of Elections to issue a county-specific proclamation.

Act 14, SLH 2021, addressed a variety of matters associated with the decennial reapportionment process that was to immediately precede the 2022 Elections. Chief among these was the expected delay in the completion of the reapportionment process due to a COVID-19 delay in the provision of data by the U.S. Census Bureau. Specifically, this Act changed the opening of candidate filing from the first working day of February to the first working day of March, solely for the 2022 Elections, to account for the delay. HRS § 12-2.5.

Act 213, SLH 2021, made various changes to elections by mail. Of these changes, the largest impact on the implementation of elections by mail involved the electronic transmission of ballots and their return, the extension of the voter registration deadline to expand access to the ballot, the earlier receipt and processing of ballots, the earlier opening of places of deposit, and greater flexibility for the county clerks in terms of opening voter service centers.

ELECTRONIC TRANSMISSION

In terms of the electronic transmittal of ballots, we made the necessary changes to the voter registration application to permit voters who could not read standard print due to a disability to be able to request that a ballot be transmitted electronically. HRS § 11-15.

Additionally, we implemented a new provision of HRS § 11-107 allowing any voter with an electronic ballot to return their ballot without a waiver of secrecy if they return it in a signed return identification envelope. Specifically, a voter who received a ballot in the mail but who could not mark it could choose to request an electronic ballot, fill it out, enclose it in the original return identification envelope, sign the affirmation on the envelope, and then return it by mail or in person at place of deposit, voter service center, or at the office of the county clerk.

Finally, we implemented another provision of HRS § 11-107 that allowed special needs voters to return their ballot electronically without the need for a secrecy waiver.

Specifically, the statute authorized a voter with special needs to use "a means of electronic authentication that does not include the voter's handwritten signature or a waiver of secrecy." With this in mind, we worked with our vendor to provide a voter with special needs a means of electronic authentication.

VOTER REGISTRATION DEADLINE

A combination of statutory changes in Act 213, SLH 2021, expanded the opportunity of individuals to register to vote and extended the deadline for mailing ballots to those individuals. Specifically, HRS § 11-24(a) was amended to provide that the close of registration would be on the 10th day prior to each election, as opposed to the 30th. Additionally, HRS § 11-24(b) was amended to provide that the clerk may accept an application on the 10th day if it was received electronically in accordance with HRS § 11-15.3, as part of a driver license transaction, or if postmarked by the 10th day prior to the election. Finally, HRS § 11-15.2 was amended to provide that one could register online to vote, in addition to in person at a voter service center, after the closing of the general register under HRS § 11-24. Voter service centers, as provided for in HRS § 11-109, are open from the 10th business day preceding the election through the close of voting on election day. The result of these statutory changes was that functionally voter registration, in one fashion or another, could continue up to and included the day of the election itself.

EARLIER RECEIPT AND PROCESSING OF BALLOTS

Prior to Act 213, SLH 2021, ballots were to be mailed so they would be received approximately 18 days prior to the election. However, the new law provided that ballots were to be received at least 18 days before the election. HRS § 11-102. Additionally, the law was changed from saying ballot processing could begin no earlier than the 10th day prior to the election to no sooner than the 18th day prior to the election. HRS § 11-108.

PLACES OF DEPOSIT

As for places of deposit, the new law changed their opening from no earlier than the 5th business prior to "as early as the mailing of ballots by the clerks." HRS § 11-109(d).

VOTER SERVICE CENTERS

In regard to voter service centers, while the time frame of being open from the 10th business prior to an election remained the same for the main voter service center in

each county, the law was changed to provide that a county "may operate additional voter service centers with varying days or hours of operation to service the voters of particular areas that otherwise could not support the operation of a voter service center for ten business days or the same times statewide." This provided greater flexibility for the county clerks to meet the needs of their voters in establishing voter service centers. HRS § 11-109(b).

VOTING AND VOTE COUNTING SYSTEM AND ANCILLARY SERVICES CONTRACT

As noted in our prior reports, *Implementing Elections by Mail*, dated November 20, 2020, and November 18, 2021, the 2020 Elections were conducted under the old voting system contract that was in its last election cycle.

In terms of future elections, the State issued a request for proposals for a voting and vote counting system, along with ancillary services, for the 2022 through 2026 Elections. The contract was ultimately awarded to Hart InterCivic, the same vendor that we worked with since the 2008 Elections. Its new system reflected the latest technology and had been tested and certified to comply with applicable federal voting system guidelines.

The contract addressed the provision of ballots, voting equipment, and ancillary services for the voter service centers and counting centers. These ancillary services addressed various matters, such as the following: 1) election programming; 2) ballot printing and mailing; 3) voting equipment maintenance, operation, testing, training, troubleshooting, and storage; and 4) accumulation, transmission, and production of election reports during the term of the contract.

With the benefit of the 2020 Elections having been conducted, we discussed with the counties how operations could be improved. This included, among other things, the obtaining of additional voting equipment and technical services to support the existing voter service centers and counting centers, along with the expansion of the number of voter service centers for the 2022 Elections and beyond. As such, we renegotiated the contract with the vendor and paid for the additional cost with federal funds from the Help America Vote Act.

VOTING SYSTEM BIENNIUM BUDGET

It is important to note that the structure of elections by mail results in the State initially needing to budget for the entire cost of the voting system for purposes of its biennium budget, even though the counties, who do not operate under a biennium budget, will eventually pay half of the cost of the voting system over the course of each election cycle.

Specifically, in combined state and county elections (i.e., the Primary Election and General Election), the State and the counties have separate duties and responsibilities. HRS § 11-110(b). The State, among other things, is responsible for the voting system. HRS § 11-110(b)(1)(B) (i.e., "The State shall be responsible for the printing and counting of ballots"), while the counties are responsible for various matters, such as voter service centers and places of deposit. HRS § 11-110(b)(1)(A).

Given this, the State is the signatory to the voting system contract and is obligated to pay the vendor each election cycle. As such, the State must initially budget to ensure it has sufficient funds for the entire cost of the contract. The contract provides for the vendor to be paid half toward the end of the first fiscal year of the biennium budget, and the other half after the conclusion of the election cycle during the second fiscal year of the biennium budget.

Having said that, at the end of the election cycle, the State and counties split the overall cost of the election cycle. This involves a process offsetting each other's expenses and billing for what remains. HRS § 11-110(a)(1). Only at the end of the election cycle do the State and counties know exactly how much their share will be as unexpected expenditures may have needed to have been made by their counterpart.

As the cost of the voting system is a fixed and significant amount, it is generally in everyone's interest from a budgeting perspective to attempt for the State and counties to pay their respective shares over the course of the two fiscal years, as opposed to allowing such a significant expenditure to be resolved at the end.

With this in mind, each fiscal year, the counties pay the vendor for their share of what the State would otherwise have to entirely pay under the contract. This functionally results in the State only needing to pay for half of the contract (i.e., the State and counties each pay 25% in the first fiscal year and similarly 25% in the second fiscal year of the biennium), and for a large part of the previously mentioned proration process to be resolved by the end of the election cycle.

VOTER EDUCATION

As a result of our positive experience in 2020 partnering with a marketing agency to assist with our voter education program, we elected again to use federal funds to issue and award a procurement for similar services. These services include providing and designing collateral materials, such as our advertisements and election brochure that we use for voter education. Additionally, the marketing agency assisted in the development of our media campaign, producing our radio, television, and print ads to help raise awareness about important election dates and deadlines.

The 2022 media campaign emphasized voter registration, election dates and deadlines, and ballot tracking. The campaign kicked off in July informing voters that they would be expecting their ballot in the mail by July 26 for the Primary, and encouraged voters to confirm that their voter registration was up to date to ensure that their ballot is sent to the correct address. In late July, the campaign shifted to inform voters of their options to return their voted ballot and the deadline to return the voted ballot. Additionally, the campaign included messaging on how voters could track their ballot using BallotTrax. A similar campaign was executed for the General Election.

In regard to voter outreach, our office produced a monthly video series, "Hawaii Votes," and a newsletter that covered various election and voting topics that included candidate filing and ballot access, voting by mail, voting options for voters with disabilities, and tips and reminders for voters when casting their ballot. The newsletter and video were posted on our website and distributed to various groups, organizations, and government agencies to disseminate within their network. Additionally, voters could sign up on our website to receive these resources.

To further promote the new ballot tracking service, our office partnered with the Hawaii State Library System to include tabletop signs at all library locations to inform the public about the new service and how to sign up.

Our office also conducted voter education presentations to raise awareness about voting options for voters with disabilities. The presentation, conducted in all 4 counties, included a demonstration of the accessible voting equipment used at voter service centers. Advocates and government agencies for the disability community participated in the event and were able to get hands-on experience with the accessible voting equipment.

EXPENSES

As indicated in previous reports, prior to elections by mail, the budgetary focus was on the voting system, election day officials, and staffing. Now, the focus is on the voting system, staffing, mailing house services, and postage. The end result has been that expenses have largely been redistributed, but the overall cost of our elections has been comparable to prior years.

In terms of the present year, the law provides for a detailed proration process between the Office of Elections and the counties.

All expenses related to elections by mail involving both state and county offices, or involving both federal and county offices, unrelated to voter registration, shall be divided in half between the State and the counties. To the extent that a particular expense is shared statewide, each county shall pay a proration of expenses as a proportion of the registered voters at the time of the general election. The counties shall separately be responsible for expenses associated with voter registration.

HRS § 11-110(a)(1).

Given this, Office of Elections and the counties will proceed to go through a detailed proration process following the conclusion of the election cycle. This process will provide the opportunity for each jurisdiction to account for their expenditures. A determination will then be made as to any reimbursements the Office of Elections or any county may be entitled to. Any reimbursement payments will be made by the end of the fiscal year out of the funds in each jurisdiction's budget for the election cycle.

2022 PRIMARY ELECTION

OPENING OF CANDIDATE FILING

On March 1, 2022, candidate filing opened. As this election cycle followed the recent decennial reapportionment and redistricting process, new districts for offices that were not at-large offices were used. Additionally, new precincts for voters had to be established to take into account the intersecting boundary lines of the new districts for different offices.

PROCLAMATION

On May 10, 2022, the proclamation, naming the time, place, and manner of the upcoming elections, as well as the voter service centers and places of deposit, was issued jointly by the Chief Election Officer and the county clerks.

CLOSE OF CANDIDATE FILING

The close of candidate filing occurred on June 7, 2022. A total of 394 candidates filed their nomination paper to be a candidate in one of the 118 seats spread across the 248 district/precincts.

MILITARY AND OVERSEAS BALLOTS

After the close of candidate filing, election officials proofed and finalized the ballots to meet the deadline in the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and its state counterpart to transmit ballots at least 45 days in advance of an election. Given this, ballots were sent out to these voters by June 29, 2022. A total of 154 ballots were transmitted for the primary election.

OFFICIAL OBSERVERS' TEST

The next milestone was conducting the official observers' test, a logic and accuracy test of the voting equipment deployed to the voter service centers. Official Observers marked test ballots and created their tally of expected results to reconcile with the voting equipment tabulated results. After confirming the voting equipment counted the ballots logically and accurately, the Official Observers witnessed the sealing of the equipment for the Primary Election.

BALLOT MAILING TO GENERAL PUBLIC

The next milestone was the mailing of ballots to non-UOCAVA voters so they would be received by at least July 26, 2022, 18 days prior to the Primary Election. This deadline required coordination with the County Elections Divisions, USPS, and the mailing house vendor. Ballots for the City and County of Honolulu were delivered to USPS for mailing on July 20 and 21, 2022, while neighbor island ballots were delivered to USPS on July 22, 2022. The County Elections Divisions provided notice of the mailing dates and coordinated the opening of their ballot drop boxes.

BALLOT TRACKING SERVICE

This year included the implementation of a ballot tracking service, BallotTrax, that provided voters the opportunity to sign up to receive text, email, or voice alerts letting them know where their ballot was in the voting process. Specifically, voters who signed up were notified when their ballot had been mailed and received and accepted for counting by the counties. Reminders were also sent to voters to return their ballot as the deadline approached for the Primary Election. Further, voters were notified if there was an issue with their signature on their return ballot envelope to be cured, so it could be counted. Ultimately, over 13,000 voters signed up for ballot tracking alerts during the Primary Election, giving them that peace of mind that their unvoted ballot was on its way to them, and that their voted ballot had been received and accepted for counting by election officials.

STATEWIDE OBSERVERS' TEST

The statewide observers' test was conducted on July 30, 2022. The test involved the counting center voting equipment and tabulation application. It was conducted simultaneously at the 4 counting centers across the state, as the test included verifying a statewide compilation report of the results from the counting centers.

PROCESSING VOTED BALLOTS

The counting centers were opened across the state beginning on August 2, 2022, to process voted ballots validated by the respective County Elections Divisions. The processing of voted ballots at the counting center involved opening return identification envelopes and scanning the ballots into the voting system. However, no tabulation report was compiled until the day of the Primary Election.

Depending on the date of receipt of the ballots, there would typically be at least a day delay between receipt of the ballot and their availability to the counting center for processing. Specifically, one needs to account for the receipt and validation of the ballot return envelopes by the County Elections Divisions, which involves confirming that everything is in order, including that the signatures have been verified.

This is an important point, as the day of the Primary Election at the counting centers involved two main groups of return identification envelopes: 1) the normal return identification envelopes that were received by the County Elections Divisions the day prior and that completed validation and transfer to the counting center on Election Day;

and 2) the Election Day return identification envelopes that were collected late in the day (e.g., the last mail delivery prior to the close of voting and return identification envelopes dropped off by the close of voting at places of deposit and County Elections Divisions) and that were validated and transferred to the counting center later in the day or the following day. This functionally, as will be reflected below in the election results, creates various periods of time in which validation by the County Elections Division or processing by the counting center could or could not occur. The intersection of these periods of time concluded with the final results for the Primary Election, with the exception of cured ballots and similar matters, depending on the county, not being able to be issued until the evening of the following day.

PRIMARY ELECTION DAY & ELECTION RESULTS

On Primary Election Day, August 13, 2022, the lines at the voter service centers were manageable. This was due to the vast majority of voters having voted prior to Election Day. Having said that, the election system was taxed due to a significant number of return identification envelopes returned in the mail and at places of deposit on the final day.

The Office of Elections periodically published summary reports of the then-current election results on its website at <https://elections.hawaii.gov/election-results/> from the close of voting on Election Day to the last ballot being counted on August 25, 2022. In total, the Office of Elections published 5 statewide summary reports. Additionally, the Office of Elections published county specific summary reports in connection with each time additional ballots were counted at a counting center. Also, results associated with statutorily mandated recounts were posted to the website. Finally, the Office of Elections' website includes a statewide precinct detail report that was issued at the conclusion of the counting of ballots.

The first 4 reports, as will be detailed below, were issued within 24 hours of the close of voting, along with county-specific reports.

The first statewide report entitled "PRIMARY ELECTION 2022 – State of Hawaii – Statewide, August 13, 2022, SUMMARY REPORT, Report 1" was printed on August 13, 2022, at 7:03 p.m. and published after the voter service centers statewide were confirmed to be closed on the Office of Elections' website. This report included the majority of ballots that had been validated and provided to the counting centers up to that day prior to the close of voting.

The second statewide report entitled “PRIMARY ELECTION 2022 – State of Hawaii – Statewide, August 13, 2022, SUMMARY REPORT, Report 2” was printed on August 13, 2022, at 10:26 p.m. and published that day on the Office of Elections’ website. This report included the majority of voter service center ballots that had been counted at the voter service centers and additional ballots received by mail and places of deposit.

The third statewide report entitled “PRIMARY ELECTION 2022 – State of Hawaii – Statewide, August 13, 2022, SUMMARY REPORT, Report 3” was printed on August 14, 2022, at 12:56 p.m. and published that day on the Office of Elections’ website.

The fourth statewide report entitled “PRIMARY ELECTION 2022 – State of Hawaii – Statewide, August 13, 2022, SUMMARY REPORT, Report 4” was printed on August 14, 2022, at 6:34 p.m. and published that day on the Office of Elections’ website.

After Statewide Summary Report 4, the counting centers conducted recounts, pursuant to HRS § 11-158, for those contests which met the mandatory recount trigger.

The automatic recount trigger impacted 6 contests. Specifically, 1 recount was conducted on Maui for a state representative contest, another on Kauai for a county council contest, and 4 on Oahu for a combination of a state senator contest and 3 state representative contests. The neighbor island recounts were conducted on August 15, 2022. On Oahu, the recounts were conducted on August 15 and 16, 2022. The results of the recounts did not impact the outcome of any contest.

After the recounts were completed, the next deadline was for voters to cure any deficiency with their return identification envelopes. Affected voters were allowed up to 5 business days following the election to cure deficiencies with their ballot return envelope identified by the County Elections Divisions pursuant to HRS § 11-106. This year’s deadline was August 22, 2022 (Monday), due to August 19, 2022 (Friday) being a state holiday.

On and in the days immediately following the deadline, we conducted the post-election audit and count in each County and released a county summary report.

The Oahu post-election count was completed on August 22, 2022. The post-election audit was also started on August 22, 2022, but due to the number of precincts (16) and the number of ballots to review within each precinct, the audit was completed on August 26, 2022.

As for the neighbor islands, counting the remaining verified ballots and post-election audits were conducted on August 23, 24, and 25, 2022, for Hawaii, Maui, and Kauai, respectively. For each County, a separate county summary report was printed on those dates.

Statewide Summary Report 5 was issued with the completion of the counting of ballots in all 4 counting centers on August 25, 2022. The post-election audit at the counting center at the State Capitol was completed the following day, on August 26, 2022. Since no issues were found to undermine the election results, Statewide Summary Report 5 was deemed the final report.

PRIMARY ELECTION CONTESTS

Our laws provide that election results may be challenged before certification by election officials. For the 2022 Primary Election, 8 election contests were filed with the Hawaii Supreme Court. After receiving the decisions from the Hawaii State Supreme Court dismissing these cases, the 2022 Primary Election was certified on September 6, 2022.

2022 GENERAL ELECTION

The milestones leading up to the General Election, except for candidate filing, were largely the same as those that occurred for the Primary Election.

MILITARY AND OVERSEAS BALLOTS

After the resolution of the election contests and the submittal of ballot questions by the counties, election officials proofed and finalized the ballots to meet the 45-day deadline prior to the General Election to transmit ballots to military and overseas voters. Specifically, ballots were sent out to these voters by September 23, 2022. A total of 402 ballots were transmitted for the General Election.

OFFICIAL OBSERVERS' TEST

The official observers' test and sealing of the voting equipment deployed to the voter service centers were conducted on October 1, 5, 6, and 8, 2022, for Oahu, Maui, Kauai, and Hawaii, respectively.

BALLOT MAILING TO GENERAL PUBLIC

The City and County of Honolulu's ballots were delivered to USPS for mailing on October 17 and 18, 2022, while neighbor island ballots were delivered to USPS on October 19, 2022. As with the Primary Election, the County Elections Divisions ensured ballot drop boxes were open to receive ballots.

BALLOT TRACKING SERVICE

Voters who signed up for the ballot tracking service, BallotTrax, for the Primary Election, were automatically provided the same ballot tracking service for the General Election, along with new voters who signed up for the service. The ballot tracking service is managed by the State and operated by each County Elections Division.

One incident with the ballot tracking service occurred in the County of Hawaii. Specifically, an incorrect message was sent out to over 2,379 voters on October 20, 2022, indicating that their "General Election ballot had been received, validated, and accepted for counting." This occurred even though their ballot had not yet been mailed out for the General Election.

The reason for the incident was that a voter eligibility file associated with the Primary Election was accidentally uploaded to the ballot tracking system rather than the file associated with the General Election. In other words, the ballot tracking service was reporting information from the Primary Election to those who had signed up for the service. The County of Hawaii and the vendor, within an hour, sent a correction message through the ballot tracking service to the impacted voters. No other counties were impacted by this issue.

In terms of moving forward, the County of Hawaii internally reviewed its procedures to prevent such errors from happening in the future. We also worked with our vendor to add an election ID field to the voter eligibility file exports indicating the date of the election. In conjunction with this, the ballot tracking service is only able to work with files with the correct election ID field.

STATEWIDE OBSERVERS' TEST

The statewide observers' test of the counting center voting equipment and tabulation application was conducted on October 22, 2022, simultaneously at the 4 counting centers across the state.

PROCESSING VOTED BALLOTS

Beginning on October 25, 2022, 2 of the counting centers started to process voted ballots. The schedule for each of the 4 counties varied depending on how many return identification envelopes had been validated by its County Election Division for processing. However, as with the prior election, no tabulation report was compiled until the day of the General Election.

GENERAL ELECTION DAY & ELECTION RESULTS

On General Election Day, November 8, 2022, the lines at the voter service centers were largely manageable as the vast majority of voters had used the mail or places of deposit for returning their ballots. However, despite this, voter service centers in Honolulu, Kapolei, Lihue, and Wailuku experienced lines that took approximately an hour to work through at the closing of polls.

As with the Primary Election, the Office of Elections periodically published summary reports of the then-current election results on its website at <https://elections.hawaii.gov/election-results/> from the close of voting on election day.

The first statewide report entitled “GENERAL ELECTION 2022 – State of Hawaii – Statewide, November 8, 2022, SUMMARY REPORT, Run 1” was printed on November 8, 2022, at 7:04 p.m. and published after the voter service center were confirmed to be closed on the Office of Elections’ website. Similar to the Primary Election, this report included the majority of ballots that had been validated and provided to the counting centers up to that day prior to the close of voting. This report corresponded to the total of the county "Run 1" report from each of the 4 counties.

The second report entitled “GENERAL ELECTION 2022 – State of Hawaii – Statewide, November 8, 2022, SUMMARY REPORT, Run 2” was printed on November 8, 2022, at 9:42 p.m. and published that day on the Office of Elections’ website. This report included the majority of voter service center ballots that had been counted at the voter service centers and additional ballots received by mail and places of deposit. This report corresponded to the total of the county "Run 2" report from each of the 4 counties.

The third statewide report entitled “GENERAL ELECTION 2022 – State of Hawaii – Statewide, November 8, 2022, SUMMARY REPORT, Run 4” was printed on November 9, 2022, at 9:20 p.m. There was no “Run 3” statewide report. The third statewide report was entitled “Run 4” to indicate that it included the Honolulu "Run 4"

county report. Specifically, since the issuance of the second statewide report, the City and County of Honolulu had issued two county reports (i.e., "Run 3" and "Run 4") and the County of Hawaii, County of Maui, and County of Kauai each had a single county report (i.e., "Run 3"). As noted above, the naming convention for the statewide report is to use the highest county run number included in the report.

Pursuant to HRS § 11-158, the counting centers conducted recounts for those contests which met the statutory trigger. A total of 2 contests were recounted. Specifically, 1 recount was conducted on Kauai for its county council contest, and 1 recount on Oahu for a state senator contest. The recounts were conducted on November 10, 2022. The results of the recounts did not impact the outcome of any contest.

The 5-business-day deadline following the General Election for voters to cure deficiencies with return identification envelopes noted by the County Election Divisions clerks was November 16, 2022 (Wednesday), due to November 11, 2022 (Friday) being a state holiday.

Following the General Election, the Office of Elections began its post-election audit and counting of additional ballots that had been cured by voters with the County Elections Divisions. The Oahu post-election audit and count was completed on November 16, 2022. As for Hawaii, its post-election audit and count was completed on November 17, 2022. The Maui and Kauai post-election audits and counts are scheduled for November 21, 2022, and November 22, 2022, respectively. Upon their conclusion, we will post the final statewide summary report.

GENERAL ELECTION CONTESTS

The results of the General Election are subject to being contested before the Hawaii State Supreme Court. The deadline for such contests is November 28, 2022.

LEGISLATIVE RECOMMENDATIONS

Given our experiences with the 2022 Elections, we have a handful of legislative recommendations. These recommendations are primarily centered around recounts.

Recount – Changing Percentage Trigger for Multi-Member Contests

Currently, election officials conduct recounts for elections if the applicable difference "is equal to or less than one hundred votes or one-quarter of one per cent of the total

number of votes cast for the contest, whichever is greater." HRS § 11-158(a). One of the consequences of this is that certain types of contests now appear more subject to recounts.

For example, while most contests are single member contests, the council for the County of Kauai is determined through a multi-member contest in which voters in the Primary Election vote for no more than 7 candidates for the 7 available seats, and the 14 candidates receiving the most votes will be placed on the ballot for the General Election at which the 7 candidates receiving the most votes will be elected. Article I, Section 1.03 & Article III, Sections 3.02 and 3.03 (Charter of the County of Kauai). As the term of office is 2 years, this situation occurs every election cycle.

Since the enactment of the mandatory recount law, the County of Kauai has always had a recount following the Primary Election and based on historical results for the contest, we expect these types of recounts to be a regular occurrence.

The other multi-member contest involves alternating election cycles in which there is a contest for 3 regularly scheduled At-Large Trustee seats that have a 4-year term on the ballot. HRS § 13D-4(f). As of today, no recount has been required for this contest.

We would recommend that HRS § 11-158 be amended to provide that multi-member contests have a different recount threshold. Specifically, "one-eighth of one per cent of the total number of votes cast for the contest." To the extent the Legislature does not want to impact the Board of Trustees election for the Office of Hawaiian Affairs, the law could be amended to only apply to situations in which more than 3 seats are involved in a contest.

Recount - Removal or Changing of 100 Vote Minimum Trigger

As previously noted, recounts occur if the applicable difference "is equal to or less than **one hundred votes** or one-quarter of one per cent of the total number of votes cast for the contest, whichever is greater." HRS § 11-158(a) (Emphasis added). The vast majority of recounts that have been held since the enactment of the recount law have been triggered by the 100 vote minimum, as opposed to the "one-quarter of one per cent of the total number of votes cast for the contest" requirement. With this in mind, we

would propose removing the 100 vote minimum requirement or changing it to 10 votes to make it functionally closer in practice to the "one-quarter of one per cent of the total number of votes cast for the contest" requirement.

Recount – Deadline for Filing an Election Contest

The recount law was enacted in 2019. Act 135, SLH 2019. As part of this law, the deadline for filing an election contest in HRS § 11-173.5 was changed to account for the resolution of the recount prior to the 6-day deadline to file an election contest. However, another law was passed that legislative session addressing elections by mail and extending the deadline to file an election contest from 6 days to 13 days. Act 136, SLH 2019.

Specifically, Act 135, SLH 2019 provided for an expedited recount that would be resolved within "seventy-two hours after the closing of polls on election day" (i.e., HRS § 11-158(c)) and then "on the third calendar day following the public announcement of the results of the mandatory recount" an election contest would need to be filed (i.e., HRS § 11-173.5(a)). At the same time, the deadline of 6 days after an election to file an election contest was retained. HRS § 11-173.5(a). The apparent intent was that the 3-day deadline after a recount would allow a contest to be filed approximately 6 days after the election. In contrast, Act 136, SLH 2019, in acknowledging the various timeline changes for elections by mail changed the 6-day deadline to 13 days. Both bills passed and their respective changes were made to HRS § 11-173.5.

In a primary and special primary election contest, or a county election contest held concurrently with a regularly scheduled primary or special primary election, the complaint shall be filed in the office of the clerk of the supreme court no later than 4:30 p.m. on the **thirteenth** day after a primary or special primary election or a county election contest held concurrently with a regularly scheduled primary or special primary election, and shall be accompanied by a deposit for costs of court as established by the rules of the supreme court; **provided that a complaint for a contest for cause that arises from a mandatory recount pursuant to section 11-158 shall be filed no later than 4:30 p.m. on the third calendar day following the public announcement of the results of the mandatory recount pursuant to section 11-158(c).** The clerk shall issue to the defendants named in the

complaint a summons to appear before the supreme court no later than 4:30 p.m. on the fifth day after service of the summons.

HRS § 11-173.5(a) (2019) (Emphases added).

The end result of this was that an expedited recount of 3 days was required for purposes of meeting an election contest deadline that was separately extended from 6 days to 13 days. Additionally, ambiguity existed as to whether a candidate involved in a mandatory recount needed to file their election contest within 3 days of the completion of the mandatory recount (i.e., a combined total of 6 days from the date of the election) or if they had the ability to benefit from the 13-day deadline from the date of the election that other candidates had to file an election contest.

Given this, we would propose that HRS § 11-173.5(a) be amended as follows:

In a primary and special primary election contest, or a county election contest held concurrently with a regularly scheduled primary or special primary election, the complaint shall be filed in the office of the clerk of the supreme court no later than 4:30 p.m. on the thirteenth day after a primary or special primary election or a county election contest held concurrently with a regularly scheduled primary or special primary election, and shall be accompanied by a deposit for costs of court as established by the rules of the supreme court~~]; provided that a complaint for a contest for cause that arises from a mandatory recount pursuant to section 11-158 shall be filed no later than 4:30 p.m. on the third calendar day following the public announcement of the results of the mandatory recount pursuant to section 11-158(c)].~~ The clerk shall issue to the defendants named in the complaint a summons to appear before the supreme court no later than 4:30 p.m. on the fifth day after service of the summons.

Recount – Initial Validation and Tabulation of Ballots

The law provides in HRS § 11-108 for the "initial tabulation" and validation of ballots by 6:00 a.m. on the day following the election. To the extent an "initial tabulation" was expected to include all ballots, except for those in deficient return identification

envelopes designated by the clerk, the timing of the validation and transferring of ballots by the clerk to the counting centers reflect significant challenges to the "initial tabulation" being completed by 6:00 a.m.

Specifically, the earlier discussion of the validation and subsequent processing of the ballots reflects that there is a significant lag between the validation of ballots and their ability to be processed for purposes of establishing the fixed universe of ballots for recount purpose (i.e., we understand the goal of the legislation was to provide for a recount of all ballots except for those in deficient return identification envelopes that would have 5 business days to be cured). Given this, we would recommend amending the law to provide for a 5:00 p.m. deadline for validation by the county clerks on the day following an election day and for the tabulation of those ballots to be completed by 11:59 p.m. that day.

(b) The initial tabulation of ballots shall be completed no later than ~~[6:00 a.m.]~~ 11:59 p.m. on the day following an election day.

(c) Any ballot the validity of which cannot be established upon receipt shall be retained by the clerk and shall not be commingled with ballots for which validity has been established until the validity of the ballot in question can be verified by the clerk. No ballot shall be included in an initial tabulation until the clerk has determined its validity. The clerk shall make reasonable efforts to determine the validity of ballots within seven days following an election day. No ballot shall be validated beyond the seventh day following an election.

(d) Any initial recount provided by law shall include only ballots verified for the purpose of the initial tabulation. In no event shall a recount of an initial tabulation include ballots the validity of which could not be verified by ~~[6:00 a.m.]~~ 5:00 p.m. on the day following an election day by the clerk.

HRS § 11-108(b)-(d).

Recount – Deadline for Completion

As indicated previously, the expedited deadline to complete the recount was premised on the existing 6-day deadline to file an election contest at that time. With the initial tabulation of ballots being completed by the day after the election, the next milestone is the curing of ballots within 5 business days of the election. HRS § 11-106. This involves voters who forgot to sign their ballot or whose signature did not match the reference image on file with the County Elections Division.

As the initial tabulation of ballots and the subsequent tabulation of cured ballots and other validated ballots by the County Elections Division should be segregable, we would propose that the recount of the initial tabulation be completed within 5 business days of the election.

All mandatory recounts of votes under this section shall be completed and the results publicly announced ~~[no later than seventy-two hours after the closing of polls on]~~ by the fifth business day after election day.

HRS § 11-158(c).

Final Deadline for Validation of Ballots – Housekeeping Change

A return identification envelope that is not signed or whose signature does not match what is on file cannot be validated by the County Elections Divisions. The law specifically provides that voters have 5 business days after an election to cure such defects. HRS § 11-106. Likewise, there may be other reasons that may delay the validation of a return identification envelope. As such, the law provides that "[t]he clerk shall make reasonable efforts to determine the validity of ballots within seven days following an election day" and that "[n]o ballot shall be validated beyond the seventh day following an election." HRS § 11-108(c).

These two deadlines are generally the same. However, depending on the year, the holidays of Statehood Day and Veterans' Day can cause the 5th business day for curing return identification envelopes to come after the 7th day after the election. As providing voters the ability to cure their return identification envelopes comes with the understanding that they will be validated and counted, we would propose that the deadline for validating ballots be changed from 7th day after the election to the 5th business day.

Any ballot the validity of which cannot be established upon receipt shall be retained by the clerk and shall not be commingled with ballots for which validity has been established until the validity of the ballot in question can be verified by the clerk. No ballot shall be included in an initial tabulation until the clerk has determined its validity. The clerk shall

make reasonable efforts to determine the validity of ballots [~~within seven days~~] by the fifth business day following an election day. No ballot shall be validated beyond the [~~seventh~~] fifth business day following an election.

HRS § 11-108(c).

CONCLUSION

This election cycle was largely focused on implementing various ways to improve on elections by mail. The implementation of new laws, the transition to a new voting system, and our experience from the prior election cycle allowed us to make progress in the further refinement of elections by mail for the benefit of the electorate.