
A BILL FOR AN ACT

RELATING TO VOTING BY MAIL.

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

1 SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended
2 by adding a new part to be appropriately designated and to read
3 as follows:

4 "PART . VOTING BY MAIL

5 §11-A Voting by mail; general principles. Beginning in
6 2010, all federal, state, and county primary, general, or
7 special elections shall be conducted by mail, pursuant to rules
8 adopted by the chief election officer. Any violation,
9 wrongdoing, or discrepancy relating to these rules shall be made
10 known to the county clerk or the chief election officer at the
11 earliest possible time. The secrecy of the ballot and the
12 accurate recording, counting, and safeguarding of the ballot
13 shall be paramount.

14 §11-B Voting by mail; function of polling place. (a) On
15 election days conducted by mail-in ballot, unless designated as
16 a voting place by a county clerk, no polling place shall be open
17 to voters except for the purpose of collecting mail-in ballots,



1 if that polling place has been so designated by the chief
2 election officer or the county clerk.

3 (b) The chief election officer shall adopt rules pursuant
4 to chapter 91 to provide for uniformity in the conduct of state
5 elections by mail-in cooperation with county clerks.

6 **§11-C Voting by mail; procedures.** (a) When conducting an
7 election by mail, each county clerk may designate the clerk's
8 office or one central location in each representative district
9 in which the election is conducted as the single place to obtain
10 a replacement ballot.

11 (b) The chief election officer by rule shall establish
12 requirements and criteria for the designation of places of
13 deposit for the ballots cast in the mail-in election. The
14 places so designated shall be open on the date of the election
15 for at least eight hours, but shall be open until at least 8:00
16 p.m.

17 **§11-D Distribution of mail-in ballots.** The clerk of each
18 county shall mail by nonforwardable mail an official ballot with
19 a return identification envelope, ballot discard envelope in the
20 case of a primary election, and a secrecy voted ballot envelope
21 to each registered voter by the following dates:



1 (1) In the case of a primary election ballot, not earlier
2 than the first Friday of September and not later than
3 the third Monday of September; and

4 (2) In the case of a general election ballot not earlier
5 than the first Friday of October and not later than
6 the last Monday in October. Following the latter date
7 a registered voter not receiving a ballot may notify
8 the applicable county clerk's office and request a
9 replacement ballot.

10 **§11-E Replacement ballot.** (a) A registered voter may
11 obtain a replacement ballot if the ballot is destroyed, spoiled,
12 lost, or not received by the registered voter, or if the voter
13 incorrectly marks a ballot in the process of voting, or receives
14 an illegible or misprinted ballot.

15 (b) The period to issue replacement ballots shall open on
16 the first workday after the date the ballots are mailed pursuant
17 to section 11-D. The period shall close at 4:30 p.m. seven
18 workdays prior to the postmark deadline date for the return of
19 ballots by mail.

20 (c) Immediately upon receipt of a replacement ballot
21 request within the time limit specified in subsection (b),
22 records shall be examined by the chief election officer, county



1 clerk, or official designee, to ascertain whether or not the
2 person is qualified and entitled to vote as requested. Upon
3 verification, a replacement ballot shall be issued and mailed in
4 an official election packet. All requests received on the last
5 day of the reissuing period shall be mailed to the voter as soon
6 as practicable, but no later than twenty-four hours after
7 receipt.

8 (d) The county clerk shall keep a record of each
9 replacement ballot provided under this section. The county
10 clerk may reissue and mail a new ballot that shall be
11 appropriately marked "Second Ballot". No replacement ballot
12 shall be available after 4:30 p.m. seven workdays prior to the
13 postmark date for the return of ballots by mail. The originally
14 issued ballot when returned shall be marked "spoiled" and
15 considered void. All spoiled, invalid, or challenged ballots
16 shall be segregated and retained apart from other ballots in a
17 secure manner and turned over to the chief election officer.

18 **§11-F Ballot requirements.** A ballot shall be counted only
19 if:

- 20 (1) It is returned in the return identification envelope;
21 (2) The envelope is signed by the registered voter; and



1 (3) The signature is verified against the voter's
2 registration card.

3 Unsigned voted ballot envelopes shall be disqualified and
4 declared invalid. Voted ballot envelopes which when opened
5 contain no ballots shall be marked and considered invalid for
6 auditing purposes and deposited in the invalid ballot box.

7 **§11-G Mail-in ballot due date.** All ballots shall be
8 returned by mail in the return envelope provided and postmarked
9 no later than the date of the primary or the date of the general
10 election respectively. Mail-in ballots may also be returned in
11 designated precinct polling places on the day of the election.
12 Any ballot delivered to the chief election officer and
13 postmarked after the respective primary or general election day
14 shall be disqualified and declared "invalid".

15 **§11-H Election day precinct polling places; hours.** The
16 chief election officer shall establish requirements and criteria
17 for the designation of places of deposit for the ballots cast in
18 the election. The places designated shall be open on the date
19 of the election for a period determined by the county clerk, for
20 at least eight hours and close no later than 8:00 p.m. only for
21 the collection of ballots that would otherwise not meet the
22 deadline requirement in section 11-G.



1 **§11-I Name change or address change.** A registered voter
2 who has changed the voter's name, or residence in the county, or
3 county of residence after the close of registration as provided
4 in section 11-18, 11-19, or 11-21 shall request a ballot in
5 person from the county clerk and shall not receive a ballot by
6 mail as provided in section 11-D."

7 SECTION 2. Section 11-25, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§11-25 Challenge by voters; grounds; procedure.** (a)
10 Challenging prior to election day. Any registered voter may
11 challenge the right of a person to be or to remain registered as
12 a voter in any precinct for any cause not previously decided by
13 the board of registration or the supreme court in respect to the
14 same person; provided that in an election of members of the
15 board of trustees of the office of Hawaiian affairs the voter
16 making the challenge must be registered to vote in that
17 election. The challenge shall be in writing, setting forth the
18 grounds upon which it is based, and be signed by the person
19 making the challenge. The challenge shall be delivered to the
20 clerk who shall forthwith serve notice thereof on the person
21 challenged. The clerk shall, as soon as possible, investigate
22 and rule on the challenge.



1 (b) Challenging on election day. Any voter rightfully in
2 the polling place may challenge the right to vote of any person
3 who comes to the precinct officials for voting purposes. The
4 challenge shall be on the grounds that the voter is not the
5 person the voter alleges to be, or that the voter is not
6 entitled to vote in that precinct; provided that only in an
7 election of members of the board of trustees of the office of
8 Hawaiian affairs, a person registered to vote in that election
9 may also challenge on the grounds that the voter is not
10 Hawaiian. No other or further challenge shall be allowed. Any
11 person thus challenged shall first be given the opportunity to
12 make the relevant correction pursuant to section 11-21. The
13 challenge shall be considered and decided immediately by the
14 precinct officials and the ruling shall be announced.

15 (c) If neither the challenger nor the challenged voter
16 shall appeal the ruling of the clerk or the precinct officials,
17 then the voter shall either be allowed to vote or be prevented
18 from voting in accordance with the ruling. If an appeal is
19 taken to the board of registration, the challenged voter shall
20 be allowed to vote; provided that ballot is placed in a sealed
21 envelope to be later counted or rejected in accordance with the
22 ruling on appeal. The chief election officer shall adopt rules



1 in accordance with chapter 91 to safeguard the secrecy of the
2 challenged voter's ballot.

3 (d) Challenging when voting by mail. For a challenge in
4 an election conducted by mail, a person's ballot may be
5 challenged at any time before the ballot is removed from its
6 return envelope for processing. The challenge shall be in
7 writing, setting forth the grounds upon which it is based, and
8 be signed by the person making the challenge. The challenge
9 shall be delivered to the clerk who shall forthwith serve notice
10 thereof on the person challenged. The clerk, as soon as
11 possible, shall investigate and rule on the challenge."

12 SECTION 3. Section 11-140, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§11-140 Spoiled ballots.** [~~In elections using the paper~~
15 ~~ballot and electronic voting systems, if a voter spoils a~~
16 ~~ballot, the voter may obtain another upon returning the spoiled~~
17 ~~one. Before returning the spoiled ballot, the voter shall~~
18 ~~conform to the procedure promulgated by the chief election~~
19 ~~officer to retain the secrecy of the vote.] In elections using a
20 mail-in ballot, if a voter spoils a ballot, the voter may obtain
21 a replacement mail-in ballot marked "Second Ballot" as provided
22 in section 11-E."~~



1 SECTION 4. Section 11-152, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§11-152 Method of counting. (a) ~~[In an election using~~
4 ~~the paper ballot voting system, immediately after the close of~~
5 ~~the polls, the chairperson of the precinct officials shall open~~
6 ~~the ballot box. The precinct officials at the precinct shall~~
7 ~~proceed to count the votes as follows:~~

8 ~~(1) The whole number of ballots shall first be counted to~~
9 ~~see if their number corresponds with the number of~~
10 ~~ballots cast as recorded by the precinct officials,~~

11 ~~(2) If the number of ballots corresponds with the number~~
12 ~~of persons recorded by the precinct officials as~~
13 ~~having voted, the precinct officials shall then~~
14 ~~proceed to count the vote cast for each candidate,~~

15 ~~(3) If there are more ballots or less ballots than the~~
16 ~~record calls for the precinct officials shall proceed~~
17 ~~as directed in section 11-153.~~

18 ~~(b) In those precincts using the electronic voting system,~~
19 ~~the ballots shall be taken in the sealed ballot boxes to the~~
20 ~~counting center according to the procedure and schedule~~
21 ~~promulgated by the chief election officer to promote the~~
22 ~~security of the ballots. In the presence of official observers,~~



1 ~~counting center employees may start to count the ballots prior~~
2 ~~to the closing of the polls provided there shall be no printout~~
3 ~~by the computer or other disclosure of the number of votes cast~~
4 ~~for a candidate or on a question prior to the closing of the~~
5 ~~polls. For the purposes of this section, the closing of the~~
6 ~~polls is that time identified in section 11-131 as the closing~~
7 ~~hour of voting.] In an election using mail-in ballots, ballots~~
8 ~~shall be secured in a manner and according to procedures adopted~~
9 ~~by the chief election officer to promote the security of the~~
10 ~~ballots. Not sooner than the fifth day before the date of an~~
11 ~~election, in preparation for counting ballots delivered by mail,~~
12 ~~the county clerk may begin opening return identification and~~
13 ~~secrecy envelopes, and verifying signatures of ballots delivered~~
14 ~~by mail and received by the county clerk. The county clerk may~~
15 ~~take any other actions that are necessary to allow the counting~~
16 ~~of ballots delivered by mail to begin on election day.~~

17 (b) All ballots and voted ballot envelopes containing the
18 voter's signature shall be held for safekeeping for thirty
19 calendar days after the certified election results have been
20 certified pursuant to section 11-155.

21 (c) The total number of ballots shall be verified to equal
22 the total number of voted ballot envelopes recorded as received



1 with the mail-in ballots. When there are more ballots than the
 2 records show as having been received, it shall be an overage and
 3 when less ballots it shall be a shortage. The chief election
 4 officer shall make a note of any overage or shortage after the
 5 vote is tabulated. Should the overage or shortage of ballots be
 6 significant enough to change the outcome of any election, an
 7 election contest may be brought under part XI."

8 SECTION 5. Section 12-31, Hawaii Revised Statutes, is
 9 amended to read as follows:

10 "§12-31 Selection of party ballot; voting. (a) No person
 11 eligible to vote in any primary or special primary election
 12 shall be required to state a party preference or nonpartisanship
 13 as a condition of voting. Each voter shall be issued the
 14 primary or special primary ballot for each party and the
 15 nonpartisan primary or special primary ballot. A voter shall be
 16 entitled to vote only for candidates of one party or only for
 17 nonpartisan candidates. If the primary or special primary
 18 ballot is marked contrary to this paragraph, the ballot shall
 19 not be counted.

20 (b) In any primary or special primary election in the year
 21 1979 and thereafter, a voter shall be entitled to select and to
 22 vote the ballot of any one party or nonpartisan, regardless of



1 which ballot the voter voted in any preceding primary or special
2 primary election.

3 (c) In any election conducted by mail-in ballot only, each
4 voter shall be issued the primary or special primary ballot for
5 each party and the nonpartisan primary or special primary
6 ballot. A secrecy discard envelope for the ballots of the non-
7 selected party shall be mailed to each voter along with the
8 official ballot envelope. A voter shall be entitled to vote
9 only for candidates of one party or only for nonpartisan
10 candidates. If the primary or special primary ballot is marked
11 contrary to this paragraph, the ballot shall not be counted.
12 The chief election officer may develop envelopes of
13 distinguishing marks, color, or size to instruct the voter of
14 the discard ballots."

15 SECTION 6. Chapter 15, Hawaii Revised Statutes, is
16 repealed.

17 SECTION 7. In codifying the new sections added by section
18 1 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections in this Act.

21 SECTION 8. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



H.B. NO. 307

1 SECTION 9. This Act shall take effect upon its approval.

2

INTRODUCED BY:



JAN 23 2009



Report Title:

Election by Mail; Voting

Description:

Requires chief election officer to mail a mail-in ballot to all registered voters for the 2010 primary and general elections, and all subsequent elections. Describes procedures for voting, return of mail-in ballot, and replacement of ballot. Repeals absentee ballot laws.

