

JAN 25 2010

A BILL FOR AN ACT

RELATING TO THE GOVERNANCE OF ELECTIONS.

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

1 SECTION 1. Concerns surrounding the Hawaii elections
2 office have been well documented. Public anxiety over the
3 office's fiscal and legal challenges has prompted some members
4 of the community to call for more direct accountability over the
5 administration of elections.

6 It is critically important for voters to have some level of
7 control over this vital part of democracy at a time when
8 elections can be decided by unusually slim margins that are
9 often bitterly contested.

10 In thirty-eight other states, voters elect a "secretary of
11 state" who is put in charge of their elections. Alaska and Utah
12 assign that task to their lieutenant governors. In each case,
13 voters have a direct say in naming the administrator of their
14 election system. If adopted, this measure would also empower
15 Hawaii voters to elect a secretary of state, who would be
16 directly responsible for ensuring that the State's election
17 system operates smoothly and remains compliant with all federal,
18 state, and local requirements.

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

3 (1) By adding a new definition to be appropriately
4 inserted and to read as follows:

5 "Secretary of state", the individual who has been elected
6 to serve as secretary of state under the Hawaii Constitution."

7 (2) By repealing the definition of "chief election
8 officer".

9 [~~"Chief election officer", the individual appointed by the
10 elections commission pursuant to section 11-1.6 to supervise
11 state elections.~~"]

12 SECTION 3. Section 11-1.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§11-1.5 Office of elections established.** (a) There is
15 established an office of elections to provide support to the
16 [~~chief election officer.~~] elections process. [~~The office shall
17 be placed within the department of accounting and general
18 services for administrative purposes.~~] The [~~chief election
19 officer~~] secretary of state shall be the administrator of the
20 office of elections, pursuant to article V, section of the
21 Constitution of the State of Hawaii. Except for exercising the
22 right to vote, the full-time employees of the office of

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1 elections shall not support, advocate, or aid in the election or
2 defeat of any candidate for public office.

3 ~~[(b) The office of elections shall provide staff support~~
4 ~~to the elections commission, as requested by the elections~~
5 ~~commission.] "~~

6 SECTION 4. Section 26-1, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "**§26-1 Office of the lieutenant governor.** (a) Except as
9 otherwise provided by law, the lieutenant governor [~~is~~
10 ~~designated the secretary of state for intergovernmental~~
11 ~~relations and shall perform the duties and functions heretofore~~
12 ~~exercised by the secretary of Hawaii. The duties and functions~~
13 ~~shall include, but not be limited to,~~] shall be responsible for
14 recordation of all legislative and gubernatorial acts,
15 certification of state documents, and maintenance of an official
16 file of rules adopted by state departments as provided in
17 chapter 91. The lieutenant governor may employ staff as
18 necessary without regard to chapter 76."

19 SECTION 5. Section 26-52, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§26-52 Department heads and executive officers.** The
22 salaries of the following state officers shall be as follows:

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- 1 (1) The salary of the superintendent of education shall be
2 set by the board of education at a rate no greater
3 than \$150,000 a year;
- 4 (2) The salary of the president of the University of
5 Hawaii shall be set by the board of regents;
- 6 (3) Effective July 1, 2004, the salaries of all department
7 heads or executive officers of the departments of
8 accounting and general services, agriculture, attorney
9 general, budget and finance, business, economic
10 development, and tourism, commerce and consumer
11 affairs, Hawaiian home lands, health, human resources
12 development, human services, labor and industrial
13 relations, land and natural resources, public safety,
14 taxation, and transportation shall be as last
15 recommended by the executive salary commission.
16 Effective July 1, 2007, and every six years
17 thereafter, the salaries shall be as last recommended
18 by the commission on salaries pursuant to section
19 26-56, unless rejected by the legislature; and
- 20 (4) The salary of the adjutant general shall be \$85,302 a
21 year. Effective July 1, 2007, and every six years
22 thereafter, the salary of the adjutant general shall

1 be as last recommended by the commission on salaries
2 pursuant to section 26-56, unless rejected by the
3 legislature, except that if the state salary is in
4 conflict with the pay and allowance fixed by the
5 tables of the regular army or air force of the United
6 States, the latter shall prevail.

7 (5) The salary of the secretary of state shall be as
8 recommended by the commission on salaries pursuant to
9 section 26-56, unless rejected by the legislature."

10 SECTION 6. Section 26-56, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) The commission shall review and recommend an
13 appropriate salary for the governor, lieutenant governor,
14 secretary of state, members of the legislature, justices and
15 judges of all state courts, administrative director of the State
16 or an equivalent position, and department heads or executive
17 officers and the deputies or assistants to the department heads
18 of the departments of:

19 (1) Accounting and general services;

20 (2) Agriculture;

21 (3) The attorney general;

22 (4) Budget and finance;

- 1 (5) Business, economic development, and tourism;
- 2 (6) Commerce and consumer affairs;
- 3 (7) Defense;
- 4 (8) Hawaiian home lands;
- 5 (9) Health;
- 6 (10) Human resources development;
- 7 (11) Human services;
- 8 (12) Labor and industrial relations;
- 9 (13) Land and natural resources;
- 10 (14) Public safety;
- 11 (15) Taxation; and
- 12 (16) Transportation.

13 The commission shall not review the salary of any position
14 in the department of education or the University of Hawaii.

15 The commission may recommend different salaries for
16 department heads and executive officers and different salary
17 ranges for deputies or assistants to department heads; provided
18 that the commission shall recommend the same salary range for
19 deputies or assistants to department heads within the same
20 department; provided further that the appointing official shall
21 specify the salary for a particular position within the
22 applicable range.

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1 The commission shall not recommend salaries lower than
2 salary amounts recommended by prior commissions replaced by this
3 section."

4 SECTION 7. Section 11-1.55, Hawaii Revised Statutes, is
5 repealed.

6 ["~~§11-1.55 Exemptions.~~ The office of elections shall be
7 exempt from section [26-35(a)(1), (4), and (5)] and shall:

8 ~~(1) Make direct communications with the governor and
9 legislature;~~

10 ~~(2) Make all decisions regarding employment, appointment,
11 promotion, transfer, demotion, discharge, and job
12 descriptions of all officers and employees of or under
13 the jurisdiction of the office of elections without
14 the approval of the comptroller; and~~

15 ~~(3) Purchase all supplies, equipment, or furniture without
16 the approval of the comptroller.~~

17 ~~The office of elections shall follow all applicable
18 personnel laws."~~]

19 SECTION 8. Section 11-1.6, Hawaii Revised Statutes, is
20 repealed.

21 ["~~§11-1.6 Appointment of the chief election officer,
22 requirements; term; restrictions; salary; reappointment;~~

1 ~~removal.~~ (a) ~~The chief election officer shall be appointed by~~
2 ~~the elections commission, without regard to chapter 76. The~~
3 ~~appointment shall not be subject to the advice and consent of~~
4 ~~the senate. In the event of a vacancy, the elections commission~~
5 ~~shall meet expeditiously to select and appoint a new chief~~
6 ~~election officer to serve the remainder of the unexpired term.~~

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

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

13 (d) ~~The chief election officer shall devote full time to~~
14 ~~the duties of the office and shall hold no other public office~~
15 ~~during the individual's term of office. Except for exercising~~
16 ~~the right to vote, the individual shall not support, advocate,~~
17 ~~or aid in the election or defeat of any candidate for public~~
18 ~~office. The chief election officer shall refrain from financial~~
19 ~~and business dealings that tend to reflect adversely on the~~
20 ~~individual's impartiality, interfere with the proper performance~~
21 ~~of election duties, or exploit the individual's position.~~

22 ~~Subject to the requirements above, the individual may hold and~~

1 ~~manage investments, including real estate, and engage in other~~
2 ~~remunerative activity, but shall not serve as an officer,~~
3 ~~director, manager, advisor, or employee of any business.~~

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

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

13 ~~(g) The chief election officer may be removed by the~~
14 ~~elections commission at any time for good cause."]~~

15 SECTION 9. Section 11-2, Hawaii Revised Statutes, is
16 repealed.

17 ["~~§11-2 Chief election officer, duties.~~ (a) The chief
18 ~~election officer shall supervise all state elections. The chief~~
19 ~~election officer may delegate responsibilities in state~~
20 ~~elections within a county to the clerk of that county or to~~
21 ~~other specified persons.~~

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1 ~~(b) The chief election officer shall be responsible for~~
2 ~~the maximization of registration of eligible electors throughout~~
3 ~~the State. In maximizing registration, the chief election~~
4 ~~officer shall make an effort to equalize registration between~~
5 ~~districts, with particular effort in those districts in which~~
6 ~~the chief election officer determines registration is lower than~~
7 ~~desirable. The chief election officer, in carrying out this~~
8 ~~function, may make surveys, carry on house to house canvassing,~~
9 ~~and assist or direct the clerk in any other area of~~
10 ~~registration.~~

11 ~~(c) The chief election officer shall maintain data~~
12 ~~concerning registered voters, elections, apportionment, and~~
13 ~~districting. The chief election officer shall use this data to~~
14 ~~assist the reapportionment commission provided for under Article~~
15 ~~IV of the Constitution.~~

16 ~~(d) The chief election officer shall be responsible for~~
17 ~~public education with respect to voter registration and~~
18 ~~information.~~

19 ~~(e) The chief election officer shall adopt rules governing~~
20 ~~elections in accordance with chapter 91."]~~

21 SECTION 10. Section 11-7, Hawaii Revised Statutes, is
22 repealed.

1 ~~["§11-7] Elections commission. (a) There is established~~
2 ~~an elections commission within the department of accounting and~~
3 ~~general services for administrative purposes. The elections~~
4 ~~commission shall consist of nine members who shall be selected~~
5 ~~as follows:~~

6 ~~(1) The president of the senate shall select two elections~~
7 ~~commission members;~~

8 ~~(2) The speaker of the house of representatives shall~~
9 ~~select two elections commission members;~~

10 ~~(3) The senators belonging to a party or parties different~~
11 ~~from the president of the senate shall designate one~~
12 ~~senator to select two elections commission members;~~

13 ~~(4) The representatives belonging to a party or parties~~
14 ~~different from the speaker of the house of~~
15 ~~representatives shall designate one representative to~~
16 ~~select two elections commission members; and~~

17 ~~(5) One member, who shall serve as chairperson of the~~
18 ~~elections commission, shall be selected by the members~~
19 ~~of the elections commission selected pursuant to~~
20 ~~paragraphs (1) to (4);~~

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1 ~~provided that each group of four elections commission members~~
2 ~~selected by each house shall include one elections commission~~
3 ~~member from each of the four counties.~~

4 ~~(b) The chairperson of the elections commission under~~
5 ~~subsection (a) (5) shall be selected by a two thirds vote.~~

6 ~~(c) A vacancy in the elections commission shall be filled~~
7 ~~in the same manner as the original appointment as specified in~~
8 ~~subsection (a) within fifteen days. A vacancy in the elections~~
9 ~~commission shall be filled with a person from the same county as~~
10 ~~the departing elections commission member. Elections commission~~
11 ~~member vacancies not filled within the times specified shall be~~
12 ~~filled promptly thereafter by the chief justice of the supreme~~
13 ~~court.~~

14 ~~(d) The elections commission shall act by majority vote of~~
15 ~~its membership and shall establish its own procedures, except as~~
16 ~~may be provided by law.~~

17 ~~(e) Notwithstanding section 26 34, elections commission~~
18 ~~member appointments shall not be subject to senatorial~~
19 ~~confirmation.~~

20 ~~(f) The term of the elections commissioners shall be four~~
21 ~~years, except that with respect to the terms of the initial~~

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1 ~~elections commission members, one member selected from each of~~
2 ~~subsection (a) (1) to (4) shall serve for a term of two years.~~

3 ~~(g) The elections commissioners shall serve without~~
4 ~~compensation, but shall be reimbursed for reasonable expenses,~~
5 ~~including travel expenses, necessary for the performance of~~
6 ~~their duties."]~~

7 SECTION 11. Section 11-7.5, Hawaii Revised Statutes, is
8 repealed.

9 ["~~§11-7.5~~ ~~Duties of the elections commission.~~ The
10 ~~duties of the elections commission are to:~~

- 11 ~~(1) Hold public hearings;~~
12 ~~(2) Investigate and hold hearings for receiving evidence~~
13 ~~of any violations and complaints;~~
14 ~~(3) Adopt rules pursuant to chapter 91;~~
15 ~~(4) Employ, without regard to chapter 76, a full time~~
16 ~~chief election officer, pursuant to section 11-1.6;~~
17 ~~and~~
18 ~~(5) Advise the chief election officer on matters relating~~
19 ~~to elections."]~~

20 SECTION 12. Section 11-8, Hawaii Revised Statutes, is
21 repealed.

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1 ~~["§11-8] Elections commission; political activities.~~

2 ~~(a) No elections commission member shall take an active part in~~
3 ~~political management or in political campaigns.~~

4 ~~(b) Each elections commission member shall retain the~~
5 ~~right to:~~

6 ~~(1) Register and vote as the elections commission member~~
7 ~~chooses in any election;~~

8 ~~(2) Participate in the nonpartisan activities of a civic,~~
9 ~~community, social, labor, or professional~~
10 ~~organization, or of a similar organization;~~

11 ~~(3) Be a member of a political party or other political~~
12 ~~organization and participate in its activities to the~~
13 ~~extent consistent with law;~~

14 ~~(4) Make a financial contribution to a political party or~~
15 ~~organization;~~

16 ~~(5) Serve as an election judge or clerk or in a similar~~
17 ~~position to perform nonpartisan election duties, as~~
18 ~~prescribed by law; and~~

19 ~~(6) Otherwise participate fully in public affairs, except~~
20 ~~as prohibited by law, in a manner which does not~~
21 ~~materially compromise the elections commission~~
22 ~~member's efficiency or integrity as an elections~~

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1 ~~commission member or the neutrality, efficiency, or~~
2 ~~integrity of the elections commission.~~

3 ~~(c) An elections commission member may request an advisory~~
4 ~~opinion from the state ethics commission to determine whether a~~
5 ~~particular activity constitutes or would constitute a violation~~
6 ~~of the code of ethics or this section."]~~

7 SECTION 13. Section 11-8.5, Hawaii Revised Statutes, is
8 repealed.

9 ~~["**[§11-8.5] Elections review program.** The elections~~
10 ~~commission shall develop and implement an elections review~~
11 ~~program to:~~

- 12 ~~(1) Review the operation and performance of elections;~~
13 ~~(2) Make recommendations to the chief election officer on~~
14 ~~methods to improve elections;~~
15 ~~(3) Establish policies for the administration of an~~
16 ~~elections observer program, to include ensuring the~~
17 ~~validity and reliability of election results;~~
18 ~~(4) Conduct a biennial evaluation of the operation of~~
19 ~~elections;~~
20 ~~(5) Submit the findings and recommendations from the~~
21 ~~biennial evaluation to the legislature, not less than~~

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1 ~~twenty days prior to the convening of each regular~~
2 ~~session held in odd numbered years; and~~
3 ~~(6) Adopt rules in accordance with chapter 91 to carry out~~
4 ~~the purposes of this section."]~~

5 SECTION 14. Section 11-9, Hawaii Revised Statutes, is
6 repealed.

7 ~~["~~§11-9~~ Exemptions. The elections commission shall be~~
8 ~~exempt from section [26-35(a)(1), (4), and (5)] and shall:~~

9 ~~(1) Make direct communications with the governor and~~
10 ~~legislature;~~

11 ~~(2) Make all decisions regarding employment, appointment,~~
12 ~~promotion, transfer, demotion, discharge, and job~~
13 ~~descriptions of all officers and employees of or under~~
14 ~~the jurisdiction of the elections commission without~~
15 ~~the approval of the comptroller; and~~

16 ~~(3) Purchase all supplies, equipment, or furniture without~~
17 ~~the approval of the comptroller.~~

18 ~~The elections commission shall follow all applicable~~
19 ~~personnel laws."]~~

20 SECTION 15. The revisor of statutes shall replace the term
21 "chief election officer" or like term, as appropriate, whenever

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1 it may appear in the Hawaii Revised Statutes, with the term
2 "secretary of state," or like term, as the context requires.

3 SECTION 16. All acts passed by the legislature, during this
4 regular session of 2010, whether enacted before or after the
5 effective date of this Act, shall be amended to conform to this
6 Act unless such acts specifically provide that this Act is being
7 amended.

8 SECTION 17. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 18. This Act shall take effect on July 1, 2011
11 only if a constitutional amendment to establish the secretary of
12 state is ratified.

13
14 INTRODUCED BY: _____

15 BY REQUEST

Report Title:

Governance; Elections

Description:

Restructures the governance system of the Office of Elections to create greater accountability by placing the Secretary of State in charge of elections.

JUSTIFICATION SHEET

DEPARTMENT: Office of the Lieutenant Governor

TITLE: A BILL FOR AN ACT RELATING TO THE GOVERNANCE OF ELECTIONS.

PURPOSE: Establish a Secretary of State as an elected, nonpartisan constitutional officer, who would be responsible for administering the election laws as well as supervising the voting system in the State.

MEANS: Amend sections 11-1, 11-1.5, 26-1, 26-52, and 26-56, Hawaii Revised Statutes (HRS), and repeal sections 11-1.55, 11-1.6, 11-2, 11-7, 11-7.5, 11-8, 11-8.5, and 11-9, HRS.

JUSTIFICATION: Concerns surrounding the Hawaii Elections Office have been well documented. Public anxiety over the office's fiscal and legal challenges has prompted some members of the community to call for more direct accountability over the administration of elections.

It is critically important for voters to have some level of control over this vital part of democracy at a time when elections can be decided by unusually slim margins that are often bitterly contested.

In 38 other states, voters elect Secretaries of State who are put in charge of their elections. Alaska and Utah assign that task to their Lieutenant Governors. In each case, voters have a direct say in naming the administrator of their election system.

Impact on the public: If adopted, this measure would also empower voters in Hawaii to elect a Secretary of State, who would be directly responsible for ensuring that the State's election system operates smoothly and remains compliant with all federal, state, and local requirements.

Impact on the department and other agencies:
This bill replaces the Chief Election
Officer with the Secretary of State as the
administrator of the Office of Elections.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Office of Elections.

EFFECTIVE DATE: Upon approval.