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LATE TESTIMONY

COMMITTEE ON JUDICIARY
Rep. Tommy Waters, Chair
Rep. Blake K. Oshiro, Vice Chair

Tuesday, March 25th, 2008
Conference Room 325

Testimony in Support of the INTENT of HCR267, Requesting the Office of Elections Provide a Briefing and Demonstration of Electronic Voting Systems, etc.

Aloha Chair Waters, Vice-Chair Oshiro and members of the committee:

My name is Bart Dame and I am testifying today as an individual on this bill. I have come to my opinions on this matter primarily through two roles I have played in recent years. I was a core member of Safe Vote Hawaii, a group of laypersons and Information Technology professionals who came together around growing public concerns about plans of the Office of Elections to shift to paperless electronic voting machines for use in Hawaii's elections. Working with the Legislature, we were able to pass ACT 200, which required that all electronic voting machines must provide a voter verifiable paper audit trail. This is now the law, but the Office of Elections strongly opposed the requirement as an unnecessary expense that would provide no real benefit. They were stubborn and they were wrong.

I have also been an official election observer for the Democratic Party for the last two election cycles and the designated "pointman" within the state party for voting technology. This has allowed me to develop a partial understanding of the complexities, and difficulties, in running modern elections. It has also provided me an opportunity to discuss common concerns about the election process with observers from the Republican Party, as well as independents and members of civic-minded watchdog groups like the League of Women Voters. It is the responsibility of the election observers to vouch for the integrity and accuracy of the election results. While I am speaking here as an individual, I can assure you that, regardless of party affiliation, there is widespread concern among election observers that we are being asked to "observe" processes that are increasingly NON-OBSERVABLE.

I appreciate the intent of this resolution. I think it is reasonable for elected officials to request a briefing and demonstration of the electronic voting machines. I would also support closer scrutiny of the recent decision to award the voting system contract to Hart-InterCivic. That award is very troubling to me for a number of reasons.

1) First off, it does not make sense to me that the State is eager to lock itself into an 8 to 10 year contract with a single voting machine manufacturer at a time when the technology is rapidly changing and when Federal standards have not been settled upon. On its face, this does not make

sense.

- 2) Secondly, this contract was awarded on the very last day of the previous acting chief elections officer's term. Why it had to be awarded before the new CEO came onboard is not clear to me.
- 3) Third, the contract was awarded to one vendor, Hart InterCivic for a price about two and a half times as much as the next qualified vendor. That raises serious questions in my mind and I believe the State had an obligation to seek "best value" for the people of Hawaii and should have set aside the award to Hart and given it to ES&S instead.
- 4) Fourth, a review of the evaluation sheets convinced me that the award of points for different features of the competing proposals was NOT objective, but biased. IN fact, I believe the Office of Elections has had a long established pattern of bias against ES&S and in favor of Hart InterCivic.

Here is a clear example:

The Office of Elections has claimed that it had opposed the passage of the law requiring a "Voter Verified Paper Audit Trail" because the VVPAT would not be equally accessible to blind voters. Let me explain this argument.

When a handicapped voter uses an electronic voting machine, it is equipped with several handicapped accessible features. A blind voter is provided an audio headset and receives audio instructions and guidance through the headphones. The choices are presented to the voter and the voter is instructed how to register their vote by pressing a button and how to move on to the next choice. When they are finished, they are given a chance to have their choices read back to them through the headset, make changes if necessary and then, cast their ballot.

A sighted voter, using the same machine, will have an opportunity to view a printed record of their choices to ensure that the onscreen record of the vote and the paper record match. This option is not available to the blind voter. The Office of Elections and the manufacturer, Hart InterCivic, do not like to call attention to this problem and instead use misleading language which implies that the blind voter is able to confirm their vote when the voting machine reads back to them their votes from the electronic record, NOT from the paper record.

And yet, when Safe Vote was trying to get the State to adopt the VVPAT, the fact that there was no way for the blind voter to "read" the paper record was sufficient reason for the Office to oppose the VVPAT requirement. Just three months ago, at a meeting of the Elections Commission, a top official from the Office, explained their earlier opposition solely on the inaccessibility of the VVPAT to blind voters.

Yet, in both 2006 and again in 2008, when the Office of Elections led the evaluation process of the competing systems being offered, no points were subtracted from the Hart eSlate voting machine, despite this problem.

And ES&S had proposed the State use a machine called the AutoMark as an alternative to the DRE machine. This is a different approach. The AutoMark has the same handicapped accessibility features as a regular DRE ("electronic voting machine") like the Hart machine, but it is simply a handicapped accessible ballot marking machine. It does not count votes. It only allows handicapped voters to mark the same ballots as all other voters use. It also allows blind voters to verify the paper record of the vote. When a marked ballot is inserted into the AutoMark, it tells the voter that the ballot has already been marked and offers to read back, from the paper, the marked votes. This allows the voter to confirm that the paper record has accurately recorded their vote. This solves the problem that the Office of Elections had previously cited as a major objection for using VVPAT compatible systems. Yet, this solution to that MAJOR problem received NO POINTS in the evaluation scoring system.

Either the problem of the "inaccessible " paper record is a problem or it is not. The Office of Elections shifting standard on this would be laughable, if anyone were paying attention. But the evaluation sheets were sealed away until after the award and few people have bothered to review them once the decision had been made.

This reso is an attempt to grapple with some of the problems facing the Office of Elections. Here are my thoughts.

The Office of Elections should make a serious attempt to open up its operations to greater transparency. Perhaps the new Chief Elections Officer can provide new leadership committed to transparency.

If the Office were to reach out to other IT professionals, both from other state agencies, but also from professional associations in the local IT industry. Invite professionals with a background in network security and financial auditing to review their current system. I believe the Office would benefit if they were to seek out expertise from outside their office. Financial services and network administrators have developed "best practices" standards that are directly applicable to the conduct of elections. People are willing to help.

A few days after the new Chief Elections Officer came onboard, I called his office and spoke to his assistant, asking for an opportunity to bring in a couple of high-level IT professionals to sit down with him and share our concerns. The assistant, Caroline, followed up the next day, to ask the names of the IT professionals. When I told her, she told me that she would call me back as soon as Mr. Cronin's schedule would permit. That was two months ago. I am hoping Mr. Cronin's schedule will free up soon.

This reso is an attempt to correct a longstanding problem: the Office of Elections has little effective accountability to the public. It was deliberately structured that way, but it needs to be adjusted. At one time, the Office of Elections was headquartered in the Office of the Lt. Governor. When Mazie Hirono was LG, she supported moving the Office out and to make it free of political control. An Elections Commission was established to provide some oversight over the Office, but the only real power they had at their disposal was a very blunt instrument: the power to hire and fire the Chief Elections Officer.

The current Elections Commission has been largely dormant for a long time, rarely having meetings and going without a chair for a couple of years. Now that they have a new chair, I am hopeful that they can provide a place for citizens to bring their concerns about our elections and can help stimulate a public discussion about the voting systems. Under State law, the Election Commission has the authority to “advise the Chief Elections Officer” on matters relating to elections. I have not seen that happen. I have attended meetings and have seen the Office of Elections staff advise the Commission, but I have not seen the reverse.

The Elections Commission has the authority to “hold public hearings” on matters related to elections. I am unaware of that having been done in the past few years, though I believe there is an opportunity to meet a public need and increase communication between the Office of Elections and the general public. In some communities, the elections are seen as belonging to the community. In Hawaii, the elections are seen as something administered by the State.

State law recognizes the “official election observers” as representatives of the various stakeholders, the political parties, public interest civic groups, etc. The role of the official observers is very poorly defined under both law and administrative rules. Their role can be clarified and strengthened. They have developed an informed interest in observing the elections process up close, yet they have an unclear legal status and their opinions are not tapped by the Office, the Elections Commission or the Legislature.

The reso raises concerns about the audit standards for electronic voting. The current audit standards are woefully deficient. To the best of my knowledge, the paper records of the votes cast during absentee walk-in are not audited at all, yet that is a particular moment of vulnerability for mischief. The VVPATs generated in the precincts polling places on election day are audited. (This is true about the optical scan ballots as well.) Under the law, 100% of the VVPATs from 10% of the precincts shall be manually counted to verify the accuracy of the electronic tally, but generally, only one statewide race is tested. The percentage of precincts audited should probably be reduced, but more races per ballot should be audited. Professional statisticians should probably be consulted to determine what would constitute an adequate sampling of the precincts. This change would require a change in statute.

In closing, I appreciate the intent of this resolution. I welcome increased interest from the Legislature towards voting technology. I also welcome more scrutiny of the recent awards of voting system contracts. There were significant problems in 2004, 2006 and now this year. The system needs reform, including, more transparency.

Both the new Chief Elections Officer, Kevin Cronin and the new Elections Commission Chair, William Marston provide an opportunity to solve a lot of the problems with the Office of Elections. I hope they will rise to the occasion.