



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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

SCOTT T. NAGO
CHIEF ELECTION OFFICER

April 13, 2023

To: Elections Commission

From: Scott T. Nago
Chief Election Officer

Re: Status of Operations

The Office of Elections has been tracking and providing testimony for the 2023 legislative session, as well as applying for new federal funds.

LEGISLATION

At this point in the session, two bills from our legislative package made it successfully through the hearing process.

HB 130, Relating to Validation of Ballots

This bill was proposed by our office to align the deadline by which voters had to cure any deficiency with their return envelope with the deadline for the county clerks to validate ballots for consistency. Specifically, HRS § 11-106 provided that voters had five business days after the election to cure their ballots. In practice, the intervening Statehood Day holiday for the Primary Election, and Veterans' Day holiday for the General Election, resulted in the time available for voters to cure their ballot with the county clerk to be up to nine calendar days after the election. This did not line up with the deadline in HRS § 11-108(c) of seven days (i.e., calendar days) after the election for the county clerks to complete the validation process. The bill was signed into law on March 31, 2023, as Act 7, Session Laws of Hawaii 2023. Now, the deadline in both statutes is five business days after the election.

SB 179, Relating to Advisory Committees

This bill renames the statewide and county advisory committees associated with equal and independent access to voter registration, casting of ballots, and other elections services. Essentially, the prior names for these committees included the words, "special needs advisory

committee,” and those words have been replaced with the words, “elections accessibility needs advisory committee.” It was enrolled to the Governor on March 31, 2023 for his consideration.

Our office continues to follow and submit testimony on other election related measures including SB 1005, which establishes presidential preference primary elections. This bill has passed with various amendments in both the House and Senate with any further changes being considered in conference.

The bills that do not pass this Legislative Session may be considered during the 2024 Legislative Session.

2023 HELP AMERICA VOTE ACT GRANT

Our office applied and was recently approved for an award of \$1,000,000 in Help America Vote Act (HAVA) funds. As a condition of the award, our office will provide a 20% match of \$200,000. We have worked with the Legislature to include this amount in our biennial state budget. The \$1,000,000 in federal funds and the \$200,000 in state general funds are required to be used toward the purposes of HAVA. The funds have been earmarked toward improvements to the statewide voter registration system, which is required by Section 303 of HAVA.

2024 ELECTIONS

As we prepare for the 2024 Elections, here are some key dates and deadlines:

February 1, 2024	Candidate filing begins
June 4, 2024	Candidate filing closes
July 23, 2024	Primary Election mail ballot packets delivered
July 29, 2024	Voter service centers open
August 10, 2024	Primary Election Day, voting closes at 7:00 PM
August 19, 2024	Primary Election deadline for voters to cure a deficient return envelope
October 18, 2024	General Election mail ballot packets delivered
October 22, 2024	Voter service centers open

November 5, 2024	General Election Day, voting closes at 7:00 PM
November 13, 2024	General Election deadline for voters to cure a deficient return envelope

If you have any questions, please feel free to contact me at
(808) 453-VOTE (8683) or 1-800-442-VOTE (8683).

§11-1.6 Appointment of the chief election officer; requirements; term; restrictions; salary; reappointment; removal. (a) The chief election officer shall be appointed by the elections commission, without regard to chapter 76. The appointment shall not be subject to the advice and consent of the senate. In the event of a vacancy, the elections commission shall meet expeditiously to select and appoint a new chief election officer to serve the remainder of the unexpired term.

(b) The person appointed to be chief election officer shall be a citizen of the United States, a resident of the State, and a registered voter of the State.

(c) The chief election officer shall serve for a term of four years. The term shall begin on February 1 following the appointment.

(d) The chief election officer shall devote full time to the duties of the office and shall hold no other public office during the individual's term of office. Except for exercising the right to vote, the individual shall not support, advocate, or aid in the election or defeat of any candidate for public office. The chief election officer shall refrain from financial and business dealings that tend to reflect adversely on the individual's impartiality, interfere with the proper performance of election duties, or exploit the individual's position. Subject to the requirements above, the individual may hold and manage investments, including real estate, and engage in other remunerative activity, but shall not serve as an officer, director, manager, advisor, or employee of any business.

(e) The chief election officer shall be paid a salary not to exceed eighty-seven per cent of the salary of the director of human resources development.

(f) The chief election officer may petition the elections commission for reappointment. The elections commission may reappoint an incumbent chief election officer based on the performance of the chief election officer. The elections commission may authorize the chief election officer to hold office until a successor is appointed.

(g) The chief election officer is an at-will employee. The elections commission shall provide written notification of any removal and state the reason for the removal. [L Sp 1995, c 27, pt of §2, §15; am L 1999, c 141, §§3, 6; am L 2000, c 253, §150; am L 2002, c 16, §1; am L 2003, c 117, §1; am L 2004, c 57, §9; am L 2005, c 226, §2; am L 2015, c 173, §1]

Executive Branch

In reaching its recommendations for the “executive salaries,” the Commission reviewed the compensation of county executives (i.e., mayors, deputy managing directors, department directors, deputy department directors, prosecuting attorneys) for the City and County of Honolulu, Hawai‘i County, Maui County and Kaua‘i County. *The Book of the States 2018* edition was reviewed to determine how other jurisdictions compensated their respective governors, lieutenant governors, and comparable department directors.

After reviewing the materials cited above and additional information, the Commission determined that pay equity and compensation levels need to be addressed for executive salaries if the State is to recruit and retain qualified executives to the executive branch of government. It is important to remember that the governor, lieutenant governor, administrative director, department directors, deputy directors, et al., administer programs that affect the health and welfare of our residents, and which have annual budgets that collectively exceed \$14 billion per year. The State needs to recruit and retain the “best and brightest” for these positions because of the daily impact these positions have on our State.

Executives in the public service are expected to work extended hours; participate in community service events, forums and meetings; be accessible on a 24-hour, 7-day-a-week basis for emergency situations; and exercise effective leadership in addressing emergency and crisis situations. Many could easily secure higher paying jobs in the private sector but instead chose to take on these high impact, high profile, demanding and time-limited jobs because of their commitment to public service. It was also noted by the Commission that directors and deputy directors are generally at the top of their professions, often with graduate degrees (including JDs, MDs, Masters’, PhDs in various fields) and several years of specialized experience qualifying them for the positions. Because of these reasons, it can be very difficult to attract and recruit for director and deputy director positions.

Externally, there are no comparable positions in the other jurisdictions in Hawai‘i to match the governor, lieutenant governor, and attorney general positions since they are unique with their statewide scope and responsibility. However, comparison with the City and County of Honolulu Mayor, managing director, and prosecuting attorney show all three State positions are paid below these three City jobs.

To address the issue of pay equity and compensation level, the following recommendations are made by the Commission (see Figure 1).

- Effective July 1, 2019 and July 1, 2020, increase the governor’s salary by 4% each year;

- Effective July 1, 2019 and July 1, 2020, increase other executive branch salaries and salary ranges by 5% each year;
- Effective July 1, 2021; July 1, 2022; July 1, 2023; July 1, 2024, increase the salaries and salary ranges of all positions by 2.5% each year.
- Section 26-52, HRS, provides that if the adjutant general, Department of Defense salary conflicts with the pay and allowance fixed by the tables of the regular army or air force of the United States, the latter shall prevail in setting the salary. Therefore, the Commission recommends that the salaries and future salary increases for the adjutant general and deputy adjutant general be set by the pay and allowance tables of the regular army or air force of the United States for officers of comparable rank and time in service over the period covered by this Commission's recommendation.

Figure 1 - Executive Salary Recommendations

Position	No. of Pos	7/1/2019	7/1/2020	7/1/2021	7/1/2022	7/1/2023	7/1/2024
Governor	1	165,048	171,648	175,944	180,348	184,860	189,480
Lieutenant Governor	1	162,552	170,676	174,948	179,316	183,804	188,400
Tier 1 Admin. Director of the State, Attorney General, Director of Budget and Finance	3	162,552	170,676	174,948	179,316	183,804	188,400
Tier 2 Dept. Directors DAGS, DBEDT, DCCA, DHHL, DHRD , DHS, DLIR, DLNR, DOA, DOH, DOT, PSD, TAX	13	154,812	162,552	166,620	170,784	175,056	179,436
Tier 1 Deputy Dept. Directors Attorney General, Budget and Finance	2	141,420 - 149,544	148,488 - 157,020	152,196 - 160,944	156,000 - 164,964	159,900 - 169,092	163,896 - 173,316
Tier 2 Deputy Dept. Directors DAGS, DBEDT, DCCA, DHHL, DHRD, DHS, DLIR, DLNR, DOA, DOH, DOT, PSD, TAX	24	134,676 - 142,416	141,408 - 149,532	144,948 - 153,276	148,572 - 157,104	152,292 - 161,028	156,096 - 165,048

The chief election officer shall be paid a salary not to exceed eighty-seven per cent of the salary of the director of human resources development. HRS §11-1.6(e).

$$170,784 \times 0.87 = \textbf{\$148,582 (recommended)}$$



F.M. SCOTTY ANDERSON
ELECTIONS COMMISSION CHAIR

**STATE OF HAWAII
ELECTIONS COMMISSION**

December 14, 2018

Ms. Daeleen Liu, Personnel Officer
Department of Accounting and General Services
Kalanimoku Building
1151 Punchbowl Street, Room 420
Honolulu, Hawaii 96813

RE: SALARY INCREASE FOR SCOTT T. NAGO

Dear Ms. Liu:

At the meeting on December 13, 2018, the Elections Commission voted and approved a salary increase for Mr. Scott T. Nago, Chief Election Officer, from an annual amount of \$100,800 to \$119,664, which is within the limits as provided by statute, HRS §11-1.6(e).

The effective date of the annual increase is July 1, 2018.

If you have any questions or need additional information, please call the Office of Elections at (808) 453-VOTE (8683). Thank you for your assistance in this matter.

Sincerely,

F.M. Scotty Anderson
Elections Commission Chair

SA:JK
EC-18-008

c: Mr. Roderick K. Becker, Comptroller
Mr. Scott T. Nago, Chief Election Officer
Elections Commission

NOTICE OF ANTICIPATED VACANCY
CHAIR, ELECTIONS COMMISSION, STATE OF HAWAI'I

The Hawai'i State Elections Commission is accepting applications for the position of **Chair, Elections Commission**, State of Hawai'i.

The Chair has a four-year term which is anticipated to begin on December 4, 2015. The Elections Commission is composed of eight members appointed by various legislators. The Chair is selected by a 2/3 vote of the members, presides over Commission meetings, and is the spokesperson for the Commission.

In accordance with Section 11-7.5, HRS, the Elections Commission holds public hearings; investigates and holds hearings to receive evidence of violations and complaints; employs a chief election officer; and advises the chief election officer on matters relating to elections. Pursuant to Section 11-8, HRS, the Commission develops and implements an election review program to review the operation and performance of elections; makes recommendations to the chief election officer on methods to improve elections, establishes policies for an election observer program, and conducts a biennial evaluation of the elections operations. Elections Commission members serve without compensation, but may be reimbursed for reasonable expenses, including travel expenses. Elections Commission members are restricted from taking an active part in political management or in political campaigns. (Section 11-8, HRS.)

Applicants: The Commission invites applicants to submit their resumes with a cover letter to the Elections Commission, State of Hawai'i, c/o Office of Elections, 802 Lehua Avenue, Pearl City, HI 96782.

The application can be emailed to the Office of Elections at elections@hawaii.gov, or it must be received by or delivered to the Office of Elections on or before the application deadline of October 23, 2015 at 4:30 p.m.

From: [Ralph Cushnie](#)
To: [OE.Elections](#)
Subject: [EXTERNAL] ELECTIONS COMMISSION MEETING Monday, April 17, 2023 Testimony
Date: Thursday, April 13, 2023 9:28:45 AM

What is the Elections Commission action plan to have the Office of Elections follow HRS 16-42. The Office of Elections has submitted legislation (HB132 and SB180) to amend HRS16-41 and HRS 16-42. These bills were designed to legalize the current audit procedures that are not authorized. These bills included language that would 1) change the definition of electronic voting system to be the same as a mechanical voting system and that would exempt the elections from audits, 2) authorize the audits of only selected races on a ballot instead of all races on a ballot as currently prescribed by the statute and 3) authorize the use of electronic images rather than actual paper ballots, also as prescribed by statute, when conducting the random ten-percent precinct post-election audit.

These bills and the proposed language changes to HRS 16-42 were recently rejected by the legislature and thus validated the legislatures intent that HRS 16-42 should be followed as written and intended.

The Office of Elections does not have legal authority to rewrite the statute and to change the audit procedures; the legislature has reaffirmed this in upholding the language of HRS 16-41 and HRS 16-42.

The audit procedure that was implemented during the 2022 Primary and General election did not follow HRS16-42. The people of Hawaii want a proper audit of the Primary and General Election of 2022.

How will the Election Commission resolve this matter?

Ralph Cushnie

April 17, 2023 (Testimony via Zoom) – Hawaii Elections Commission

Aloha. Thank you, Mr. Chair and Commissioners for this opportunity to testify.

My name is Jamie Detwiler, Hawaii State House of Representatives candidate for District 37 representing Mililani and Waipio Gentry. I am also the 2023-24 President of the Hawaii Federation of Republican Women.

The subject of my testimony refers to Agenda item VII., Performance Evaluation and Consideration of Salary Adjustment of the Chief Election Officer, Pursuant to HRS §§ 11-7.5(5) and 11-1.6(e), and HRS 16-42.

Before considering a salary adjustment (especially an increase), please take note of the current poor performance practices of Mr. Nago, Chief Election Officer:

1. Failure to perform audits in the 2022 Primary and General Elections in accordance with HRS 16-42. I recommend that the results of the audits be published for the public.
2. Failure to respond to my written request to comply with HRS 16-42 received by the Office of Elections on 11/14/22 by certified U.S. Mail.
3. Failure to respond to my written request for a hand count of House District 37 received by the Office of Elections on 11/14/22 by certified U.S. Mail based on the following evidence of maladministration:
 - a. No documentation of Chain of Custody for Drop Box Ballots and U.S. Mail ballots.
 - b. Disparity between the favorable results for my opponent for the Mail-in votes and favorable results for myself for the In-person votes.
 - c. No post-election accounting of unused pre-printed ballots used at Honolulu Hale, Kapolei Hale, and Voter Service Centers.
 - d. No Chain of custody for a supplemental drop box used at Honolulu Hale on Election Day that was wheeled out to the curb because the primary box was full.
4. I also testified before the House Committee on Judiciary and Hawaii Affairs regarding HB132 (elections) on 3/14/23 to share this information. Mr. Nago was present.
5. Dirty Voter Rolls – On November 6, 2020, Mr. Nago stated during a PBS Hawaii interview that over 100,000 ballots were mailed to the wrong address or to deceased people. That's one-eighth of the registered voters. This is not acceptable.

For these and many other concerns from “We the People”, I strongly recommend an evaluation rating of “Poor”. I also recommend a written admonishment to include suspension with consideration to remove from office based on poor performance.

I am a retired Federal Civilian. I have over 30 years in social services and healthcare administration in the private and Federal sector. I served as a supervisor and program manager during my career where I underwent multiple audits as well as conducted program audits. The procedural maladministration described today is unacceptable and warrants immediate attention.

Thank you for your service to the people of Hawaii.

Respectfully submitted,
Jamie Detwiler

Public Testimony for Elections Commission Meeting April 17, 2023

Corinne Solomon

Honolulu Resident

Aloha Elections Commission Chair Anderson and Elections Commission Members,

Thank you for the opportunity to provide testimony on agenda items IV. Status of Operations Report from the Chief Election Officer, and VII. Performance Evaluation and Consideration of Salary Adjustment of the Chief Election Officer, Pursuant to HRS §§ 11-7.5(5) and 11-1.6(e), and Action, If Appropriate.

Testimony related to agenda item IV:

“2023 HELP AMERICA VOTE ACT GRANT Our office applied and was recently approved for an award of \$1,000,000 in Help America Vote Act (HAVA) funds. As a condition of the award, our office will provide a 20% match of \$200,000. We have worked with the Legislature to include this amount in our biennial state budget. The \$1,000,000 in federal funds and the \$200,000 in state general funds are required to be used toward the purposes of HAVA. The funds have been earmarked toward improvements to the statewide voter registration system, which is required by Section 303 of HAVA.”

Please explain in detail how the HAVA funds will be “earmarked toward improvements to the statewide voter registration system”.

Will the funds be used to enroll in the Electronic Registration Information Center (ERIC)?

If so, please let the citizens of Hawai'i know, as several states have recently terminated their contracts with ERIC, citing the following concerns:

- ERIC refuses to require member states to participate in addressing multi-state voter fraud
- ERIC focuses on adding names to voter rolls by requiring a solicitation to individuals who already had an opportunity to register to vote and made the conscious decision to not be registered
- ERIC allows for a hyper-partisan individual to be an ex-officio non-voting member on its governance board
- ERIC unnecessarily restricts how Missouri utilizes data reports
- ERIC's benefits to Missouri are limited as only three of the eight states that boarder Missouri are members

Additionally, [2023 research done by Judicial Watch](#) determined that “the large amount of sensitive data provided to ERIC by member states and the organization’s role in maintaining

voter rolls may violate a number of federal statutes. Among them are the Help America Vote Act, National Voter Registration Act and Driver's Privacy Protection Act."

Testimony related to agenda item IV and VII:

In his April 13, 2023 Status of Operations, Chief Elections Officer Scott Nago did not address HB132 and companion SB180, which did not pass.

These bills would have allowed for ballot images to be used in lieu of paper ballots, and would have removed the requirement to select precincts randomly for the audits.

HB132 and companion SB180 were written and introduced in an attempt to legitimize prior misconduct by the Office of Elections when they did not adhere to HRS§ 16-42 for the 2020 and 2022 post-election audits, which dictate how post-election pre-certification audits are to be performed.

HB132 and companion SB180 did not follow election audit best practices, which I outlined in my public testimony, and will repeat here:

-Start of HB132 testimony:

HB132

Testimony in Opposition

Corinne Solomon

Oahu Resident

I strongly oppose HB132.

In 2020 the Office of Elections violated Hawaii State law during the post-election pre-certification audits and did not randomly audit 10% of precincts as required by HRS§ 16-42. This was brought up repeatedly in Elections Commission meetings and never remedied.

In 2022 HRS§ 16-42 was again violated, this time by using ballot images in lieu of paper ballots for the post-election audits. There is an active lawsuit brought by the Hawaii Republican Party against the Office of Elections on the ballot image issue. This case is still active.

Now we see that the "remedy" is to rewrite the laws that were broken in 2020 and 2022, laws which were written to meet best practices standards for conducting post-election pre-certification audits.

Current HRS§ 16-42:

(3) The chief election officer conducts a post-election, pre-certification audit of a random sample of not less than ten per cent of the precincts employing the electronic voting system, to verify that the electronic tallies generated by the system in those precincts equal hand tallies of the paper ballots generated by the system in those precincts;

Here is some of the text in HB132:

(3) The chief election officer conducts a post-election, pre-certification audit of [a random sample of] not less than ten per cent of the precincts [employing the electronic voting system], to verify that the [electronic tallies generated by] results from the system [in those precincts] with

*respect to a selected contest or ballot question equal ~~[hand tallies]~~ a tally of the **[paper]** ballots ~~[generated by the system in those precincts; and]~~ or voter verifiable paper audit trails;*

*(4) **The audit may be conducted with scanned images of the ballots** or voter verifiable paper audit trails **and involve a contest or ballot question**. To the extent technology permits other forms of duplication or reproduction, **the technology likewise may be used in lieu of the physical paper ballots** or voter verifiable paper audit trails;...*

Using paper ballots for audits and randomly selecting precincts for audits are **considered best practices for post-election audits** by several non-partisan federal election organizations.

US Election Assistance Commission (EAC) 2020 [Post-Election Audits:](#)

Post-Election Audit Best Practices:

...” a state’s chief election official or local election official **randomly** selects the designated percentage of total precincts”...

Usage of Ballot Images in Post-Election Audits:

...” **ballot image audits have raised concerns** among some election integrity and security experts because the review is only of digital images and not the official paper record.”

EAC 2021 [Election Audits Across the United States:](#)

“In general, a state’s chief election official, an independent audit board, or local election official **randomly selects the precincts**, devices, or ballots subject to the audit, according to a pre-determined formula.”

“Traditional post-election audits are usually conducted by hand tallying a sample of **paper records and comparing the results to electronic reports** produced by voting systems”...

Brennan Center for Justice: 2019 [Post-election Audits: Restoring Trust in Elections](#)

document goes in depth into audit best practices. Note that Hawaii uses a fixed-percentage audit model.

“There are three basic categories of post-election audits described in current law, proposed bills, and academic literature.

They are as follows: A. Fixed-Percentage Audit Model.

In this model, **jurisdictions are required to randomly select a fixed percentage of precincts** or machines to audit. All voter verifiable paper records for the selected precincts or machines are hand-counted and compared to the electronic tallies.”

Selecting Votes to be Audited

“Use Transparent and Random Selection Processes for All Auditing Procedures.

Audits are more likely to prevent fraud and produce greater voter confidence in election results if the public can verify that the paper records, machines, or precincts to be audited are chosen in a truly random manner.”

“Post-election audits of voter-verifiable **paper records** are a critical tool for detecting ballot-counting errors, discouraging fraud, and improving the security and reliability of electronic voting machines in future elections. “

Ensuring Overall Audit Effectiveness

“... a single unexplained **discrepancy between the paper records and electronic tallies is a strong indication of a software problem of some kind**. Any such discrepancy, even if it is just one vote and can have no effect on the outcome, is **grounds for a review of voting machine software code**.”

National Association of Secretaries of State (NASS)

2021 [NASS Task Force on Vote Verification: Post-election Audit Recommendations](#)

Post-Election Audits Overall

“Post-election audits also generally take place in a designated percentage of **randomly selected precincts**, tabulators and/or ballots after the election.”

Hawaii’s Lt. Governor, Sylvia Luke, is a [member](#) of NASS. I hope she is aware of HB132, which completely goes against audit best practices endorsed by NASS, the EAC, and the Brennan Center for Justice.

HB132 appears to be written in response to corrective actions pursued by those fighting for election integrity and has nothing to do with following national standards on audit best practices, which should be what our election laws reflect.

-End of HB132 testimony

In summary, there is a lack of public confidence and trust in our Office of Elections.

I recommend the following as potential ways to restore some of the public trust that has been lost:

1. Mr. Nago needs to make public, well in advance of the 2024 Primary, the OE post-election precertification audit procedures that will ensure compliance with HRS§ 16-42.
2. The Office of Elections should seek input and feedback from Hawai’i citizens who are analyzing Hawai’i’s election data, election procedures, and researching election integrity. We are not your enemies! We want to help.
 - a. We can recruit volunteers if audit manpower is a concern.

- b. We can be available for input on future election related legislation and internal development on policies and procedures that relate to election transparency, such as the post-election audits.
- c. We are happy to provide research assistance for analysis of available data and policies and procedures to recommend improvements on current systems (e.g., I had offered at the last meeting to compare curing processes across all four counties, this offer still stands).

When you go into Executive Session during your 4/17/2023 EC meeting, please take into consideration Mr. Nago's participation in drafting HB132/SB180, whose context appears to be motivated by self-preservation, and does not have any appearance of an attempt to follow national guidelines of election audit best practices, and which corrective actions can be implemented to restore trust and ensure compliance with Hawai'i election laws.

Mahalo for the opportunity to provide testimony.

Corinne Solomon