

JAN 19 2007

A BILL FOR AN ACT

RELATING TO VOTING.

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

1 SECTION 1. In the 2004 presidential election, a record
2 number of voters requested absentee ballots. This trend
3 demonstrates that more voters are finding voting by mail to be
4 an easier option than voting at the polls on election day.

5 Other states, such as Oregon, have used voting by mail as
6 the exclusive method for casting ballots. From their experience
7 with voting by mail, these states have found that:

8 (1) Voter participation increases with voting by mail
9 because it is easier for people to vote;

10 (2) Voting by mail is cost effective, as there are fewer
11 costs associated with the staffing of polling places;

12 (3) Having the ballots for a longer period of time lets
13 voters study their choices and find answers to their
14 questions before casting their votes; and

15 (4) Unlike computerized voting, voting by mail continues
16 to have a paper ballot that is verifiable and may be
17 audited.



1 The purpose of this Act is to establish an election by mail
2 program to be utilized as the exclusive means of casting a
3 ballot for a federal, state, and county primary, general, or
4 special election, if authorized by the office of elections.

5 SECTION 2. The Hawaii Revised Statutes is amended by
6 adding a new chapter to be appropriately designated and to read
7 as follows:

8 "CHAPTER

9 ELECTION BY MAIL

10 § -1 Definitions. As used in this chapter, unless the
11 context clearly requires otherwise:

12 "Ballot" shall have the same meaning as defined in section
13 11-1.

14 "Chief election officer" means the individual defined in
15 section 11-1.

16 "Clerk" shall have the same meaning as defined in section
17 11-1.

18 "County" shall have the same meaning as defined in section
19 11-1.

20 "Election" shall have the same meaning as defined in
21 section 11-1.



1 "Election by mail" means an election conducted exclusively
2 by mail.

3 "Voter" shall have the same meaning as defined in section
4 11-1.

5 § -2 **Election by mail; determination.** (a) An election
6 by mail may be conducted by the chief election officer if the
7 chief election officer, in consultation with the county clerks,
8 determines that conducting an election by mail is economically
9 and administratively feasible.

10 (b) The chief election officer shall provide notice
11 pursuant to section 1-28.5 no later than sixty days before the
12 election, that an election by mail shall be conducted and that
13 no poll will be open on election day. This information shall
14 also be mailed to each voter with the ballot.

15 § -3 **Procedures for conducting election by mail.** (a)
16 Except as provided in subsections (b) and (c), the county clerk
17 shall mail by nonforwardable mail:

- 18 (1) An official ballot;
- 19 (2) A return identification envelope; and
- 20 (3) A secrecy envelope;

21 to each registered voter between eighteen days and fourteen days
22 before the date of the election.



1 (b) If the county clerk determines that a voter does not
2 receive daily mail service from the United States Postal
3 Service, the county clerk shall mail by nonforwardable mail:

- 4 (1) An official ballot;
- 5 (2) A return identification envelope; and
- 6 (3) A secrecy envelope;

7 to the voter between twenty days and eighteen days before the
8 date of the election.

9 (c) If the voter requests a ballot be mailed outside of
10 the State, the county clerk shall mail by nonforwardable mail:

- 11 (1) An official ballot;
- 12 (2) A return identification envelope; and
- 13 (3) A secrecy envelope;

14 to the voter not sooner than the twenty-ninth day before the
15 election.

16 (d) Upon receipt of a ballot by mail, the voter may:

- 17 (1) Mark the ballot;
- 18 (2) Sign the return identification envelope supplied with
19 the ballot; and
- 20 (3) Comply with the instructions provided with the ballot.

21 The voter may return the marked ballot to the county clerk by
22 the United States Postal Service or by depositing the ballot at



1 any place of deposit designated by the chief election officer or
2 county clerk. All postage for ballots returned by the United
3 States Postal Service shall be provided by the voter.

4 **§ -4 Replacement ballots.** (a) In an election by mail,
5 a voter may obtain a replacement ballot. To vote a replacement
6 ballot, the voter shall complete and sign a replacement ballot
7 request form. The request for a replacement ballot may be made
8 by mail, in person, or by other means designated by the chief
9 election officer according to the procedures provided by the
10 rules adopted by the chief election officer pursuant to chapter
11 91.

12 (b) Upon receipt of a request for a replacement ballot,
13 the county clerk or a designee appointed by the clerk shall:

- 14 (1) Verify the registration of the voter and ensure that
15 another ballot has not been returned to the voter;
16 (2) Make a notation on the list of registered voters that
17 the voter has requested a replacement ballot;
18 (3) Mark the return identification envelope so that it may
19 be identified as a replacement ballot; and
20 (4) Issue a replacement ballot.

21 **§ -5 Counting of ballots.** (a) In an election by mail,
22 the method of preparing ballots for counting may begin no sooner



1 than the seventh day before the election. In the presence of
2 official observers, counting center employees may start to count
3 the ballots on the day of the election. All handling and
4 counting of the mailed-in ballots shall be according to the
5 procedures provided by the rules adopted by the chief election
6 officer pursuant to chapter 91.

7 (b) A mailed ballot shall be counted if:

- 8 (1) It is received by the county clerk not later than the
9 end of the period determined by the chief election
10 officer;
- 11 (2) It is received in the return identification envelope;
- 12 (3) The envelope is signed by the voter to whom the ballot
13 is issued; and
- 14 (4) The signature of the voter is verified pursuant to
15 subsection (c).

16 (c) The county clerk, or a designee appointed by the
17 county clerk, shall verify the signature on the return
18 identification envelope according to the procedures provided by
19 the rules adopted by the chief election officer pursuant to
20 chapter 91.

21 (d) Upon receipt of a voted replacement ballot, the county
22 clerk or a designated appointee shall verify that a completed



1 and signed replacement ballot request form has been received by
2 the county clerk or is included with the voted replacement
3 ballot. If a request form has been completed and signed by the
4 voter and received by the county clerk, the county clerk or a
5 designated appointee shall process the ballot. If the
6 replacement ballot request form is not completed or signed by
7 the voter or not received by the county clerk, the county clerk
8 or a designated appointee shall not process the ballot."

9 SECTION 3. Chapter 15, Hawaii Revised Statutes, is amended
10 by adding a new section to be appropriately designated and to
11 read as follows:

12 "§15- Election by mail. When the election by mail
13 system established pursuant to chapter is to be used in any
14 election, absentee voting under this chapter shall not be
15 permitted."

16 SECTION 4. Section 11-1, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By amending the definition of "ballot" to read:

19 ""Ballot", a ballot, including an absentee ballot, is a
20 written or printed, or partly written and partly printed paper
21 or papers containing the names of persons to be voted for, the
22 office to be filled, and the questions or issues to be voted on.



1 "Ballot" includes a ballot used in an election conducted by
2 mail. A ballot may consist of one or more cards or pieces of
3 paper, or one face of a card or piece of paper, or a portion of
4 the face of a card or piece of paper, depending on the number of
5 offices, candidates to be elected thereto, questions or issues
6 to be voted on, and the voting system in use. It shall also
7 include the face of the mechanical voting machine when arranged
8 with cardboard or other material within the ballot frames,
9 containing the names of the candidates and questions to be voted
10 on."

11 2. By amending the definition of "voting system" to read:
12 ""Voting system", the use of paper ballots, electronic
13 ballot cards, voting machines, voting by mail, or any system by
14 which votes are cast and counted."

15 SECTION 5. Section 11-16, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) [~~Any~~] For any election not conducted by mail pursuant
18 to chapter _____, any qualified person unable for any cause to
19 present oneself in person before the clerk for registration may
20 register to vote by mail, not later than thirty days prior to a
21 primary or general election, through the affidavit on
22 application for voter registration or other form prescribed by



1 the chief election officer. The form shall include a self-
2 subscribing oath for the applicant to swear to the truth of the
3 allegations in the application. An applicant unable to write
4 for reason of illiteracy, blindness, or other physical
5 disability shall have the applicant's mark witnessed by a person
6 who shall sign the affidavit in the space provided. Application
7 forms shall be made available to any qualified person through
8 community groups, political parties, and other groups prescribed
9 by the chief election officer. Application forms shall be made
10 available to any qualified person at the time of that person's
11 driver's license application or renewal through the examiner of
12 drivers."

13 SECTION 6. Section 11-17, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) The clerk, not later than 4:30 p.m. on the sixtieth
16 day after every general election, shall remove the name of any
17 registered voter who did not vote in that general election, and
18 also did not vote in the primary election preceding that general
19 election, and also did not vote in the previous general
20 election, and also did not vote in the primary election
21 preceding that general election, and also did not vote in the
22 regularly scheduled special elections held in conjunction with



1 those primary and general elections, if any, with the exception
2 of:

- 3 (1) Those who submitted written requests for absentee
- 4 ballots as provided in section 15-4; or
- 5 (2) Anyone who preregistered pursuant to section 11-12(b).

6 If a person voted, at least once, in any of the above-mentioned
7 elections, the person's name shall remain on the list of
8 registered voters. For this purpose, "vote" means the
9 depositing of the ballot in the ballot box whether the ballot is
10 blank or later rejected for any reason. In the case of voting
11 machines, "vote" means the voter has activated the proper
12 mechanism and fed the vote into the machine. In the case of an
13 election by mail pursuant to chapter , "vote" means the
14 voter has returned the ballot to the chief election officer or
15 county clerk by the United States Postal Service or by
16 depositing the ballot an a place designated for ballot deposit
17 by the chief election officer or county clerk."

18 SECTION 7. Section 11-21, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) The county clerk may designate a registration clerk,
21 who may be an election official, at any of the polling places or
22 at the place of deposit as designated by the chief election



1 officer or county clerk pursuant to section -3, in the county
2 on the day of the election."

3 SECTION 8. Section 11-91.5, Hawaii Revised Statutes, is
4 amended by amending subsections (a), (b), and (c) to read as
5 follows:

6 "(a) Any federal, state, or county election [~~held other~~
7 ~~than on the date of a regularly scheduled primary or general~~
8 ~~election]~~ may be conducted by mail[~~-~~] as provided in
9 chapter .

10 (b) The chief election officer, in consultation with the
11 county clerks, shall determine whether a federal or state
12 election[~~, other than a regularly scheduled primary or general~~
13 ~~election,~~] may be conducted by mail or at polling places.

14 (c) The chief election officer, in consultation with the
15 county clerk, shall determine whether a county election[~~, held~~
16 ~~other than on the date of a regularly scheduled primary or~~
17 ~~general election,~~] may be conducted by mail or at polling
18 places. An election by mail in the county shall be under the
19 supervision of the county clerk."

20 SECTION 9. Section 11-92.3, Hawaii Revised Statutes, is
21 amended by amending its title and subsection (a) to read as
22 follows:



1 "§11-92.3 Consolidated precincts; natural disasters;
2 postponement; [~~absentee voting required~~] special elections.

3 (a) In the event of a flood, tsunami, earthquake, volcanic
4 eruption, high wind, or other natural disaster, occurring prior
5 to an election, that makes a precinct inaccessible, the chief
6 election officer or county clerk in the case of county elections
7 may consolidate precincts within a representative district. If
8 the extent of damage caused by any natural disaster is such that
9 the ability of voters, in any precinct, district, or county, to
10 exercise their right to vote is substantially impaired, the
11 chief election officer or county clerk in the case of county
12 elections may [~~require~~]:

13 (1) (A) Require the registered voters of the affected
14 precinct, district, or county to vote by absentee
15 ballot pursuant to section 15-2 [~~and may~~
16 postpone]; or

17 (B) Require the registered voters of the affected
18 precinct, district, or county to vote by mail
19 pursuant to chapter ; and

20 (2) Postpone the conducting of an election in the affected
21 precinct, district, or county for no more than twenty-
22 one days; provided that any [~~such~~] postponement shall



1 not affect the conduct of the election, tabulation, or
 2 distribution of results for those precincts,
 3 districts, or counties not designated for
 4 postponement.

5 The chief election officer or county clerk in the case of county
 6 elections shall give notice of the consolidation, postponement,
 7 or requirement to vote by absentee ballot[7] or by mail, in the
 8 affected [~~county or~~] precinct, county, or district prior to the
 9 opening of [~~the precinct~~] each polling place by whatever
 10 possible news or broadcast media are available. Precinct
 11 officials and workers affected by any consolidation shall not
 12 forfeit their pay."

13 SECTION 10. Section 11-184, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 **"§11-184 Election expenses and responsibilities in**
 16 **combined state and county elections.** Election expenses in
 17 elections involving both state and county offices shall be
 18 shared as set forth below:

- 19 (1) The State shall pay and be responsible for:
- 20 (A) Precinct officials;
 - 21 (B) Instruction of precinct officials when initiated
 - 22 or approved by the chief election officer;



- 1 (C) Boards of registration;
- 2 (D) Polling place costs other than supplies:
- 3 installation rentals, ballot boxes, voting
- 4 booths, custodians, telephones, and maintenance;
- 5 (E) Other equipment such as ballot transport
- 6 containers;
- 7 (F) Temporary election employees hired to do strictly
- 8 state work; and
- 9 (G) Extraordinary voter registration and voter
- 10 education costs when approved by the chief
- 11 election officer.
- 12 (2) The county shall pay and be responsible for:
- 13 (A) Normal voter registration, voters list
- 14 maintenance, and all printing connected with
- 15 voter registration, including printing of the
- 16 voters list;
- 17 (B) Temporary election employees hired to do strictly
- 18 county work;
- 19 (C) Maintenance of existing voting machines,
- 20 including parts, freight, storage, programming,
- 21 and personnel;



- 1 (D) Maintenance and storage of voting devices and
- 2 other equipment; and
- 3 (E) Employees assigned to conduct absentee or voting
- 4 by mail polling place functions.
- 5 (3) The remaining election expenses shall be divided in
- 6 half between the State and the counties. Each county
- 7 will pay a proration of expenses as a proportion of
- 8 the registered voters at the time of the general
- 9 election. These expenses shall include but not be
- 10 limited to:
- 11 (A) Polling place supplies;
- 12 (B) All printing, including ballots, but excluding
- 13 printing connected with voter registration;
- 14 (C) Temporary election employees not including voting
- 15 machine programmers doing work for both the State
- 16 and county;
- 17 (D) Ballot preparation and packing; and
- 18 (E) All other costs for which the State or county are
- 19 not specifically responsible relating to the
- 20 operation of voting machines, electronic voting
- 21 systems, and other voting systems except paper
- 22 ballots to include but not be limited to real



1 property rentals, equipment rentals, personnel,
 2 mileage, telephones, supplies, publicity,
 3 computer programming, and freight.

4 The responsibility for the above functions shall
 5 be determined by the chief election officer where the
 6 responsibility for such functions has not been
 7 assigned by the legislature.

8 Any future expenses not presently incurred under any voting
 9 system now in use or to be used shall be assigned to
 10 ~~[paragraphs]~~ paragraph (1), (2), or (3) ~~[above]~~ by the chief
 11 election officer upon agreement with the clerks or by the
 12 legislature."

13 SECTION 11. Section 19-6, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 "**§19-6 Misdemeanors.** The following persons shall be
 16 guilty of a misdemeanor:

- 17 (1) Any person who offers any bribe or makes any promise
 18 of gain, or with knowledge of the same permits any
 19 person to offer any bribe or make any promise of gain
 20 for the person's benefit to any voter to induce the
 21 voter to sign a nomination paper, and any person who
 22 accepts any bribe or promise of gain of any kind as



1 consideration for signing the same, whether the bribe
2 or promise of gain be offered or accepted before or
3 after the signing;

4 (2) Any person who wilfully tears down or destroys or
5 defaces any election proclamation or any poster or
6 notice or list of voters or visual aids or facsimile
7 ballot, issued or posted by authority of law;

8 (3) Any person printing or duplicating or causing to be
9 printed or duplicated any ballot, conforming as to the
10 size, weight, shape, thickness, or color to the
11 official ballot so that it could be cast or counted as
12 an official ballot in an election;

13 (4) Every person who is disorderly or creates a
14 disturbance whereby any meeting of the precinct
15 officials or the board of registration of voters
16 during an election is disturbed or interfered with; or
17 whereby any person who intends to be lawfully present
18 at any meeting or election is prevented from
19 attending; or who causes any disturbance at any
20 election; and every person assisting or aiding or
21 abetting any disturbance;



1 (5) Every person who, either in person or through another,
2 in any manner breaks up or prevents, or endeavors to
3 break up or prevent, the holding of any meeting of the
4 board of registration of voters, or in any manner
5 breaks up or prevents, or endeavors to break up or
6 prevent, the holding of any election;

7 (6) Any person, other than those designated by section
8 11-132, who remains or loiters within the area set
9 aside for voting as set forth in section 11-132 during
10 the time appointed for voting;

11 (7) Any person, including candidates carrying on any
12 campaign activities within the area described in
13 section 11-132 during the period of time starting one
14 hour before the polling place opens and ending when
15 the polling place closes for the purpose of
16 influencing votes. Campaign activities shall include
17 the following:

18 (A) Any distribution, circulation, carrying, holding,
19 posting, or staking of campaign cards, pamphlets,
20 posters and other literature;

21 (B) The use of public address systems and other
22 public communication media;



- 1 (C) The use of motor caravans or parades; and
- 2 (D) The use of entertainment troupes or the free
- 3 distribution of goods and services;

4 (8) Any person who opens a return envelope containing [an
 5 absentee]:

6 (A) An absentee ballot voted under chapter 15 other
 7 than those authorized to do so under chapter 15;
 8 or

9 (B) A ballot voted under chapter _____ other than those
 10 authorized to do so under chapter _____ ;

11 (9) Any unauthorized person found in possession of any
 12 voting machine or keys thereof;

13 (10) Every person who wilfully violates or fails to obey
 14 any of the provisions of law, punishment for which is
 15 not otherwise in this chapter specially provided for."

16 SECTION 12. There is appropriated out of the general
 17 revenues of the State of Hawaii the sum of \$ _____ , or so much
 18 thereof as may be necessary for fiscal year 2007-2008, and the
 19 same sum, or so much thereof as may be necessary for fiscal year
 20 2008-2009, for the purpose of implementing and administering the
 21 election by mail program.



S.B. NO. 156

1 The sums appropriated shall be expended by the department
2 of accounting and general services for the purposes of this Act.

3 SECTION 13. This Act shall take effect on July 1, 2007.

4

INTRODUCED BY: *Cyan Hill*

Russell Kolb

Clarence K. Washburn

Thomas G. Proulx



Report Title:

Elections; Voting by Mail

Description:

Authorizes an election by mail voting system for federal, state, and county elections. Requires elections to be conducted by mail when chief election officer, in consultation with county clerks, determines an election by mail is economically and administratively feasible. Makes appropriations.

