

JAN 21 2011

S.B. NO. 1080

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## A BILL FOR AN ACT

RELATING TO THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 UNIFORM MILITARY AND OVERSEAS VOTERS ACT

6 § -1 Short title. This chapter may be cited as the  
7 Uniform Military and Overseas Voters Act.

8 § -2 Definitions. In this chapter:

9 "Covered voter" means:

- 10 (1) A uniformed-service voter or an overseas voter who is  
11 registered to vote in this State;
- 12 (2) A uniformed-service voter defined in paragraph (1) of  
13 that definition whose voting residence is in this  
14 State and who otherwise satisfies this State's voter  
15 eligibility requirements;
- 16 (3) An overseas voter who, before leaving the United  
17 States, was last eligible to vote in this State and,



1           except for a state residency requirement, otherwise  
2           satisfies this State's voter eligibility requirements;

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

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

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

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

20          "Dependent" means an individual recognized as a dependent  
21          by a uniformed service.



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

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

7 "Military-overseas ballot" means:

- 8 (1) A federal write-in absentee ballot;  
9 (2) A ballot specifically prepared or distributed for use  
10 by a covered voter in accordance with this chapter; or  
11 (3) A ballot cast by a covered voter in accordance with  
12 this chapter.

13 "Overseas voter" means a United States citizen who is  
14 outside the United States.

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

19 "Uniformed service" means:

- 20 (1) Active and reserve components of the Army, Navy, Air  
21 Force, Marine Corps, or Coast Guard of the United  
22 States;



1           (2) The Merchant Marine, the commissioned corps of the  
2           Public Health Service, or the commissioned corps of  
3           the National Oceanic and Atmospheric Administration of  
4           the United States; or

5           (3) The National Guard and state militia.

6           "Uniformed-service voter" means an individual who is  
7 qualified to vote and is:

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

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

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

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

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



1           §   -3 Elections covered. The voting procedures in this  
2 chapter apply to:

- 3           (1) A general, special, presidential preference, or  
4           primary election for federal office;
- 5           (2) A general, special, or primary election for statewide  
6           or state legislative office or state ballot measure;  
7           and
- 8           (3) A general, special, recall, primary, or runoff  
9           election for local government office or local ballot  
10          measure conducted under section 11-91.5 for which  
11          absentee voting or voting by mail is available for  
12          other voters.

13          §   -4 Role of chief election officer. (a) The chief  
14 election officer shall be the state official responsible for  
15 implementing this chapter and the State's responsibilities under  
16 the Uniformed and Overseas Citizens Absentee Voting Act, 42  
17 U.S.C. section 1973ff et seq.

18          (b) The chief election officer shall make available to  
19 covered voters information regarding voter registration  
20 procedures for covered voters and procedures for casting  
21 military-overseas ballots. The chief election officer may  
22 delegate the responsibility under this subsection only to the



1 state office designated in compliance with section 102(b)(1) of  
2 the Uniformed and Overseas Citizens Absentee Voting Act, 42  
3 U.S.C. section 1973ff-1(b)(1).

4 (c) The chief election officer shall establish an  
5 electronic transmission system through which a covered voter may  
6 apply for and receive voter registration materials, military-  
7 overseas ballots, and other information under this chapter.

8 (d) The chief election officer shall:

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

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

17 (e) The chief election officer shall prescribe the form  
18 and content of a declaration for use by a covered voter to swear  
19 or affirm specific representations pertaining to the voter's  
20 identity, eligibility to vote, status as a covered voter, and  
21 timely and proper completion of an overseas-military ballot.

22 The declaration shall be based on the declaration prescribed to



1 accompany a federal write-in absentee ballot, as modified to be  
2 consistent with this chapter. The chief election officer shall  
3 ensure that a form for the execution of the declaration,  
4 including an indication of the date of execution of the  
5 declaration, is a prominent part of all balloting materials for  
6 which the declaration is required.

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

17       § -6 Methods of registering to vote. (a) To apply to  
18 register to vote, in addition to any other approved method, a  
19 covered voter may use a federal postcard application, or the  
20 application's electronic equivalent.

21       (b) A covered voter may use the declaration accompanying a  
22 federal write-in absentee ballot to apply to register to vote



1 simultaneously with the submission of the federal write-in  
2 absentee ballot, if the declaration is received not later than  
3 thirty days prior to the election pursuant to section 11-16. If  
4 the declaration is received after that date, it must be treated  
5 as an application to register to vote for subsequent elections.

6 (c) The chief election officer shall ensure that the  
7 electronic transmission system described in section -4(c) is  
8 capable of accepting both a federal postcard application and any  
9 other approved electronic registration application sent to the  
10 appropriate election official. The voter may use the electronic  
11 transmission system or any other approved method to register to  
12 vote.

13 § -7 Methods of applying for military-overseas ballot.

14 (a) A covered voter who is registered to vote in this State may  
15 apply for a military-overseas ballot using the regular absentee  
16 ballot application in use in the voter's jurisdiction under  
17 section 11-16 or the federal postcard application or the  
18 application's electronic equivalent.

19 (b) A covered voter who is not registered to vote in this  
20 State may use a federal postcard application or the  
21 application's electronic equivalent to apply simultaneously to





1 register to vote under section -6 and for a military-overseas  
2 ballot.

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

8 The voter may use the electronic transmission system or any  
9 other approved method to apply for a military-overseas ballot.

10 (d) A covered voter may use the declaration accompanying a  
11 federal write-in absentee ballot as an application for a  
12 military-overseas ballot simultaneously with the submission of  
13 the federal write-in absentee ballot, if the declaration is  
14 received by the appropriate election official by the fifth day  
15 before the election.

16 (e) To receive the benefits of this chapter, a covered  
17 voter shall inform the appropriate election official that the  
18 voter is a covered voter. Methods of informing the appropriate  
19 election official that a voter is a covered voter include:

20 (1) The use of a federal postcard application or federal  
21 write-in absentee ballot;



- 1           (2) The use of an overseas address on an approved voter  
2                    registration application or ballot application; and  
3           (3) The inclusion on an approved voter registration  
4                    application or ballot application of other information  
5                    sufficient to identify the voter as a covered voter.  
6           (f) This chapter does not preclude a covered voter from  
7                    voting under chapter 15.

8           §   -8 Timeliness and scope of application for military-  
9                    overseas ballot. An application for a military-overseas ballot  
10                   shall be timely if received by the fifth day before the election  
11                   for that election. An application for a military-overseas  
12                   ballot for a primary election, whether or not timely, shall be  
13                   effective as an application for a military-overseas ballot for  
14                   the general election. An application for a military-overseas  
15                   ballot shall be effective for a runoff election necessary to  
16                   conclude the election for which the application was submitted.

17           §   -9 Transmission of unvoted ballots. (a) For an  
18                   election described in section   -3 for which this State has not  
19                   received a waiver pursuant to section 579 of the Military and  
20                   Overseas Voter Empowerment Act, 42 U.S.C. section 1973ff-  
21                   1(g) (2), not later than forty-five days before the election or,  
22                   if the forty-fifth day before the election is a weekend or



1 holiday, not later than the business day preceding the forty-  
2 fifth day, the election official in each jurisdiction charged  
3 with distributing a ballot and balloting materials shall  
4 transmit a ballot and balloting materials to all covered voters  
5 who by that date submit a valid military-overseas ballot  
6 application.

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

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

20 § -10 Timely casting of ballot. To be valid, a  
21 military-overseas ballot shall be received by the appropriate  
22 local election official not later than the close of the polls,



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

5       § -11 **Federal write-in absentee ballot.** A covered voter  
6 may use a federal write-in absentee ballot to vote for all  
7 offices and ballot measures in an election described in  
8 section -3.

9       § -12 **Receipt of voted ballot.** (a) A valid military-  
10 overseas ballot cast in accordance with section -10 shall be  
11 counted if it is delivered by the end of business on the  
12 business day before the election day to the address that the  
13 appropriate state or local election office has specified.

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

20       § -13 **Declaration.** A military-overseas ballot shall  
21 include or be accompanied by a declaration or affirmation signed  
22 by the voter that a material misstatement of fact in completing



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

3 § -14 Confirmation of receipt of application and voted  
4 ballot. The chief election officer, in coordination with local  
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 Use of voter's electronic-mail address. (a) The  
14 local election official shall request an electronic-mail address  
15 from each covered voter who registers to vote after the  
16 effective date of this chapter. An electronic-mail address  
17 provided by a covered voter may not be made available to the  
18 public or any individual or organization other than an  
19 authorized agent of the local 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 must describe the purposes for which the electronic-mail address  
5 may be used and include a statement that any other use or  
6 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 those 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 § -16 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 must 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 also must 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 styles are finalized pursuant to  
17 section 11-119, and not later than the date ballots are required  
18 to be transmitted to voters under section 15-4, the official  
19 charged with preparing the election notice under subsection (a)  
20 shall update the notice with the certified candidates for each  
21 office and ballot measure questions and make the updated notice  
22 publicly available.



1 (d) A local 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 § -17 Prohibition of nonsubstantive requirements.

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

18 (b) Notarization is not required for the execution of a  
19 document under this chapter. An authentication, other than the  
20 declaration specified in section -13 or the declaration on  
21 the federal postcard application and federal write-in absentee  
22 ballot, shall not be required for execution of a document under





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

4 § -18 Equitable relief. A court may issue an injunction  
5 or grant other equitable relief appropriate to ensure  
6 substantial compliance with, or enforce, this chapter on  
7 application by:

8 (1) A covered voter alleging a grievance under this  
9 chapter; or

10 (2) An election official in this State.

11 § -19 Relation to electronic signatures in global and  
12 national commerce act. This chapter modifies, limits, and  
13 supersedes the Electronic Signatures in Global and National  
14 Commerce Act, 15 U.S.C. section 7001 et seq., but does not  
15 modify, limit, or supersede section 101(c) of that act, 15  
16 U.S.C. section 7001(c), or authorize electronic delivery of any  
17 of the notices described in section 103(b) of that act, 15  
18 U.S.C. section 7003(b)."

19 SECTION 2. This Act shall take effect on July 1, 2011.

20

INTRODUCED BY:

*[Handwritten signature]*



**Report Title:**

Military and Overseas Voters Act

**Description:**

Enacts Uniform Military and Overseas Voters Act to ensure ability of members of the military and others eligible voters who are overseas to participate in all elections for federal, state, and local offices. Authorizes ballots and balloting materials to be transmitted by facsimile or electronic mail.

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

