

SB2819



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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SCOTT T. NAGO
INTERIM CHIEF ELECTION
OFFICER

**TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
ON SENATE BILL NO. 2819
RELATING TO ELECTIONS**

February 5, 2010

Chair Taniguchi and members of the Senate Committee on Judiciary and Government Operations, thank you for the opportunity to testify in support of Senate Bill No. 2819. The purpose of this bill is to implement an amendment to federal law concerning voting by military and overseas voters.

Specifically, President Barack Obama signed into law the National Defense Authorization Act for Fiscal Year 2010 on October 28, 2009. Subtitle H of that law, which may be cited as the Military and Overseas Voter Empowerment Act (MOVE), amended various parts of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 USC §§ 1973ff et seq.)

Among these amendments is a provision requiring states to transmit absentee ballots to uniformed and overseas voters no later than forty-five days prior to a federal election. 42 USC § 1973ff-1(a)(8). This provision is effective as of the 2010 General Election. The present law provides for the Primary Election to be held on the second to the last Saturday in September in every even numbered year, provided that it no case does it precede the General Election by less than forty-five days. HRS § 12-2. Given that the General Election is held on the first Tuesday following the first Monday in November in every even numbered year, most Primary Elections are exactly forty-five days prior to the General Election. Haw. Const. Article II, § 8 (State Elections); 2 USC §§ 1 & 7 (Congressional Elections); and 3 USC § 1 (Presidential Elections).¹

¹ The Primary Election is forty-five days prior to the general election in 2010, 2014, 2018, and 2020. In 2012 and 2022 the Primary Election is fifty-two days prior to the General Election, due to first day of November in those years being a Tuesday, thus causing an additional week to elapse before the first Tuesday after the first Monday in November.

A period of forty-five days between the Primary and General Election is insufficient to finalize election results, address legal challenges, proof the contents of the General Election ballot, print the ballots, and finally mail them out in compliance with the new federal law. Specifically, challenges to the Primary Election results can be filed up to six days after the election and the resolution of said challenge by the Hawaii Supreme Court may take up to an additional nine days. HRS § 11-173.5. Separately, the proofing of the General Election ballot as to candidates, ballot questions, and ballot types takes approximately seven days. After which, it takes approximately fourteen days to print out the ballots, before they can even be mailed out forty-five days in advance of the General Election.

As such, it would be difficult to meet this new federal requirement, barring a change in our laws. It should be noted that the federal law allows for states to request a waiver of the requirement on an election by election basis, if it can show that it has alternative means by which it can ensure access to the ballot for overseas voters. 42 USC § 1973ff-1(g)(1). The law further provides that the request must be made more than ninety days before the general election and that the approval or denial of the request will occur no later than sixty-five days before the general election. 42 USC § 1973ff-1(g)(3).

With this in mind, we have sought to immediately submit the State of Hawaii's application, but we have been informed by the Federal Voting Assistance Program that it is still consulting with the Department of Justice on the specifics of the waiver application process. 42 USC § 1973ff-1(g)(2). As such, until that time no application can be submitted or considered.

The present bill addresses the Office of Elections' previously noted concerns about timing, by moving Hawaii's Primary Election date to the second Saturday in August and the deadline for filing nomination papers to the first Tuesday in June.

Thank you for the opportunity to testify in support of Senate Bill No. 2819.

BARBARA WONG
EXECUTIVE DIRECTOR



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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION
235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 5, 2010

TO: The Honorable Brian T. Taniguchi, Chair
Senate Committee on Judiciary and Government Operations

The Honorable Dwight Y. Takamine, Vice-Chair
Senate Committee on Judiciary and Government Operations

Members of the Senate Committee on Judiciary and Government Operations

FROM: Barbara U. Wong, Executive Director ^{T.B.}
Campaign Spending Commission

SUBJECT: Testimony on S.B. No. 2819, Relating to Elections¹

Friday, February 5, 2010
9:35 a.m. in Conference Room 016

Chair Taniguchi, Vice-Chair Takamine, and Members of the Senate Committee on Judiciary and Government Operations, thank you for the opportunity to testify on this bill which proposes to:

- Change the date of the primary election from the second to the last Saturday in September to the second Saturday in August for primary elections; and
- Change the filing deadline for nomination papers to the first Tuesday in June, except for special primary or special elections.

The bill would apply to the primary elections held prior to the regularly scheduled general election held in November 2010, and every election thereafter, but shall not apply to any special election held before November 2010.

In order to maintain the same level of reporting and transparency that the campaign finance laws currently provide, the reporting deadlines need to be adjusted to align with the changed primary date. We also ask the Committee to consider adding an additional report for noncandidate committees.

¹ This bill was referred to only this committee.

I. FILING OF DISCLOSURE REPORTS

A. Candidate Committee Reports

1. Current deadlines

Under current law, reports must be filed during the remainder of 2010 by candidates for the House of Representatives, Kauai Mayor and Neighbor Island County Council² as follows:

Due date	Reporting period	Candidate Committee Report
August 2, 2010	January 1 through June 30, 2010	1 st Preliminary Primary Report
September 8, 2010	July 1 through September 3, 2010	2 nd Preliminary Primary Report
September 15, 2010	September 4 through September 14, 2010	Late Contributions Report ³
<i>September 18, 2010</i>		<i>Primary Election</i>
October 8, 2010	September 4 through September 18, 2010	Final Primary Report
October 8, 2010	January 1 through September 18, 2010	Expenditures of Public Funds ⁴
October 25, 2010	September 19 through October 18, 2010	Preliminary General Report ⁵
October 25, 2010	January 1 through October 18, 2010	Preliminary General Report ⁶
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report ⁷
<i>November 2, 2010</i>		<i>General Election</i>
December 2, 2010	October 19 through November 2, 2010	Final Election Period Report, ⁸ or
December 2, 2010	September 19 through November 2, 2010	Final Election Period Report, ⁹ or
December 2, 2010	January 1 through November 2, 2010	Final Election Period Report ¹⁰
December 2, 2010	January 1 through November 2, 2010	Expenditures of Public Funds

² There are – reporting schedules with slight differences depending on the office sought.

³ This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fifteen calendar days through four calendar days prior to the Primary Election. Late Contributions must also be reported on the Final Primary Report. The report is not required if there are no Late Contributions.

⁴ This form is required for candidates who received partial public financing in the primary election.

⁵ This form is for candidates that were successful in the Primary Election and have advanced to the General Election. This report is not required for candidates that won outright or were unsuccessful in the Primary Election. See the Final Election Period Report

⁶ This is the first report for candidates for the Office of Hawaiian Affairs.

⁷ This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions or if a candidate won outright or was unsuccessful in the Primary Election.

⁸ For candidates that filed the Preliminary General Report.

⁹ For candidates that won outright or were unsuccessful in the Primary Election and who did not file the Preliminary General Report.

¹⁰ For candidates whose aggregate contributions and aggregate expenditures for the election period total \$1,000 or less. All previous reports, with the exception of the Organizational Report, are not required to be filed.

B. Reporting deadlines under S.B. No. 2819

This bill, as drafted, would require candidate committees to file reports for an August 14, 2010 primary election as follows (changes are in boldface):

Due date	Reporting period	Candidate Committee Report
August 2, 2010 ¹¹	January 1 through June 30, 2010	1 st Preliminary Primary Report
[September 8, 2010] August 4, 2010	July 1 through [September 3, 2010] July 30, 2010	2 nd Preliminary Primary Report ¹²
[September 15, 2010] August 11, 2010	[September 4 through September 14, 2010] July 31 through August 10, 2010	Late Contributions Report ¹³
[September 18, 2010] August 14, 2010		Primary Election
[October 8, 2010] September 13	[September 4 through September 18, 2010] July 31 through August 14, 2010	Final Primary Report ¹⁴
[October 8, 2010] September 13, 2010	January 1 through [September 18, 2010] August 14, 2010	Expenditures of Public Funds
October 25, 2010	[September 19] August 15 through October 18, 2010	Preliminary General Report
October 25, 2010	January 1 through October 18, 2010	Preliminary General Report
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report
November 2, 2010		General Election
December 2, 2010	October 19, 2010 through November 2, 2010	Final Election Period Report; or
December 2, 2010	[September 19] August 15 through November 2, 2010	Final Election Period Report; or
December 2, 2010	January 1 through November 2, 2010	Final Election Period Report
December 2, 2010	January 1 through November 2, 2010	Expenditures of Public Funds

S.B. No. 2189 would, among other things:

¹¹ If H.B. No. 1130 passes, this reporting date would be changed to July 31, 2008.

¹² "(a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk's office. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the following dates:

- (A) July thirtieth of the year of the primary election;
- (B) Ten calendar days prior to each primary and initial special election; and
- (C) Ten calendar days prior to a special or general election.

(2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of other preliminary reports..." HRS section 11-212(a).

¹³ "Each candidate, candidate's committee, or committee, that within the period of fifteen calendar days through four calendar days prior to a primary, special primary, general, or special general election, makes contributions aggregating more than \$500, or receives contributions from any person or entity aggregating more than \$500, shall file a report with the commission or appropriate county clerk's office on forms provided by the commission, no later than 4:30 p.m., three calendar days prior to the election." HRS section 11-207.5(a).

¹⁴ "Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary or initial special election." HRS section 11-213(a).

- Require that the first preliminary primary report and second preliminary primary report be filed by the candidate committee within two days of each other (August 2 and August 4, respectively); and
 - Present a 42-day gap in the 2010 election between the committee's final primary report filed on September 13, 2010 (for the reporting period from July 31 through August 14, 2010) and the preliminary general report filed on October 25, 2010 (reporting period from August 15 through October 18, 2010). There would be less transparency for the public as information regarding candidates' contributions and expenditures would not be available to the public during this gap. Under current law, the time-period between the regular reports filed during the peak election time of 2010 varies from seventeen to thirty days based on how close to each election day it is (i.e., reports would be due in 2010 on September 8, October 8, and October 25).
- C. Recommendation – amend section 11-212(a), HRS, so that the first preliminary primary report is filed on July 5 and second preliminary primary report is filed on July 30; amend the law to add a second preliminary general report to be filed on September 30**

We recommend amending section 11-212(a), HRS as follows:

“(a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk's office. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the following dates:

- (A) July ~~[thirtieth]~~ fifth of the year of the primary election;
- (B) Ten calendar days prior to each primary and initial special election;
- ~~[and]~~
- (C) September 30 of the year of the primary election; and
- ~~[(C)]~~ (D) Ten calendar days prior to a special or general election.

(2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of other preliminary reports...”

If our recommendations are incorporated in this bill, candidate committees would be required to file reports as follows:

Due date	Reporting period	Candidate Committee Report
[August 2, 2010 July 6, 2010	January 1 through June 30, 2010	1 st Preliminary Primary Report
[September 8, 2010] August 4, 2010	July 1 through [September 3, 2010] July 30, 2010	2 nd Preliminary Primary Report ¹⁵
[September 15, 2010] August 11, 2010	[September 4 through September 14, 2010] July 31 through August 10, 2010	Late Contributions Report ¹⁶
[September 18, 2010] August 14, 2010		Primary Election
[October 8, 2010] September 13	[September 4 through September 18, 2010] July 31 through August 14, 2010	Final Primary Report ¹⁷
[October 8, 2010] September 13, 2010	January 1 through [September 18, 2010] August 14, 2010	Expenditures of Public Funds
September 30, 2010	August 15 through September 25, 2010	1st Preliminary General Report
October 25, 2010	[September 19] August 15 through October 18, 2010 or September 26 through October 18, 2010	2nd Preliminary General Report
October 25, 2010	January 1 through October 18, 2010	Preliminary General Report
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report
<i>November 2, 2010</i>		<i>General Election</i>
December 2, 2010	October 19, 2010 through November 2, 2010	Final Election Period Report; or
December 2, 2010	[September 19] August 15 through November 2, 2010	Final Election Period Report; or
December 2, 2010	January 1 through November 2, 2010	Final Election Period Report
December 2, 2010	January 1 through November 2, 2010	Expenditures of Public Funds

¹⁵ “(a) (1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk’s office. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the following dates:

- (A) July thirtieth of the year of the primary election;
- (B) Ten calendar days prior to each primary and initial special election; and
- (C) Ten calendar days prior to a special or general election.

(2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of other preliminary reports...” HRS section 11-212(a).

¹⁶ “Each candidate, candidate’s committee, or committee, that within the period of fifteen calendar days through four calendar days prior to a primary, special primary, general, or special general election, makes contributions aggregating more than \$500, or receives contributions from any person or entity aggregating more than \$500, shall file a report with the commission or appropriate county clerk’s office on forms provided by the commission, no later than 4:30 p.m., three calendar days prior to the election.” HRS section 11-207.5(a).

¹⁷ “Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary or initial special election.” HRS section 11-213(a).

II. Noncandidate Committee Reports

A. Current reporting deadlines

Due date	Reporting period	Noncandidate Committee Report
September 6, 2010	January 1 through September 3, 2010	Preliminary Primary Report
September 15, 2010	September 4 through September 14, 2010	Late Contributions Report ¹⁸
<i>September 18, 2010</i>		<i>Primary Election</i>
October 8, 2010	September 4 through September 18, 2010	Final Primary Report
October 25, 2010	September 19 through October 18, 2010	Preliminary General Report
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report ¹⁹
<i>November 2, 2010</i>		<i>General Election</i>
December 2, 2010	October 19 through November 2, 2010	Final Election Period Report

B. Reporting deadlines under S.B. No. 2819

Due date	Reporting period	Noncandidate Committee Report
[September 6, 2010] August 4, 2010	January 1 through [September 3, 2010] July 30, 2010	Preliminary Primary Report
August 14, 2010		<i>Primary Election</i>
[September 15, 2010] August 11, 2010	[September 4 through September 14, 2010] July 31 through August 10, 2010	Late Contributions Report ²⁰
[September 18, 2010]		<i>Primary election</i>
[October 8, 2010] September 13, 2010	[September 4 through September 18, 2010] July 31 through August 14, 2010	Final Primary Report
October 25, 2010	[September 19] August 15 through October 18, 2010	Preliminary General Report
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report ²¹
<i>November 2, 2010</i>		<i>General Election</i>
December 2, 2010	October 19 through November 2, 2010	Final Election Period Report

¹⁸ This form is for reporting contributions received from any person or entity that aggregates more than \$500 and for reporting contributions made to candidates that aggregate more than \$500 during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions.

¹⁹ This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions or if a candidate won outright or was unsuccessful in the Primary Election.

²⁰ This form is for reporting contributions received from any person or entity that aggregates more than \$500 and for reporting contributions made to candidates that aggregate more than \$500 during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions.

²¹ This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions or if a candidate won outright or was unsuccessful in the Primary Election.

This bill presents a 42-day gap in the 2010 election between the committee's final primary report filed on September 13, 2010 (for the reporting period from July 31 through August 14, 2010) and the preliminary general report filed on October 25, 2010 (reporting period from August 15 through October 18, 2010).

C. Recommendation – amend the law to add a second preliminary general report to be filed on September 30

We recommend amending section 11-212(b), HRS as follows:

“(b) Each noncandidate committee shall file a preliminary report with the commission, on forms provided by the commission, no later than 4:30 p.m. on the tenth calendar day prior to each primary election, September 30, and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:

- (1) The aggregate sum of all contributions and other campaign receipts received;
- (2) The amount and date of deposit of the contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$100 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.”

If these recommendations are incorporated in this bill, noncandidate committees would be required to file reports as follows:

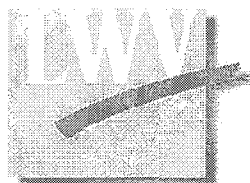
Due date	Reporting period	Noncandidate Committee Report
[September 6, 2010] <u>August 4, 2010</u>	January 1 through [September 3, 2010] <u>July 30, 2010</u>	Preliminary Primary Report
<u>August 14, 2010</u>		<i>Primary Election</i>
[September 15, 2010] <u>August 11, 2010</u>	[September 4 through September 14, 2010] <u>July 31 through August 10, 2010</u>	Late Contributions Report ²²

²² This form is for reporting contributions received from any person or entity that aggregates more than \$500 and for reporting contributions made to candidates that aggregate more than \$500 during the period of fifteen calendar days

September 18, 2010		Primary election
[October 8, 2010] September 13, 2010	[September 4 through September 18, 2010] July 31 through August 14, 2010	Final Primary Report
September 30, 2010	August 15 through September 25, 2010	1st Preliminary General Report
October 25, 2010	[September 19] August 15 through October 18, 2010 or September 26 through October 18, 2010	2nd Preliminary General Report
October 25, 2010	[September 19] August 15 through October 18, 2010	Preliminary General Report
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report ²³
November 2, 2010		General Election
December 2, 2010	October 19 through November 2, 2010	Final Election Period Report

through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions.

²³ This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions or if a candidate won outright or was unsuccessful in the Primary Election.



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON SB 2819 RELATING TO ELECTIONS

Committee on Judiciary and Government Operations
Friday, February 05, 2010
9:35 A.M.
Conference Room 016

Testifier: Jean Aoki, LWV

Chair Senator Taniguchi, Vice Chair Senator Takamine, members of JGO,

The League of Women Voters of Hawaii is in strong support of SB 2819 Relating to Elections.

For a long time, we have supported providing a longer period between the primary and general elections. The absentee ballots were a factor, but also the fact that the six weeks now provided leaves no room for error or for more complicated challenges to election results. Even under normal conditions, the staff is under stress to get the ballots ready and distributed in time for the General Election.

Lengthening the time between the primary and general elections will allow doing the necessary preparations in a more deliberate and controlled way, reducing or eliminating errors. And this, of course, will also help us meet the provisions of the National Defense Authorization Act's requirements for providing for absentee ballots to overseas voters.

Thank you for giving us this opportunity to testify in support of SB 2819.