

JAN 22 2010

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## A BILL FOR AN ACT

RELATING TO ELECTIONS BY MAIL.

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

1           SECTION 1. The legislature finds that it is in the State's  
2 interest to increase voting participation. In 2008, Hawaii had  
3 the lowest voter turnout rate for general elections in the  
4 nation with only 51.8 per cent of registered voters in islands  
5 voting in the presidential election. In contrast, Oregon has  
6 one of the ten highest voter turnout rates in the nation, with  
7 over 85.7 per cent of eligible voters voting in the 2008 general  
8 election.

9           Oregon instituted its vote-by-mail system after it was  
10 approved by almost seventy per cent of Oregonians in a 1998  
11 initiative. In the 1996 general election, voter participation  
12 in Oregon was 71.3 per cent. In 2000, after vote-by-mail was  
13 instituted, the voter turnout was 79.8 percent. Vote-by-mail is  
14 credited with improving voter participation in Oregon. Oregon's  
15 vote-by-mail system is used for all elections and is popular  
16 with voters because it empowers the voter and eliminates many of  
17 the problems and costs of other voting systems. In Oregon,



1 ballots are mailed to voters, and the voter is required to  
2 return the ballot by mail or by dropping it off at designated  
3 sites within a two-week period.

4 As of 2004, although Oregon was the only state to use a  
5 vote-by-mail system for all elections, all states now allow some  
6 version of mail-in voting. At least twenty-nine states,  
7 including Hawaii, allow no-excuse absentee voting. In the 2008  
8 general election, twenty five per cent of ballots were mail in  
9 absentee ballots. The legislature finds that a vote-by-mail  
10 system has a number of advantages over traditional polling.

11 The purpose of this Act is to require the office of  
12 elections to develop and implement a vote-by-mail program to be  
13 implemented in the 2012 elections.

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

17 "PART

18 "§11- Definitions. For purposes of the part, unless the  
19 context clearly requires otherwise:

20 "Affirmation statement" means the statement included with  
21 all ballots, including replacement ballots, that the person  
22 filling out and returning the ballot is the person to whom the



1 ballot was delivered. It shall be signed by the voter and  
2 included in the outer envelope of the returned ballot

3 "Ballot" means a ballot as defined in section 11-1 that is  
4 used in an election by mail and that conforms to the  
5 requirements of this chapter.

6 "Chief election officer" means the individual defined in  
7 section 11-1.

8 "Clerk" shall have the same meaning as defined in section  
9 11-1.

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

12 "Drop site" means any site designated by the chief  
13 elections officer as a location where ballots can be delivered  
14 as an alternative to mailing them to the county clerk's office.

15 "Election" shall have the same meaning as defined in  
16 section 11-1, and shall include presidential elections.

17 "Election by mail" means an election conducted primarily by  
18 mail-in-ballot.

19 "Mail-in-ballot" means any ballot used by a voter to vote  
20 by mail in any election.

21 "Polling place" or "poll" means any county clerks office or  
22 any drop site.



1 "Replacement ballot" means a ballot provided to a voter at  
2 the voter's request to replace the ballot originally mailed to  
3 the voter by the clerk's office.

4 "Voter" shall have the same meaning as defined in section  
5 11-1.

6 **§11- Elections to be conducted by mail.** Beginning  
7 July 1, 2011, all elections shall be conducted by mail. Part  
8 VIII of chapter 11, relating to ballots, shall apply to this  
9 chapter.

10 **§11- Procedures for sending ballots to voters by mail.**

11 (a) The clerk shall mail by nonforwardable mail:

- 12 (1) An official ballot;
- 13 (2) An affirmation statement;
- 14 (3) Instructions explaining the proper method of filling  
15 out the ballot; the proper way to return it by mail;  
16 the proper method for completing the affirmation  
17 statement and a notice that the voter's ballot will be  
18 valid only if the affirmation statement is signed; all  
19 alternatives to the mail-in-ballot including but not  
20 limited to drop sites, the county clerk's office, and  
21 accommodations for voters with disabilities; the  
22 procedure for obtaining a replacement ballot; a



1 contact number for further questions; and any other  
2 information prescribed by the rules adopted by the  
3 chief election officer.

4 (4) A ballot envelope;

5 (5) A prepaid return envelope pre-addressed to the country  
6 clerk's office where the voter is registered;

7 to each registered voter not more than fifteen days before the  
8 election and not less than ten days before the election.

9 (b) If the clerk determines that a voter does not receive  
10 daily mail service from the United States Postal Service, the  
11 clerk shall mail by forwardable mail to the last known address  
12 of the voter:

13 (1) An official ballot;

14 (2) An affirmation statement;

15 (3) Instructions explaining the proper method of filling  
16 out the ballot; the proper way to return it by mail;  
17 the proper method for completing the affirmation  
18 statement and a notice that the voter's ballot will be  
19 valid only if the affirmation statement is signed; all  
20 alternatives to the mail-in-ballot including but not  
21 limited to drop sites, the county clerk's office, and  
22 accommodations for voters with disabilities; the



1 procedure for obtaining a replacement ballot; a  
2 contact number for further questions; and any other  
3 information prescribed by the rules adopted by the  
4 chief election officer;

5 (4) A ballot envelope; and

6 (5) A prepaid return envelope pre-addressed to the country  
7 clerk's office where the voter is registered;

8 not more than fifteen days before the election and not less than  
9 ten days before the election.

10 (c) If the voter requires a ballot be mailed outside of  
11 the State of Hawaii, the clerk shall mail by nonforwardable  
12 mail:

13 (1) An official ballot;

14 (2) An affirmation statement;

15 (3) Instructions explaining the proper method of filling  
16 out the ballot; the proper way to return it by mail;  
17 the proper method for completing the affirmation  
18 statement and a notice that the voter's ballot will be  
19 valid only if the affirmation statement is signed; all  
20 alternatives to the mail-in-ballot including but not  
21 limited to drop sites, the county clerk's office, and  
22 accommodations for voters with disabilities; the



1 procedure for obtaining a replacement ballot; a  
2 contact number for further questions; and any other  
3 information prescribed by the rules adopted by the  
4 chief election officer;

5 (4) A ballot envelope; and

6 (5) A prepaid return envelope pre-addressed to the country  
7 clerk's office where the voter is registered;  
8 sufficiently in advance of the election to allow adequate time  
9 for delivery of the ballot and the processing of the returns by  
10 the date of the election.

11 (d) The mailed distribution and return of ballots in an  
12 election by mail shall be at no cost to the voter. The State  
13 and the counties shall share in the cost of postage associated  
14 with the distribution and return of ballots pursuant to sections  
15 11-182, 11-183, and 11-184, if the costs are not covered by the  
16 federal government.

17 **§11- Replacement ballots.** (a) In an election by mail,  
18 a voter may obtain replacement ballots. Replacement ballots and  
19 replacement ballot request forms shall be available from the  
20 county clerks' offices and at any other location designated by  
21 the rules adopted by the chief election officer. To obtain a  
22 replacement ballot, the voter shall complete and sign a



1 replacement ballot request form. The request for a replacement  
2 ballot may be made by mail, in person, or by other means  
3 designated by the chief election officer.

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

6 (1) Verify the registration of the voter and ensure that  
7 another ballot has not been returned by the voter;

8 (2) Issue a replacement ballot;

9 (3) Issue a prepaid, preaddressed return envelope clearly  
10 marked with "replacement ballot"; and

11 (4) Make a notation on the list of registered voters that  
12 the voter has requested a replacement ballot and has  
13 been issued one.

14 **§11- Methods of ballot return.** (a) Ballots may be  
15 returned to the county clerk's office where the voter is  
16 registered or at any drop site in the county where the voter is  
17 registered.

18 (b) All county clerks' offices shall accept ballots by  
19 mail, in person, or by other means designated by the chief  
20 election officer. County clerks offices shall accept ballots  
21 received not later than the end of the acceptance period  
22 determined by the chief election officer.





1 (c) The chief election officer shall designate at least  
2 one drop site per voting precinct containing a ballot depository  
3 that shall be locked and secured from tampering and any other  
4 security measures that the chief election officer shall  
5 authorize. Drop sites shall accept ballots delivered in person  
6 or by other means designated by the chief election officer at  
7 least from 7 a.m. until 6 p.m. on election day and at any other  
8 time determined by the chief election officer as an alternative  
9 to returning the ballots by mail.

10 **§11- Processing returned ballots.** (a) All ballots  
11 received at drop sites shall be stored in sealed, tamper-proof  
12 containers and transported to the county clerk's office of that  
13 precinct.

14 (b) The county clerks' offices shall determine the  
15 validity of all ballots. A ballot is valid if it is:

- 16 (1) Received in the prepaid, preaddressed envelope  
17 delivered with the ballot;
- 18 (2) The envelope is signed by the voter to whom the ballot  
19 was issued;
- 20 (3) The signature of the voter is verified by the clerk or  
21 their designee by comparing it to the signature on the  
22 voter's most recent voter registration affidavit; and



1           (4) The voter is a registered voter who has complied with  
2           section 11-15.

3           (c) Upon receipt of a cast replacement ballot, the clerk  
4 or a designated appointee shall verify that a completed and  
5 signed replacement ballot request form has been received by the  
6 clerk or is included with the voted replacement ballot. If a  
7 request form has been completed and signed by the voter and  
8 received by the clerk, the clerk or a designated appointee shall  
9 process the ballot. If the replacement ballot request form is  
10 not completed or signed by the voter or not received by the  
11 clerk, the clerk or a designated appointee shall the ballot  
12 invalid.

13           (d) Ballots determined to be valid shall be sorted by the  
14 precinct of the voter who cast it and stored in a secure room  
15 until election day. Invalid ballots shall be stored in a  
16 separate sealed room for further review.

17           §11-     **Counting ballots.** (a) Ballot counting may begin  
18 no sooner than the day of the election. Valid ballots shall be  
19 counted in the presence of official observers. Ballot counting  
20 shall include the following:

21           (1) Ballots shall be kept separated by precinct throughout  
22           the process.



- 1           (2) One group of volunteers or employees shall open the  
2           outer, signed envelope;
- 3           (3) One group of volunteers or employees shall open the  
4           inner envelope, remove the ballots and place  
5           unquestionable ballots in sealed, tamperproof boxes.  
6           Questionable ballots shall be endorsed with the  
7           clerk's name or initials, and the word "questionable".  
8           All questionable ballots shall be set aside uncounted  
9           and disposed of according to rules and regulations set  
10          by the chief election officer. A ballot is  
11          questionable if:
- 12           (A) A ballot contains any mark or symbol whereby it  
13           can be identified, or any mark or symbol contrary  
14           to the provisions of law; or
- 15           (B) Two or more ballots are found in the envelope;
- 16          (4) One group of volunteers or employees shall open the  
17          sealed boxes and count them in the manner prescribed  
18          by the chief election officer;
- 19          (5) To enable random sampling by a manual audit the count  
20          shall be tallied every two hundred and fifty ballots.  
21          Each consecutive two hundred and fifty ballots



1 together with the tally up to that point shall be  
2 stored in separate boxes; and

3 (6) No individual may participate in more than one group  
4 of employees or volunteers.

5 §11- Rules. The chief election officer may adopt rules  
6 as authorized under section 11-4 for purposes of this part."

7 SECTION 3. Section 11-1, Hawaii Revised Statutes, is  
8 amended to read as follows:

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

10 "Ballot", a ballot including an absentee ballot is a  
11 written or printed, or partly written and partly printed paper  
12 or papers containing the names of persons to be voted for, the  
13 office to be filled, and the questions or issues to be voted on.  
14 A ballot may consist of one or more cards or pieces of paper, or  
15 one face of a card or piece of paper, or a portion of the face  
16 of a card or piece of paper, depending on the number of offices,  
17 candidates to be elected thereto, questions or issues to be  
18 voted on, and the voting system in use. [~~It shall also include~~  
19 ~~the face of the mechanical voting machine when arranged with~~  
20 ~~cardboard or other material within the ballot frames, containing~~  
21 ~~the names of the candidates and questions to be voted on.] "~~

22 2. By amending the definition of "voting system" to read:



1        "Voting system", means the use of paper ballots,  
2    [~~electronic ballot cards, voting machines, or any system by~~  
3    ~~which votes are cast and counted.~~] in an election by mail as  
4    provided under part ."

5        3. By adding the definitions of "polling place" and "poll"  
6    to read:

7        "Polling place" and "poll" means any drop site or county  
8    clerk's office."

9        SECTION 4. Section 11-12, Hawaii Revised Statutes, is  
10   amended by amending subsection (a) to read as follows:

11        "(a) Every person who has reached the age of eighteen  
12   years or who is seventeen years of age and will be eighteen  
13   years of age by the date of the next election, and is otherwise  
14   qualified to register may do so for that election. The person  
15   shall then be listed upon the appropriate county general  
16   register and precinct list. No person shall register or vote in  
17   any other [~~precinct~~] county than that in which the person  
18   resides except as provided in section 11-21."

19        SECTION 5. Section 11-17, Hawaii Revised Statutes, is  
20   amended by amending subsection (a) to read as follows:

21        "(a) The clerk, not later than 4:30 p.m. on the sixtieth  
22   day after every general election, shall remove the name of any



1 registered voter who did not vote in that general election, and  
2 also did not vote in the primary election preceding that general  
3 election, and also did not vote in the previous general  
4 election, and also did not vote in the primary election  
5 preceding that general election, and also did not vote in the  
6 regularly scheduled special elections held in conjunction with  
7 those primary and general elections, if any, with the exception  
8 of:

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

12 If a person voted, at least once, in any of the above-mentioned  
13 elections, the person's name shall remain on the list of  
14 registered voters. For this purpose "vote" means [~~the~~  
15 ~~depositing of the ballot in the ballot box whether the ballot is~~  
16 ~~blank or later rejected for any reason. In the case of voting~~  
17 ~~machines "vote" means the voter has activated the proper~~  
18 ~~mechanism and fed the vote into the machine.] voting by a  
19 mail-in-ballot as defined in section 11- and duly processed  
20 under chapter 11."~~

21 SECTION 6. Section 11-21, Hawaii Revised Statutes, is  
22 amended by amending subsection (e) to read as follows:



1           "(e) No person shall be prevented from voting at the  
2 election in the [~~precinct~~] county in which the person's name  
3 appears on the voters list due to a change of name, or other  
4 correction made under this section. However, any voter  
5 registered in the wrong [~~precinct~~] county who shall refuse to  
6 make the correction of registration may be challenged in  
7 accordance with section 11-25."

8           SECTION 7. Section 11-22, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           "**§11-22 Changing register; correction of errors.** (a) The  
11 clerk shall correct the register if at any time it shall be  
12 manifest to the clerk that the name of a person registered has  
13 been accidentally misspelled, or that the person has been  
14 misnamed therein, or that the person has been accidentally  
15 registered under the wrong precinct, district, or county, or  
16 that the person was accidentally removed pursuant to section  
17 11-17(a), or that the name of the person should be corrected or  
18 restored pursuant to section 11-17(b).

19           (b) In any case where the clerk refuses to correct the  
20 register the person may appeal to the board of registration and  
21 the register shall be changed upon a written order of the board  
22 of registration, setting forth the reasons for the change. The



1 order shall be directed to the clerk [~~or to the precinct~~  
2 ~~officials of the election precinct where the voter is entitled~~  
3 ~~to vote if the register has been closed. The precinct officials~~  
4 ~~shall thereupon correct the list of voters furnished them~~  
5 ~~according to the terms of the order, noting on the list the~~  
6 ~~reasons for the correction, and shall send the original order to~~  
7 ~~the clerk as soon as may be possible after the close of the~~  
8 ~~polls]. The clerk, upon receipt of any order from the board of~~  
9 registration [~~or from the precinct officials, as the case may~~  
10 ~~be,~~] shall correct the register according to the terms of the  
11 order, making on the register a reference to the order."

12 SECTION 8. Section 11-24, Hawaii Revised Statutes, is  
13 amended by amending subsection (c) to read as follows:

14 "(c) Immediately upon the closing of the general county  
15 register, the clerk shall proceed to prepare a list of all  
16 registered voters in [~~each precinct, separately.~~] the county.  
17 The list shall contain, in alphabetical order, without  
18 designation of the race or age of voters, the names of all  
19 voters so registered in [~~each precinct,~~] the county, and the  
20 precinct and residence of each unless such residence is deemed  
21 confidential pursuant to section 11-14.5. The list shall be  
22 available for inspection at the office of the county clerk prior





1 to election day. [~~On election day the precinct officials shall~~  
2 ~~post the list at the precinct polling place.~~] "

3 SECTION 9. Section 11-25, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5 "(b) Challenging on election day. Any voter rightfully in  
6 the polling place may challenge the right to vote of any person  
7 who comes to the [~~precinct officials~~] polling place for voting  
8 purposes. The challenge shall be on the grounds that the voter  
9 is not the person the voter alleges to be, or that the voter is  
10 not entitled to vote in that [~~precinct; provided that only in an~~  
11 ~~election of members of the board of trustees of the office of~~  
12 ~~Hawaiian affairs, a person registered to vote in that election~~  
13 ~~may also challenge on the grounds that the voter is not~~  
14 ~~Hawaiian.~~] county. No other or further challenge shall be  
15 allowed. Any person thus challenged shall first be given the  
16 opportunity to make the relevant correction pursuant to section  
17 11-21. The challenge shall be considered and decided  
18 immediately by the precinct officials or clerk and the ruling  
19 shall be announced."

20 SECTION 10. Section 11-72, Hawaii Revised Statutes, is  
21 amended by amending subsection (b) to read as follows:



1           "(b) In assigning the precinct officials, the following  
2 criteria shall be followed:

3           (1) The precinct officials shall be registered voters of  
4 the precinct in which they serve; but if qualified  
5 persons in the precinct or representative district are  
6 not readily available to serve, they may be chosen  
7 from without the precinct or representative district,  
8 or if qualified persons either in or without the  
9 precinct or representative district are not available  
10 to serve, the chief election officer may designate  
11 precinct officials who are not registered voters if  
12 the persons so designated are otherwise qualified and  
13 shall have attained the age of sixteen years on or  
14 before June 30, of the year of the election in which  
15 they are appointed to work;

16           (2) The chief election officer may designate more precinct  
17 officials than are needed in order to create a pool of  
18 qualified precinct officials who may be assigned to  
19 fill vacancies or to perform their duties as needed in  
20 any precinct;

21           (3) No parent, spouse, reciprocal beneficiary, child, or  
22 sibling of a candidate shall be eligible to serve as a



1 precinct official in any [~~precinct~~] county in which  
2 votes may be cast for the candidate; nor shall any  
3 candidate for any elective office be eligible to serve  
4 as a precinct official in the same election in which  
5 the person is a candidate. No candidate who failed to  
6 be nominated in the primary or special primary  
7 election shall be eligible to serve as a precinct  
8 official in the general election next following; and

9 (4) The chairperson of the precinct officials shall be the  
10 first named precinct official on the list prepared by  
11 the chief election officer. The remainder of the  
12 precinct officials shall be apportioned as follows:

13 (A) The total votes cast, except those cast for  
14 nonpartisan candidates, for all of the following  
15 offices that were on the ballot in the next  
16 preceding general election shall be divided into  
17 the total votes cast for all the candidates of  
18 each party for these offices: president and  
19 vice-president, United States senator, United  
20 States representative, governor and lieutenant  
21 governor, state senator, and state  
22 representative;



1 (B) If a party's proportion of votes cast exceeds  
2 fifty per cent, its share shall be one-half of  
3 the precinct officials. The remaining one-half  
4 shall be divided among the remaining parties in  
5 proportion to their respective total of votes  
6 cast for the offices set forth in subparagraph  
7 (A);

8 (C) In the case of the above division resulting in  
9 parties having fractional positions, a whole  
10 position shall go to the party with the larger  
11 number of votes cast; and

12 (D) Newly qualified parties may be assigned up to ten  
13 per cent of the total positions available at the  
14 discretion of the chief election officer."

15 SECTION 11. Section 11-76, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§11-76 Compensation.** [~~(a) Electronic ballot and voting~~  
18 ~~machine elections. Precinct officials and related election day~~  
19 ~~nonprofit groups or employees shall be compensated pursuant to a~~  
20 ~~schedule established by the chief election officer. The~~  
21 ~~schedule shall be contained in rules adopted pursuant to chapter~~  
22 ~~91.~~



1       ~~(b)~~] Paper ballot elections. The chairperson of the  
2 precinct officials and the precinct officials shall ~~[receive the~~  
3 ~~same base amounts as in subsection (a).]~~ be compensated pursuant  
4 to a schedule established by the chief election officer. The  
5 schedule shall be contained in rules adopted pursuant to chapter  
6 91. In addition, all precinct officials shall be paid \$5 for  
7 each three hundred ballots or portion thereof cast at that  
8 ~~[precinct.]~~ drop site."

9       SECTION 12. Section 11-77, Hawaii Revised Statutes, is  
10 amended to read as follows:

11       "**§11-77 Appointment of watchers; service.** (a) Each  
12 qualified political party shall be entitled to appoint ~~[no more~~  
13 ~~than]~~ one watcher who may be present at any time ~~[in]~~ at each  
14 ~~[precinct]~~ polling place and ~~[absentee polling place in which]~~  
15 where the candidates of that political party are on the ballot.  
16 Each party shall submit its list of watchers not later than  
17 4:30 p.m. on the tenth day prior to any election to the chief  
18 election officer or to the clerk in county elections. All  
19 watchers shall serve without expense to the State or county.  
20 All watchers so appointed shall be registered voters. No person  
21 shall serve as a watcher who could not qualify to serve as a  
22 precinct official under section ~~[+]~~ 11-72(b)(3) ~~[+]~~.



1 (b) Each watcher shall be provided with identification  
2 from the chief election officer, or by the clerk in the case of  
3 county elections, stating the watcher's name and the name of the  
4 party the watcher represents. On election day the watcher shall  
5 present identification to the chairperson of precinct officials  
6 of the [~~precinct or precincts~~] polling place where the watcher  
7 is to serve.

8 (c) All watchers for [~~precincts~~] polling places shall be  
9 permitted to observe the conduct of the election in the  
10 [~~precinct.~~] polling place. The watchers may remain in the  
11 [~~precinct~~] polling place as long as the [~~precinct~~] polling place  
12 is in operation subject to section 19-6. [~~Watchers may review~~  
13 ~~the polling book pursuant to section 11-97.~~]

14 (d) The watcher shall call the attention of the  
15 chairperson to any violations of the election laws that the  
16 watcher observes. After the chairperson's attention is called  
17 to the violation the chairperson shall make an attempt to  
18 correct such violation. If the chairperson fails to correct the  
19 violation, the watcher may appeal to the clerk of the county.

20 (e) The watchers shall be permitted to observe the  
21 operations of the absentee polling place. Any violation of the  
22 election laws shall be reported to the clerk."



1 SECTION 13. Section 11-91.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 " ~~[§]11-91.5~~ Federal, state, and county elections by  
4 mail. (a) Any federal, state, or county election ~~[held other~~  
5 ~~than on the date of a regularly scheduled primary or general~~  
6 ~~election may]~~ shall be conducted by mail ~~[.]~~ pursuant to part  
7 \_\_\_\_\_.

8 (b) ~~[The chief election officer shall determine whether a~~  
9 ~~federal or state election, other than a regularly scheduled~~  
10 ~~primary or general election, may be conducted by mail or at~~  
11 ~~polling places.~~

12 ~~(c) The county clerk shall determine whether a county~~  
13 ~~election, held other than on the date of a regularly scheduled~~  
14 ~~primary or general election, may be conducted by mail or at~~  
15 ~~polling places.]~~ An election by mail in the county shall be  
16 under the supervision of the county clerk.

17 ~~[-(d)]~~ (c) The chief election officer shall adopt rules  
18 pursuant to chapter 91 to provide for uniformity in the conduct  
19 of federal, state, and county elections by mail."

20 SECTION 14. Section 11-95, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1           "(a) Any voter shall on the day of the election be  
2 entitled to be absent from any service or employment in which  
3 such voter is then engaged or employed for a period of not more  
4 than two hours (excluding any lunch or rest periods) between the  
5 time of opening and closing the polls to allow two consecutive  
6 hours in which to vote. Such voter shall not because of such  
7 absence be liable to any penalty, nor shall there be any  
8 rescheduling of normal hours or any deduction made, on account  
9 of the absence from any usual salary or wages; provided that the  
10 foregoing shall not be applicable to any employee whose hours of  
11 employment are such that the employee has a period of two  
12 consecutive hours (excluding any lunch or rest periods) between  
13 the time of opening and closing the polls when the employee is  
14 not working for the employer. If, however, any employee fails  
15 to vote after taking time off for that purpose the employer,  
16 upon verification of that fact, may make appropriate deductions  
17 from the salary or wages of the employee for the period during  
18 which the employee is hereunder entitled to be absent from  
19 employment. [~~Presentation of a voter's receipt by an employee  
20 to the employer shall constitute proof of voting by the  
21 employee.~~]"





1 SECTION 15. Section 11-96, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§11-96 **Records prima facie evidence.** Every record made  
4 pursuant to law by a board of registration of voters, the county  
5 clerk's office, or the precinct officials, shall be a prima  
6 facie evidence of the facts therein set forth, and shall be  
7 received as such in any court or tribunal in which the same is  
8 offered in evidence."

9 SECTION 16. Section 11-111, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§11-111 **Official and facsimile ballots.** Ballots issued  
12 by the chief election officer in state elections and by the  
13 clerk in county elections are official ballots. In elections  
14 using the paper ballot [~~and electronic voting systems,~~] the  
15 chief election officer or clerk in the case of county elections  
16 shall have printed informational posters containing facsimile  
17 ballots which depict the official ballots to be used in the  
18 election. The precinct officials shall post the informational  
19 posters containing the facsimiles of the official ballots near  
20 the entrance to the polling place where they may be easily seen  
21 by the voters prior to voting."



1 SECTION 17. Section 11-119, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:

3 "(d) Each [~~precinct~~] clerk's office shall receive a  
4 sufficient number of ballots based on the number of registered  
5 voters and the expected spoilage in the election concerned. A  
6 sufficient number of absentee ballots shall be delivered to each  
7 clerk not later than 4:30 p.m. on the fifteenth day prior to the  
8 date of any election."

9 SECTION 18. Section 11-131, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§11-131 Hours of voting.** The polls shall be opened by  
12 the precinct officials at 7:00 a.m. of the election day and  
13 shall be kept open continuously until 6:00 p.m. of that day.  
14 If, at the closing hour of voting, any voter desiring to vote is  
15 standing in line outside the entrance of the polls with the  
16 desire of entering and voting, but due to the polling place  
17 being overcrowded has been unable to do so, the voter shall be  
18 allowed to vote irrespective of the closing hour of voting. No  
19 voter shall be permitted to enter or join the line after the  
20 prescribed hour for closing the polls. [~~If all of the~~  
21 ~~registered voters of the precinct have cast their votes prior to~~  
22 ~~the closing time, the polls may be closed earlier but the votes~~



1 ~~shall not be counted until after closing time unless allowed by~~  
2 ~~the chief election officer.] "~~

3 SECTION 19. Section 11-139, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§11-139 Voting assistance. (a) Any voter who requires  
6 assistance to vote may be given assistance by a person of the  
7 voter's choice, other than the voter's employer or agent of that  
8 employer or agent of the voter's union, or the voter may receive  
9 the assistance of two precinct officials who are not of the same  
10 political party, or the voter may receive the assistance of the  
11 county clerk. A voter needing assistance may be handed a ballot  
12 outside the polling place but within one hundred feet thereof or  
13 within the polling place parking lot by the precinct officials  
14 or the county clerk and in their presence but in a secret  
15 manner, mark and return the same to the precinct officials or  
16 county clerk.

17 (b) The precinct officials or county clerk shall enter in  
18 writing in the record book the following:

- 19 (1) The voter's name;
- 20 (2) The fact that the voter cannot read the names on the  
21 ballot, if that is the reason for requiring  
22 assistance, and otherwise, the specific physical



1           disability which requires the voter to receive  
2           assistance; and

3           (3) The name or names of the person or persons furnishing  
4           the assistance."

5           SECTION 20. Section 11-152, Hawaii Revised Statutes, is  
6           amended to read as follows:

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

12           ~~(1) The whole number of ballots shall first be counted to~~  
13           ~~see if their number corresponds with the number of~~  
14           ~~ballots cast as recorded by the precinct officials;~~

15           ~~(2) If the number of ballots corresponds with the number~~  
16           ~~of persons recorded by the precinct officials as~~  
17           ~~having voted, the precinct officials shall then~~  
18           ~~proceed to count the vote cast for each candidate;~~

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



1       ~~(b) In those precincts using the electronic voting system,~~  
2       ~~the ballots shall be taken in the sealed ballot boxes to the~~  
3       ~~counting center according to the procedure and schedule~~  
4       ~~promulgated by the chief election officer to promote the~~  
5       ~~security of the ballots. In the presence of official observers,~~  
6       ~~counting center employees may start to count the ballots prior~~  
7       ~~to the closing of the polls provided there shall be no printout~~  
8       ~~by the computer or other disclosure of the number of votes cast~~  
9       ~~for a candidate or on a question prior to the closing of the~~  
10       ~~polls. For the purposes of this section, the closing of the~~  
11       ~~polls is that time identified in section 11-131 as the closing~~  
12       ~~hour of voting.] seal the ballot depositories and transport them~~  
13       ~~to the county clerk's office where they shall be processed~~  
14       ~~according to 11- . Counting shall proceed according to~~  
15       ~~section 11- ."~~

16       SECTION 21. Section 11-153, Hawaii Revised Statutes, is  
17       amended to read as follows:

18       "**§11-153 More or less ballots than recorded.** (a) If  
19       there are more ballots than the [~~poll book~~] voting register  
20       indicates, this shall be an overage and if less ballots, it  
21       shall be an underage. The election officials or counting center  
22       employees responsible for the tabulation of ballots shall make a



1 note of this fact on a form to be provided by the chief election  
2 officer. The form recording the overage or underage shall be  
3 sent directly to the chief election officer or the clerk in  
4 county elections separate and apart from the other election  
5 records.

6 ~~[(b) If the electronic voting system is being used in an  
7 election, the overage or underage shall be recorded after the  
8 tabulation of the ballots. In an election using the paper  
9 ballot voting system, the precinct officials shall proceed to  
10 count the votes cast for each candidate or on a question after  
11 recording the overage or underage.]~~

12 ~~(e)]~~ (b) The chief election officer or the clerk shall  
13 make a list of all precincts in which an overage or underage  
14 occurred and the amount of the overage or underage. This list  
15 shall be filed and kept as a public record in the office of the  
16 chief election officer or the clerk in county elections and the  
17 clerk's office in counties other than the city and county of  
18 Honolulu in elections involving state candidates.

19 An election contest may be brought under part XI, if the  
20 overage or underage in any district could affect the outcome of  
21 an election."



1 SECTION 22. Section 11-155, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§11-155 Certification of results of election. On receipt  
4 of certified tabulations from the election officials concerned,  
5 the chief election officer or county clerk in county elections  
6 shall compile, certify, and release the election results after  
7 the expiration of the time for bringing an election contest.  
8 The certification shall be based on a comparison and  
9 reconciliation of the following:

- 10 (1) The results of the canvass of ballots conducted  
11 pursuant to chapter 16;
- 12 (2) The audit of [~~pollbooks (and related)~~ voter  
13 registration record books[+]] and resultant overage and  
14 underage report;
- 15 (3) The audit results of the manual audit team;
- 16 (4) The results of the absentee ballot reconciliation  
17 report compiled by the clerks; and
- 18 (5) All logs, tally sheets, and other documents generated  
19 during the election and in the canvass of the election  
20 results.

21 A certificate of election or a certificate of results declaring  
22 the results of the election as of election day shall be issued



1 pursuant to section 11-156; provided that in the event of an  
2 overage or underage, a list of all precincts in which an overage  
3 or underage occurred shall be attached to the certificate. The  
4 number of candidates to be elected receiving the highest number  
5 of votes in any election district shall be declared to be  
6 elected. Unless otherwise provided, the term of office shall  
7 begin or end as of the close of polls on election day. The  
8 position on the question receiving the appropriate majority of  
9 the votes cast shall be reflected in a certificate of results  
10 issued pursuant to section 11-156."

11 SECTION 23. Section 11-172, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§11-172 Contests for cause; generally.** With respect to  
14 any election, any candidate, or qualified political party  
15 directly interested, or any thirty voters of any election  
16 district, may file a complaint in the supreme court. The  
17 complaint shall set forth any cause or causes, such as but not  
18 limited to, provable fraud, overages, or underages, that could  
19 cause a difference in the election results. ~~[The complaint~~  
20 ~~shall also set forth any reasons for reversing, correcting, or~~  
21 ~~changing the decisions of the precinct officials or the~~  
22 ~~officials at a counting center in an election using the~~





1 ~~electronic voting system.]~~ A copy of the complaint shall be  
2 delivered to the chief election officer or the clerk in the case  
3 of county elections."

4 SECTION 24. Section 16-1, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§16-1 Voting systems authorized. Election-by-mail shall  
7 be the only voting system in the State. The chief election  
8 officer may adopt, experiment with, or abandon any ~~[voting~~  
9 ~~system authorized under this chapter or to be authorized by the~~  
10 ~~legislature. These systems shall include, but not be limited to~~  
11 ~~voting machines, paper ballots, and [electronic voting systems.~~  
12 ~~All voting systems approved by the chief election officer under~~  
13 ~~this chapter are authorized for use in all elections for voting,~~  
14 ~~registering, and counting votes cast at the election.~~

15 ~~Voting systems of different kinds may, at the discretion of~~  
16 ~~the chief election officer, be adopted for different precincts~~  
17 ~~within the same district.] means necessary to optimize results~~  
18 and efficiency of elections and the election-by-mail voting  
19 system. The chief election officer may provide for the  
20 experimental use at any election, in one or more precincts, of a  
21 voting system without a formal adoption thereof and its use at  
22 the election shall be as valid for all purposes as if it had



1 been permanently adopted; provided that if a voting machine is  
2 used experimentally under this paragraph it need not meet the  
3 requirements of section 16-12."

4 SECTION 25. Section 19-6, Hawaii Revised Statutes, is  
5 amended to read as follows:

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

8 (1) Any person who offers any bribe or makes any promise  
9 of gain, or with knowledge of the same permits any  
10 person to offer any bribe or make any promise of gain  
11 for the person's benefit to any voter to induce the  
12 voter to sign a nomination paper, and any person who  
13 accepts any bribe or promise of gain of any kind as  
14 consideration for signing the same, whether the bribe  
15 or promise of gain be offered or accepted before or  
16 after the signing;

17 (2) Any person who wilfully tears down or destroys or  
18 defaces any election proclamation or any poster or  
19 notice or list of voters or visual aids or facsimile  
20 ballot, issued or posted by authority of law;

21 (3) Any person printing or duplicating or causing to be  
22 printed or duplicated any ballot, conforming as to the



1 size, weight, shape, thickness, or color to the  
2 official ballot so that it could be cast or counted as  
3 an official ballot in an election;

4 (4) Every person who is disorderly or creates a  
5 disturbance whereby any meeting of the precinct  
6 officials or the board of registration of voters  
7 during an election is disturbed or interfered with; or  
8 whereby any person who intends to be lawfully present  
9 at any meeting or election is prevented from  
10 attending; or who causes any disturbance at any  
11 election; and every person assisting or aiding or  
12 abetting any disturbance;

13 (5) Every person who, either in person or through another,  
14 in any manner breaks up or prevents, or endeavors to  
15 break up or prevent, the holding of any meeting of the  
16 board of registration of voters, or in any manner  
17 breaks up or prevents, or endeavors to break up or  
18 prevent, the holding of any election;

19 (6) Any person, other than those designated by section  
20 11-132, who remains or loiters within the area set  
21 aside for voting as set forth in section 11-132 during  
22 the time appointed for voting;



- 1           (7) Any person, including candidates carrying on any  
2           campaign activities within the area described in  
3           section 11-132 during the period of time starting one  
4           hour before the polling place opens and ending when  
5           the polling place closes for the purpose of  
6           influencing votes. Campaign activities shall include  
7           the following:
- 8           (A) Any distribution, circulation, carrying, holding,  
9           posting, or staking of campaign cards, pamphlets,  
10          posters and other literature;
- 11          (B) The use of public address systems and other  
12          public communication media;
- 13          (C) The use of motor caravans or parades; and
- 14          (D) The use of entertainment troupes or the free  
15          distribution of goods and services;
- 16          (8) Any person who opens a return envelope containing an  
17          absentee ballot voted under chapter 15 other than  
18          those authorized to do so under chapter 15;
- 19          (9) Any person who opens a return envelope containing a  
20          ballot or replacement ballot other than those  
21          authorized to do so under chapter 11;



1       ~~[(9)]~~ (10) Any unauthorized person found in possession of  
2                   any voting machine or keys thereof; and  
3       ~~[(10)]~~ (11) Every person who wilfully violates or fails to  
4                   obey any of the provisions of law, punishment for  
5                   which is not otherwise in this chapter specially  
6                   provided for."

7           SECTION 26. Section 11-18, Hawaii Revised Statutes, is  
8 repealed.

9           ~~["§11-18 Transfer of registration on removal from one  
10 precinct to another in same county. A registered voter who  
11 changes residence from one precinct to another prior to any  
12 election shall notify the clerk and change the registration to  
13 the proper precinct by the appropriate registration deadline;  
14 provided that no change of registration shall be allowed if the  
15 change of residence occurs after the close of registration for  
16 an election except pursuant to section 11-21(e). The change of  
17 registration due to a change of residence may be challenged as  
18 provided in section 11-25."]~~

19           SECTION 27. Section 11-93, Hawaii Revised Statutes, is  
20 repealed.

21           ~~["§11-93 Voting units. Immediately after the close of  
22 registration of voters preceding any election, the chief~~



1 ~~election officer shall establish one or more voting units in~~  
 2 ~~each precinct polling place. All voting units shall be in the~~  
 3 ~~same precinct polling place. In a precinct having more than one~~  
 4 ~~voting unit the chief election officer or the officer's~~  
 5 ~~authorized representative shall designate each unit by a uniform~~  
 6 ~~identification system. The clerk in preparing the list of~~  
 7 ~~registered voters shall divide the list, on an alphabetical~~  
 8 ~~basis, as equal as possible between or among the voting units." ]~~

9 SECTION 28. Section 11-120, Hawaii Revised Statutes, is  
 10 repealed.

11 ~~["§11-120 Distribution of ballots, record. The chief~~  
 12 ~~election officer or the county clerk in county elections shall~~  
 13 ~~forward the official ballots, specimen ballots, and other~~  
 14 ~~materials to the precinct officials of the various precincts.~~  
 15 ~~They shall be delivered and kept in a secure fashion in~~  
 16 ~~accordance with rules and regulations promulgated by the chief~~  
 17 ~~election officer. In no case shall they arrive later than the~~  
 18 ~~opening of the polls on election day.~~

19 ~~A record of the number of ballots sent to each precinct~~  
 20 ~~shall be kept by the chief election officer or the clerk." ]~~

21 SECTION 29. Section 11-136, Hawaii Revised Statutes, is  
 22 repealed.



1           ~~["§11-136 Poll book, identification, voting. Every person~~  
2 ~~upon applying to vote shall sign the person's name in the poll~~  
3 ~~book prepared for that purpose. This requirement may be waived~~  
4 ~~by the chairperson of the precinct officials if for reasons of~~  
5 ~~illiteracy or blindness or other physical disability the voter~~  
6 ~~is unable to write. Every person shall provide identification~~  
7 ~~if so requested by a precinct official. A poll book shall not~~  
8 ~~contain the social security number of any person.~~

9           ~~After signing the poll book and receiving the voter's~~  
10 ~~ballot, the voter shall proceed to the voting booth to vote~~  
11 ~~according to the voting system in use in the voter's precinct.~~  
12 ~~The precinct official may, and upon request shall, explain to~~  
13 ~~the voter the mode of voting."]~~

14           SECTION 30. Chapter 16, part III, Hawaii Revised Statutes,  
15 is repealed.

16           SECTION 31. Chapter 16, part IV, Hawaii Revised Statutes,  
17 is repealed.

18           SECTION 32. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20



# S.B. NO. 2415

1 SECTION 33. This Act shall take effect upon its approval  
2 and shall apply to elections held after January 1, 2011.

3

INTRODUCED BY:

*Guy L. Acun*

*Assembly of Cook  
County Illinois*

*Will Eyo*





**Report Title:**

Elections-By-Mail

**Description:**

Establishes elections-by-mail as the only voting system in Hawaii. Makes necessary changes to chapters 11, 16 and 19, HRS.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

