

JAN 21 2011

---

---

# A BILL FOR AN ACT

RELATING TO MILITARY AND OVERSEAS VOTERS.

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

1           SECTION 1. Chapter 15, Hawaii Revised Statutes, is amended  
2 by adding a new part to be appropriately designated and to read  
3 as follows:

4                   **"PART . UNIFORM MILITARY AND OVERSEAS VOTERS ACT**

5           **§15-A Short title.** This part may be cited as the Uniform  
6 Military and Overseas Voters Act.

7           **§15-B Definitions.** For the purpose of this part:

8           "Covered voter" means:

- 9           (1) A uniformed-service voter or an overseas voter who is  
10           registered to vote in this State;
- 11           (2) A person described in paragraph (1) of the definition  
12           of "uniform-service voter" whose voting residence is  
13           in this State and who otherwise satisfies this State's  
14           voter eligibility requirements;
- 15           (3) An overseas voter who, before leaving the United  
16           States, was last eligible to vote in this State and,  
17           except for a state residency requirement, otherwise  
18           satisfies this State's voter eligibility requirements;



1 (4) An overseas voter who, before leaving the United  
2 States, would have been last eligible to vote in this  
3 State had the voter then been of voting age and,  
4 except for a state residency requirement, otherwise  
5 satisfies this State's voter eligibility requirements;  
6 or

7 (5) An overseas voter who was born outside the United  
8 States, is not described in paragraph (3) or (4), and,  
9 except for a state residency requirement, otherwise  
10 satisfies this State's voter eligibility requirements,  
11 if:

12 (A) The last place where a parent or legal guardian  
13 of the voter was, or under this part would have  
14 been, eligible to vote before leaving the United  
15 States is within this State; and

16 (B) The voter has not previously registered to vote  
17 in any other state.

18 "Dependent" means an individual recognized as a dependent  
19 by a uniformed service.

20 "Federal postcard application" means the application  
21 prescribed under section 101(b)(2) of the Uniformed and Overseas  
22 Citizens Absentee Voting Act, 42 U.S.C. section 1973ff(b)(2).



1 "Federal write-in absentee ballot" means the ballot  
2 described in section 103 of the Uniformed and Overseas Citizens  
3 Absentee Voting Act, 42 U.S.C. section 1973ff-2.

4 "Military-overseas ballot" means:

- 5 (1) A federal write-in absentee ballot;  
6 (2) A ballot specifically prepared or distributed for use  
7 by a covered voter in accordance with this part; or  
8 (3) A ballot cast by a covered voter in accordance with  
9 this part.

10 "Overseas voter" means a United States citizen who is  
11 outside the United States.

12 "State" means a state of the United States, the District of  
13 Columbia, Puerto Rico, the United States Virgin Islands, or any  
14 territory or insular possession subject to the jurisdiction of  
15 the United States.

16 "Uniformed service" means:

- 17 (1) Active and reserve components of the Army, Navy, Air  
18 Force, Marine Corps, or Coast Guard of the United  
19 States;  
20 (2) The Merchant Marine, the commissioned corps of the  
21 Public Health Service, or the commissioned corps of



1 the National Oceanic and Atmospheric Administration of  
2 the United States; or

3 (3) The National Guard and state militia.

4 "Uniformed-service voter" means an individual who is  
5 qualified to vote and is:

6 (1) A member of the active or reserve components of the  
7 Army, Navy, Air Force, Marine Corps, or Coast Guard of  
8 the United States who is on active duty;

9 (2) A member of the Merchant Marine, the commissioned  
10 corps of the Public Health Service, or the  
11 commissioned corps of the National Oceanic and  
12 Atmospheric Administration of the United States;

13 (3) A member on activated status of the National Guard or  
14 state militia; or

15 (4) A spouse or dependent of a member referred to in this  
16 definition.

17 "United States", used in the territorial sense, means the  
18 several states, the District of Columbia, Puerto Rico, the  
19 United States Virgin Islands, and any territory or insular  
20 possession subject to the jurisdiction of the United States.

21 **§15-C Elections covered.** The voting procedures in this  
22 part apply to:



1 (1) A general, special, primary, or runoff election for  
2 federal office;

3 (2) A general, special, primary, or runoff election for  
4 statewide or state legislative office or state ballot  
5 measure; and

6 (3) A general, special, primary, or runoff election for  
7 county government office or county ballot measure.

8 **§15-D Role of chief elections officer.** (a) The chief  
9 election officer shall be responsible for implementing this part  
10 and the State's responsibilities under the Uniformed and  
11 Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff  
12 et seq.

13 (b) The chief election officer shall make available to  
14 covered voters information regarding voter registration  
15 procedures for covered voters and procedures for casting  
16 military-overseas ballots. The chief election officer may  
17 delegate the responsibility under this subsection only to the  
18 state office designated in compliance with section 102(b)(1) of  
19 the Uniformed and Overseas Citizens Absentee Voting Act, 42  
20 U.S.C. section 1973ff-1(b)(1).

21 (c) The chief election officer shall establish an  
22 electronic transmission system through which a covered voter may



1 apply for and receive voter registration materials, military-  
2 overseas ballots, and other information under this part.

3 (d) The chief election officer shall:

4 (1) Develop standardized absentee-voting materials,  
5 including privacy and transmission envelopes and their  
6 electronic equivalents, authentication materials, and  
7 voting instructions, to be used with the military-  
8 overseas ballot of a voter authorized to vote in any  
9 jurisdiction in this State; and

10 (2) To the extent reasonably possible, coordinate with  
11 other states to carry out this subsection.

12 (e) The chief election officer shall prescribe the form  
13 and content of a declaration for use by a covered voter to swear  
14 or affirm specific representations pertaining to the voter's  
15 identity, eligibility to vote, status as a covered voter, and  
16 timely and proper completion of an overseas-military ballot.  
17 The declaration shall be based on the declaration prescribed to  
18 accompany a federal write-in absentee ballot, as modified to be  
19 consistent with this part. The chief election officer shall  
20 ensure that a form for the execution of the declaration,  
21 including an indication of the date of execution of the



1 declaration, is a prominent part of all balloting materials for  
2 which the declaration is required.

3       **§15-E Overseas voter's registration address.** In  
4 registering to vote, an overseas voter who is eligible to vote  
5 in this State shall use and shall be assigned to the voting  
6 precinct of the address of the last place of residence of the  
7 voter in this State, or, in the case of a voter described by  
8 paragraph (5) in the definition of "covered voter" in section  
9 15-B, the address of the last place of residence in this State  
10 of the parent or legal guardian of the voter. If that address  
11 is no longer a recognized residential address, the voter shall  
12 be assigned an address for voting purposes.

13       **§15-F Methods of registering to vote.** (a) To apply to  
14 register to vote, in addition to any other approved method, a  
15 covered voter may use a federal postcard application or the  
16 application's electronic equivalent.

17       (b) A covered voter may use the declaration accompanying a  
18 federal write-in absentee ballot to apply to register to vote  
19 simultaneously with the submission of the federal write-in  
20 absentee ballot, if the declaration is received by the voter  
21 registration deadline for that election. If the declaration is



1 received after that date, it shall be treated as an application  
2 to register to vote for subsequent elections.

3 (c) The chief election officer shall ensure that the  
4 electronic transmission system described in section 15-D(c) is  
5 capable of accepting both a federal postcard application and any  
6 other approved electronic registration application sent to the  
7 appropriate election official.

8 **§15-G Methods of applying for military-overseas ballot.**

9 (a) A covered voter who is registered to vote in this State may  
10 apply for a military-overseas ballot using the regular absentee  
11 ballot application in use in the voter's jurisdiction under this  
12 chapter or the federal postcard application or the application's  
13 electronic equivalent.

14 (b) A covered voter who is not registered to vote in this  
15 State may use a federal postcard application or the  
16 application's electronic equivalent to apply simultaneously to  
17 register to vote under section 15-F and for a military-overseas  
18 ballot.

19 (c) The chief election officer shall ensure that the  
20 electronic transmission system described in section 15-D(c) is  
21 capable of accepting the submission of both a federal postcard





1 application and any other approved electronic military-overseas  
2 ballot application sent to the appropriate election official.

3 (d) A covered voter may use the declaration accompanying a  
4 federal write-in absentee ballot as an application for a  
5 military-overseas ballot simultaneously with the submission of  
6 the federal write-in absentee ballot, if the declaration is  
7 received by the appropriate election official by the last day  
8 for other voters in this State to apply for an absentee ballot  
9 under section 15-4.

10 (e) To receive the benefits of this part, a covered voter  
11 shall inform the appropriate election official that the voter is  
12 a covered voter. Methods of informing the appropriate election  
13 official that a voter is a covered voter include:

- 14 (1) The use of a federal postcard application or federal  
15 write-in absentee ballot;
- 16 (2) The use of an overseas address on an approved voter  
17 registration application or ballot application; and
- 18 (3) The inclusion on an approved voter registration  
19 application or ballot application of other information  
20 sufficient to identify the voter as a covered voter.



1 (f) This part does not preclude a covered voter from  
2 voting under the regular absentee voting provisions of this  
3 chapter.

4 **§15-H Timeliness and scope of application for military-**  
5 **overseas ballot.** An application for a military-overseas ballot  
6 is timely if received by the last day for other voters in this  
7 State to apply for an absentee ballot under section 15-4.

8 An application for a military-overseas ballot for a primary  
9 election, whether or not timely, is effective as an application  
10 for a military-overseas ballot for the general election.

11 An application for a military-overseas ballot is effective  
12 for a runoff election necessary to conclude the election for  
13 which the application was submitted.

14 **§15-I Transmission of unvoted ballots.** (a) For an  
15 election described in section 15-C for which this State has not  
16 received a waiver pursuant to section 579 of the Military and  
17 Overseas Voter Empowerment Act, 42 U.S.C. section 1973ff-  
18 1(g)(2), not later than forty-five days before the election or,  
19 if the forty-fifth day before the election is a weekend or  
20 holiday, not later than the business day preceding the forty-  
21 fifth day, the election official in each jurisdiction charged  
22 with distributing a ballot and balloting materials shall



1 transmit a ballot and balloting materials to all covered voters  
2 who by that date submit a valid military-overseas ballot  
3 application.

4 (b) A covered voter who requests that a ballot and  
5 balloting materials be sent to the voter by electronic  
6 transmission may choose facsimile transmission or electronic  
7 mail delivery, or, if offered by the voter's jurisdiction,  
8 internet delivery. The election official in each jurisdiction  
9 charged with distributing a ballot and balloting materials shall  
10 transmit the ballot and balloting materials to the voter using  
11 the means of transmission chosen by the voter.

12 (c) If a ballot application from a covered voter arrives  
13 after the jurisdiction begins transmitting ballots and balloting  
14 materials to voters, the official charged with distributing a  
15 ballot and balloting materials shall transmit them to the voter  
16 not later than two business days after the application arrives.

17 **§15-J Timely casting of ballot.** For a ballot to be  
18 considered validly cast:

19 (1) A military-overseas ballot shall be received by the  
20 appropriate county election official not later than  
21 the close of the polls; or



1           (2) The voter shall submit the ballot for mailing,  
2           electronic transmission, or other authorized means of  
3           delivery not later than 12:01 a.m., at the place where  
4           the voter completes the ballot, on the date of the  
5           election.

6           **§15-K Federal write-in absentee ballot.** A covered voter  
7 may use a federal write-in absentee ballot to vote for all  
8 offices and ballot measures in an election described in section  
9 15-C.

10          **§15-L Receipt of voted ballot.** (a) A valid military-  
11 overseas ballot cast in accordance with section 15-J shall be  
12 counted if it is delivered not later than the closing of the  
13 polls on any election day.

14          (b) If, at the time of completing a military-overseas  
15 ballot and balloting materials, the voter has declared under  
16 penalty of perjury that the ballot was timely submitted, the  
17 ballot may not be rejected on the basis that it has a late  
18 postmark, an unreadable postmark, or no postmark.

19          **§15-M Declaration.** A military-overseas ballot shall  
20 include or be accompanied by a declaration signed by the voter  
21 that a material misstatement of fact in completing the ballot



1 may be grounds for a conviction of perjury under the laws of the  
2 United States or this State.

3       **§15-N Confirmation of receipt of application and voted**  
4 **ballot.** The chief election officer, in coordination with county  
5 election officials, shall implement an electronic free-access  
6 system by which a covered voter may determine by telephone,  
7 electronic mail, or internet whether:

8       (1) The voter's federal postcard application or other  
9 registration or military-overseas ballot application  
10 has been received and accepted; and

11       (2) The voter's military-overseas ballot has been received  
12 and the current status of the ballot.

13       **§15-O Use of voter's electronic-mail address.** (a) The  
14 appropriate county election official shall request an  
15 electronic-mail address from each covered voter who registers to  
16 vote after the effective date of this part. An electronic-mail  
17 address provided by a covered voter may not be made available to  
18 the public or any individual or organization other than an  
19 authorized agent of the county election official and is exempt  
20 from disclosure under chapter 92F. The address may be used only  
21 for official communication with the voter about the voting  
22 process, including transmitting military-overseas ballots and



1 election materials if the voter has requested electronic  
2 transmission, and verifying the voter's mailing address and  
3 physical location. The request for an electronic-mail address  
4 shall describe the purposes for which the electronic-mail  
5 address may be used and include a statement that any other use  
6 or disclosure of the electronic-mail address is prohibited.

7 (b) A covered voter who provides an electronic-mail  
8 address may request that the voter's application for a military-  
9 overseas ballot be considered a standing request for electronic  
10 delivery of a ballot for all elections held through December 31  
11 of the year following the calendar year of the date of the  
12 application or another shorter period the voter specifies,  
13 including for any runoff elections that occur as a result of  
14 such elections. An election official shall provide a military-  
15 overseas ballot to a voter who makes a standing request for each  
16 election to which the request is applicable. A covered voter  
17 who is entitled to receive a military-overseas ballot for a  
18 primary election under this subsection is entitled to receive a  
19 military-overseas ballot for the general election.

20 **§15-P Publication of election notice.** (a) At least one  
21 hundred days before a regularly scheduled election and as soon  
22 as practicable before an election not regularly scheduled, an



1 official in each jurisdiction charged with printing and  
2 distributing ballots and balloting material shall prepare an  
3 election notice for that jurisdiction, to be used in conjunction  
4 with a federal write-in absentee ballot. The election notice  
5 shall contain a list of all of the ballot measures and federal,  
6 state, and local offices that as of that date the official  
7 expects to be on the ballot on the date of the election. The  
8 notice shall also contain specific instructions for how a voter  
9 is to indicate on the federal write-in absentee ballot the  
10 voter's choice for each office to be filled and for each ballot  
11 measure to be contested.

12 (b) A covered voter may request a copy of an election  
13 notice. The official charged with preparing the election notice  
14 shall send the notice to the voter by facsimile, electronic  
15 mail, or regular mail, as the voter requests.

16 (c) As soon as ballot forms are certified, and not later  
17 than the date ballots are required to be transmitted to voters  
18 under this chapter, the official charged with preparing the  
19 election notice under subsection (a) shall update the notice  
20 with the certified candidates for each office and ballot measure  
21 questions and make the updated notice publicly available.



1 (d) A county election jurisdiction that maintains an  
2 internet website shall make the election notice prepared under  
3 subsection (a) and updated versions of the election notice  
4 regularly available on the website.

5 **§15-Q Prohibition of nonsubstantive requirements.** (a) If  
6 a voter's mistake or omission in the completion of a document  
7 under this part does not prevent determining whether a covered  
8 voter is eligible to vote, the mistake or omission shall not  
9 invalidate the document. Failure to satisfy a nonsubstantive  
10 requirement, such as using paper or envelopes of a specified  
11 size or weight, shall not invalidate a document submitted under  
12 this part. In a write-in ballot authorized by this part, if the  
13 intention of the voter is discernable under this State's uniform  
14 definition of what constitutes a vote, an abbreviation,  
15 misspelling, or other minor variation in the form of the name of  
16 a candidate or a political party shall be accepted as a valid  
17 vote.

18 (b) Notarization shall not be required for the execution  
19 of a document under this part. An authentication, other than  
20 the declaration specified in section 15-M or the declaration on  
21 the federal postcard application and federal write-in absentee  
22 ballot, is not required for execution of a document under this





1 part. The declaration and any information in the declaration  
2 may be compared with information on file to ascertain the  
3 validity of the document.

4 **§15-R Equitable relief.** A court may issue an injunction  
5 or grant other equitable relief appropriate to ensure  
6 substantial compliance with, or enforce, this part on  
7 application by:

8 (1) A covered voter alleging a grievance under this part;

9 or

10 (2) An election official in this State.

11 **§15-S Uniformity of application and construction.** In  
12 applying and construing this uniform act, consideration shall be  
13 given to the need to promote uniformity of the law with respect  
14 to its subject matter among states that enact it.

15 **§15-T Relation to Electronic Signatures in Global and**  
16 **National Commerce Act.** This part modifies, limits, and  
17 supersedes the Electronic Signatures in Global and National  
18 Commerce Act, 15 U.S.C. section 7001 et seq., but does not  
19 modify, limit, or supersede section 101(c) of that Act, 15  
20 U.S.C. section 7001(c), or authorize electronic delivery of any  
21 of the notices described in section 103(b) of that Act, 15  
22 U.S.C. section 7003(b)."



1 SECTION 2. Chapter 15, Hawaii Revised Statutes, is amended  
2 by designating sections 15-1 to 15-14 as part I, entitled  
3 "General Provisions".

4 SECTION 3. Section 15-3.5, Hawaii Revised Statutes, is  
5 repealed.

6 [~~§15-3.5 Federal write-in absentee ballot.~~

7 ~~Notwithstanding the provisions of this chapter and chapters 11~~  
8 ~~and 16, the federal write-in absentee ballot for overseas voters~~  
9 ~~in general elections for federal office which must be prescribed~~  
10 ~~under section 1973ff of title 42, United States Code, as~~  
11 ~~amended, may be used in general elections for federal offices." ]~~

12 SECTION 4. In codifying the new sections added by section  
13 1 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 5. Statutory material to be repealed is bracketed  
17 and stricken.

18 SECTION 6. This Act shall take effect upon its approval.

19 *Malama Jones*  
*John King* INTRODUCED BY: *Michelle Adair*  
*Maana Chun aalland* *Will Eyo*



*[Handwritten signatures and initials]*

S.B. NO. 636

Resuley J. Bat



**Report Title:**

Elections; Uniformed Services and Overseas Absentee Voters

**Description:**

Implements voting provisions for uniformed services and overseas absentee voters, including electronic transmission of balloting materials, as required by the Military and Overseas Voter Empowerment Act.

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

