



BERNICE K.N. MAU
City Clerk

ELECTIONS
OFFICE OF THE CITY CLERK
530 SOUTH KING STREET, ROOM 100
HONOLULU, HAWAII 96813-3099
TELEPHONE: (808) 768-3800 • FAX: (808) 768-3835

LATE TESTIMONY

COMMENTS ON HB 100
RELATING TO VOTING
Committee on Judiciary
Rm. 325
2:00 February 1, 2011

Chair Keith-Agaran and Committee Members:

The Office of the City Clerk provides comments on HB 100 but takes no position on the issue of whether Hawaii's regularly scheduled elections should be conducted utilizing a vote by mail election scheme.

We attach for your information, Hawaii Administrative Rules Subtitle 13, Chapter 175. We believe that it provides a practical and fair scheme for implementing vote by mail elections. The 2010 Congressional District I special election and District I Honolulu City Council special election were both implemented under this Chapter and two previous 2009 Honolulu City Council special elections were also implemented using similar procedures.

We highlight for Committee discussion the question of whether return ballot postage should be provided if alternatives such as drop off boxes/locations are established. The cost of return postage for the 2010 primary election would have been in excess of \$128,000 under this bill.

We also recommend an equitable cost sharing formula of election expenses (between State and County agencies charged with implementation of vote by mail elections) that takes into consideration the various vote by mail costs such as staffing, mailing service, postage, etc..

Finally, an appropriation in this bill is absolutely necessary to: develop a statewide signature image database and collect voter signature images; procure incoming mail scanning/sorting machines; and procure other equipment for handling the anticipated 300,000 vote by mail envelopes and ballots that could be returned in a regular Primary Election.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 13 OFFICE OF ELECTIONS

CHAPTER 175

ELECTIONS BY MAIL

- \$3-175-1 Purpose; general applicability.
- \$3-175-2 Proclamation.
- \$3-175-3 Board of Registration:
- \$3-175-4 Ballot packet; contents.
- \$3-175-5 Mailing of ballots; date
- \$3-175-6 Absentee polling place.
- \$3-175-7 Voter procedure.
- \$3-175-8 Return of ballots; postage.
- \$3-175-9 Ballot collection sites; private collection sites prohibited.
- \$3-175-10 Ballot cast upon receipt; replacement ballot.
- \$3-175-11 Submittal of ballots; deadline.
- \$3-175-12 Extension of deadline for receiving ballots.
- \$3-175-13 Verification of affirmation signatures.
- \$3-175-14 Processing and tabulation of ballots.
- \$3-175-15 Receipt and disposition of late ballots.
- \$3-175-16 Deadlines for all-mail elections.

\$3-175-1 Purpose; general applicability. The purpose of these administrative rules is to provide for consistency in the administration of elections by mail. Unless the context indicates otherwise, and where not inconsistent, and to the extent practicable, statutory provisions and administrative rules pertaining to regular elections shall be applicable elections by mail. [Eff JAN 09 2010 (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)]

§3-175-2 Proclamation. For any federal, state, or county election held other than on the date of a regularly scheduled primary or general election, the chief election officer or clerk, in the case of county elections, shall issue an election proclamation to announce an election administered by mail. The proclamation shall set forth the date of the election, location and hours of operation of the absentee polling place or places, anticipated ballot mailing date, ballot return deadline, and other information for voters. [Eff. **JAN 09 2010** (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)]

§3-175-3 Board of Registration. The board of registration shall not be required to convene on election day for an election administered by mail. [Eff. **JAN 09 2010** (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)]

§3-175-4 Ballot packet; contents. The chief election officer or clerk shall provide the voter with a ballot, secrecy envelope, return envelope, and any other pertinent information. The return envelope shall contain an affirmation statement that is substantially similar to the affirmation statement required on absentee mail voting materials. [Eff. **JAN 09 2010** (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)]

§3-175-5 Mailing of Ballots; date. Vote by mail ballot packets shall be sent by non-forwardable mail to all active registered voters in the general county registry as of the closing of the general county registry specified in HRS §11-24. Vote by mail ballot packets may be mailed out in accordance with any schedule stated in the election proclamation. To the extent a constitutional, charter, statutory, ballot production, logistical, or other basis exists for modifying the schedule, the schedule may be modified. The chief election officer or clerk may mail a ballot to voters transferring voter registration after the closing of the registry. Voters who are unable to receive election mail at the address listed in the general county registry shall be responsible for requesting an absentee

ballot or voting at the absentee polling place.
[Eff JAN 09 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS
§§11-4, 11-91.5)

§3-175-6 Absentee polling place. The chief election officer or clerk in the case of county elections shall establish at least one absentee polling place for servicing voters requiring the use of an accessible voting device.
[Eff JAN 09 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS
§§11-4, 11-91.5)

§3-175-7 Voter procedure. When a voter receives the vote by mail materials, the voter shall comply with all written instructions provided, mark the ballot, sign the affirmation statement on the return envelope, and return the ballot by placing the ballot in the return envelope provided by depositing the envelope in the United States mail or delivering the sealed envelope to the election office or ballot collection site. [Eff JAN 09 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-8 Return of ballots; postage. If not provided by the election office, ballot return postage shall be borne by the voter. The chief election officer or clerk shall inform voters of the required amount of return postage to ensure proper delivery and of other options for the return of the ballot. [Eff JAN 09 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-9 Ballot collection sites; private collection sites prohibited. The chief election officer or clerk may establish ballot collection sites in addition to the county clerk's office for receiving voted ballots. Ballot collection sites for returned ballots shall be established if return postage is not borne by the election office.

It shall be unlawful for any person other than the chief election officer or clerk to establish a ballot collection site.

[Eff JAN 09 2010] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS

§§11-4, 11-91.5)

§3-175-10 Ballot cast upon receipt; replacement ballot. A ballot contained in a properly signed return envelope that has been received by the chief election officer or county clerk shall be considered cast and may not be recast for any reason. As such, a voter may not request back a ballot or seek to cancel it, after it has been received by the chief election officer or county clerk.

A voter may receive a replacement ballot if the original ballot is destroyed, spoiled, lost, or not received by the voter. A replacement ballot need not be mailed within five days of the election. [Eff **JAN 09 2010** (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-11 Submittal of ballots; deadline. The voted ballot shall be returned in the provided return envelope. All voted ballots must be received by the Chief election officer or Clerk in the case of county elections by 6:00 p.m. on election day in order to be counted. [Eff **JAN 09 2010** (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5, 11-131)

§3-175-12 Extension of deadline for receiving ballots. In the event of a flood, tsunami, earthquake, volcanic eruption, other natural disaster, or other emergency condition, the Governor by written proclamation may extend the deadline for returning ballots for a period of not more than seven days in any state or county election if the Governor receives a written request for the extension from the chief election officer or county clerk. The chief election officer or clerk may request the Governor to extend the deadline for returning ballots under this section if the natural event or disaster makes it impossible or impracticable for voters to return ballots by 6:00 p.m. due to the emergency. [Eff **JAN 09 2010** (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5, 128-9)

§3-175-13 Verification of affirmation signatures.

Prior to opening the return and ballot envelopes, the signatures on the return envelopes shall be verified with signatures contained on the voter registration affidavit, absentee ballot application, or other reliable source document available to the chief election officer or clerk.

Envelopes with verified affirmation signatures shall be forwarded for processing and tabulation. If the elections office identifies return envelopes where two members of a household signed the other's return envelope, if both signatures are verified, both envelopes may be forwarded for processing and tabulation.

Up to four days prior to the election:

- 1) Return envelopes that do not contain the required signature on the affirmation statement may be returned to voters for execution and re-submittal by the ballot return deadline.
- 2) Return envelopes with non-matching signatures shall be segregated and the chief election officer or clerk may attempt to contact the voter to update the signature record on file in the election office. The contacted voter shall be required to appear personally to update the signature record not later than 6:00 p.m. election day for the ballot to be counted.

Within three days of the election, attempts may be made to contact the respective voter to correct the error or deficiency. However, any return envelopes with missing or non-matching signatures that were not updated as of 6:00 p.m. election day shall be invalidated and placed in the invalid ballot box. [Eff. **JAN 09 2010**] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-14 Processing and tabulation of ballots. If the requirements of §3-175-13 are met, at the discretion of the chief election officer or clerk, the return and ballot envelopes may be opened and ballots tabulated within seven days prior to the election day. In no case, however, shall the elections results become publicly known before 6:00 p.m. election day. [Eff. **JAN 09 2010**] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-15 Receipt and disposition of late ballots. Any return envelopes containing vote by mail ballots received after the deadline shall be kept unopened and disposed of pursuant to HRS §11-154. [Eff **JAN 09 2010**] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5)

§3-175-16 Deadlines for all-mail elections. All deadlines of 6:00 p.m. in chapter 175 are based on the prescribed hour for the closing of polls found in HRS §11-131. To the extent that statutory time is ever changed, all references to 6:00 p.m. will be treated as changed to the new statutory time for the closing of polls. [Eff **JAN 09 2010**] (Auth: HRS §§11-4, 11-91.5) (Imp: HRS §§11-4, 11-91.5, 11-131)



Tuesday, February 1, 2011
State Capitol Room 325

HB 100 Relating to Voting

LATE TESTIMONY

To: House Committee on Judiciary
Representative Keith-Agaran, Chair
Representative Rhoads, Vice Chair

Testimony of: Debi Hartmann
Executive Director
Democratic Party of Hawai'i

My name is Debi Hartmann, Executive Director for the Democratic Party of Hawai'i. Dante Carpenter, our Chair, and I had the privilege of serving as Observers in the Special Primary Election for the replacement of the U.S House of Representative seat vacated by our current Governor Abercrombie. That particular election process was an all-mail-in ballot election.

Our experience and observations lead the Chair and me to lend our support to the intent of this bill, while at the same time ask for clarification and point out a few concerns in HB 100.

1. Page 3, Line 6 – The bill speaks to “one precinct on each island to be open on primary election day to provide walk-in voting and to receive ballots.”
 - a. We recommend one precinct per House District. We make this recommendation based on the geography of each Island. If you take the Big Island for example it is an extreme hardship to ask someone from South Kona to drive to Hilo or vice versa. I think you can picture our concern.
2. On the same page, line 16, we would suggest that mail-out ballots should have a (21) twenty-one day turn around rather than 18-14 days. This would keep it consistent with everyone who receives a mailed ballot.
3. Page 6, Line 18, speaks to the counting of ballots. We recommend that the outside of the envelope contain the precinct and district for counting and accurate data processing.
 - a. It has been difficult in the past to know how many have voted in any given precinct and district by mail-in versus walk-in by precinct. We are constantly asked to participate in national data collection for statistical purposes yet we are unable to do so due to a lack of

DEMOCRATIC PARTY OF HAWAII

1050 Ala Moana Blvd., Suite #2660 * Honolulu, HI 96814 * Phone: (808) 596-2980 * Fax: (808) 596-2985



ability to collect accurate data. We must always go through mathematical gyrations realizing it is an estimate.

4. Page 10, line 5, removal of names from the voter files. This is for clarification purposes. Are we correct in understanding that after two election cycles of both primary and general if a person has not voted their name is REMOVED FROM THE VOTER FILE?
5. Page 12 line 11, this is a restatement of our number one (1) concern as noted above as it appears twice in HB 100.

Thank you in advance for your attention to our concerns and clarifying areas we were not sure we fully understood.

LATE TESTIMONY

Representative Gilbert Keith-Agaran, Chair
Representative Karl Rhoads, Vice-Chair
Judiciary Committee

House of Representatives of the State of Hawai'i

Lance D. Collins, Ph.D
Law Office of Lance D Collins

Tuesday, February 1, 2011
Support HB No. 100, Relating to Voting

My name is Lance D. Collins. I am an attorney in private practice on the island of Maui and testify on my own behalf. I **support** this bill.

This should be the first step in a two step process of moving all voting towards a mail-in system.

Thank you for this opportunity to provide testimony on this measure.

Mahalo.

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