



GOV. MSG. NO. 1329

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 05, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 05, 2012, the following bill was signed into law:

HB461 HD1 SD1

RELATING TO THE UNIFORM MILITARY AND
OVERSEAS VOTERS ACT.
Act 226 (12)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

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) An overseas voter who, before leaving the United
13 States, was last eligible to vote in this State and,
14 except for a state residency requirement, otherwise
15 satisfies this State's voter eligibility requirements;
- 16 (3) An overseas voter who, before leaving the United
17 States, would have been last eligible to vote in this
18 State had the voter then been of voting age and,



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

4 (4) An overseas voter who was born outside the United
5 States, is not described in paragraph (2) or (3), and
6 except for a state residency requirement, otherwise
7 satisfies this State's voter eligibility requirements,
8 if:

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

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

15 "Dependent" means an individual recognized as a dependent
16 by a uniformed service.

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

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



1 "Military-overseas ballot" means:

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

7 "Overseas voter" means a United States citizen who is
8 living outside the United States.

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

13 "Uniformed service" means:

- 14 (1) Active and reserve components of the Army, Navy, Air
- 15 Force, Marine Corps, or Coast Guard of the United
- 16 States;
- 17 (2) The Merchant Marine, the commissioned corps of the
- 18 Public Health Service, or the commissioned corps of
- 19 the National Oceanic and Atmospheric Administration of
- 20 the United States; or
- 21 (3) The National Guard and state militia.



1 "Uniformed-service voter" means an individual who is
2 qualified to vote and is:

- 3 (1) A member of the active or reserve components of the
4 Army, Navy, Air Force, Marine Corps, or Coast Guard of
5 the United States who is on active duty;
- 6 (2) A member of the Merchant Marine, the commissioned
7 corps of the Public Health Service, or the
8 commissioned corps of the National Oceanic and
9 Atmospheric Administration of the United States;
- 10 (3) A member on activated status of the National Guard or
11 state militia; or
- 12 (4) A spouse or dependent of a member referred to in this
13 definition.

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

18 **§ -3 Elections covered.** The voting procedures in this
19 chapter apply to:

- 20 (1) A general, special, or primary election for federal
21 office;



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

4 (3) A general, special, recall, primary, or runoff
5 election for local government office or local ballot
6 measure conducted under section 11-91.5 for which
7 absentee voting or voting by mail is available for
8 other voters.

9 **§ -4 Role of chief election officer.** (a) The chief
10 election officer shall be the state official responsible for
11 implementing this chapter and the State's responsibilities under
12 the Uniformed and Overseas Citizens Absentee Voting Act, 42
13 U.S.C. section 1973ff et seq.

14 (b) The chief election officer shall establish an
15 electronic transmission system through which a covered voter may
16 apply for and receive voter registration materials, military-
17 overseas ballots, and other information under this chapter. The
18 chief election officer may satisfy the requirements of this
19 chapter by utilizing an electronic transmission system
20 established by the Federal Voting Assistance Program in lieu of
21 creating a separate electronic transmission system.



1 (c) The chief election officer shall develop standardized
2 absentee-voting materials, including privacy and transmission
3 envelopes and their electronic equivalents, authentication
4 materials, and voting instructions, to be used with the
5 military-overseas ballot of a voter authorized to vote in any
6 jurisdiction in this State.

7 (d) The chief election officer shall accept forms
8 prescribed by the Uniformed and Overseas Citizens Absentee
9 Voting Act, 42 U.S.C. section 1973ff et seq., for use by a
10 covered voter than contains the prescribed standard declaration
11 to swear or affirm specific representations pertaining to the
12 voter's identity, eligibility to vote, status as a covered
13 voter, and timely and proper completion of an overseas-military
14 ballot.

15 **§ -5 Overseas voter's registration address.** In
16 registering to vote, an overseas voter who is eligible to vote
17 in this State shall use and be assigned to the voting district
18 of the person's residence, or the last place of residence prior
19 to leaving this State, or, in the case of a voter described by
20 paragraph (4) of the definition of "covered voter" under section
21 -2, the address of the last place of residence in this State
22 of the parent or legal guardian of the voter. If that address



1 is no longer a recognized residential address, the voter shall
2 be assigned a district for voting purposes.

3 **§ -6 Methods of registering to vote.** (a) To apply to
4 register to vote, in addition to any other approved method, a
5 covered voter may use the federal postcard application, or the
6 application's electronic equivalent for all elections conducted
7 in the State.

8 (b) A covered voter may use the declaration accompanying a
9 federal write-in absentee ballot to apply to register to vote
10 simultaneously with the submission of the federal write-in
11 absentee ballot, if it is received no later than thirty days
12 prior to the election pursuant to section 11-16.

13 (c) The chief election officer shall ensure that the
14 electronic transmission system described in section -4(b) is
15 capable of accepting both a federal postcard application and any
16 other approved electronic registration application sent to the
17 appropriate election official. The voter may use the electronic
18 transmission system or any other approved method to register to
19 vote.

20 **§ -7 Methods of applying for military-overseas ballot.**

21 (a) A covered voter who is registered to vote in this State may
22 apply for a military-overseas ballot using the absentee ballot



1 application prescribed in section 15-4, the federal postcard
2 application, or the application's electronic equivalent, as
3 appropriate.

4 (b) A covered voter who is not registered to vote in this
5 State may use a federal postcard application or the
6 application's electronic equivalent to apply simultaneously to
7 register to vote under section -6 and for a military-overseas
8 ballot.

9 (c) The chief election officer shall ensure that the
10 electronic transmission system described in section -4(b) is
11 capable of accepting the submission of both a federal postcard
12 application and any other approved electronic military-overseas
13 ballot application sent to the appropriate election official.
14 The voter may use the electronic transmission system or any
15 other approved method to apply for a military-overseas ballot.

16 (d) A covered voter may use the declaration accompanying
17 the federal write-in absentee ballot as an application for a
18 military-overseas ballot simultaneously upon its submission if
19 it is received by the appropriate election official by the
20 deadline prescribed under section 15-4.

21 **§ -8 Timeliness and scope of application for military-**
22 **overseas ballot.** An application for a military-overseas ballot



1 shall be timely if received by the request period prescribed
2 under section 15-4. An application for a military-overseas
3 ballot for a primary election, whether or not timely, shall be
4 effective as an application for a military-overseas ballot for
5 the general election and all subsequent elections held before
6 December 31 of that calendar year.

7 **§ -9 Transmission of unvoted ballots.** (a) No later
8 than forty-five days before the election or, if the forty-fifth
9 day before the election is a weekend or holiday, no later than
10 the business day preceding the forty-fifth day, the election
11 official in each jurisdiction charged with distributing a ballot
12 and balloting materials shall transmit a ballot and balloting
13 materials to all covered voters who by that date submit a valid
14 military-overseas ballot application.

15 (b) A covered voter who requests that a ballot and
16 balloting materials be sent to the voter by electronic
17 transmission may choose facsimile transmission or electronic
18 mail delivery, or, if offered by the voter's jurisdiction,
19 internet delivery. The election official in each jurisdiction
20 charged with distributing a ballot and balloting materials shall
21 transmit the ballot and balloting materials to the voter using
22 the means of transmission chosen by the voter.



1 (c) If a ballot application from a covered voter arrives
2 after the jurisdiction begins transmitting ballots and balloting
3 materials to voters, the official charged with distributing a
4 ballot and balloting materials shall transmit them to the voter
5 no later than two business days or as soon as allowable after the
6 application arrives.

7 § -10 **Receipt of voted ballot.** A valid military-
8 overseas ballot shall be counted if it is received by the close
9 of the polls on the day of the election and meets the
10 requirements prescribed under section 15-9.

11 § -11 **Declaration.** A military-overseas ballot shall
12 include or be accompanied by a declaration or affirmation signed
13 by the voter that a material misstatement of fact in completing
14 the ballot may be grounds for a conviction of perjury or related
15 offenses under the laws of the United States of this State.

16 § -12 **Federal write-in absentee ballot.** A covered voter
17 may use a federal write-in absentee ballot to vote for all
18 offices and ballot measures in an election described in section
19 -3.

20 § -13 **Confirmation of receipt of application and voted**
21 **ballot.** The chief election officer, in coordination with local
22 election officials, shall implement an electronic free-access



1 system by which a covered voter may determine by telephone,
2 electronic mail, or Internet whether:

3 (1) The voter's federal postcard application or other
4 registration or military-overseas ballot application
5 has been received and accepted; and

6 (2) The voter's military-overseas ballot has been
7 received.

8 § -14 Use of voter's electronic-mail address. (a) The
9 local election official shall request an electronic-mail address
10 from each covered voter who registers to vote after the
11 effective date of this chapter. An electronic-mail address
12 provided by a covered voter may not be made available to the
13 public or any individual or organization other than an
14 authorized agent of the local election official and is exempt
15 from disclosure under chapter 92F. The electronic-mail address
16 may be used only for official communication with the voter about
17 the voting process, including transmitting military-overseas
18 ballots and election materials if the voter has requested
19 electronic transmission, and verifying the voter's mailing
20 address and physical location.

21 (b) A covered voter who provides an electronic-mail
22 address may request that the voter's application for a military-



1 overseas ballot be considered a standing request for electronic
2 delivery of a ballot for all elections held through December 31
3 of the calendar year of the date of the application or another
4 shorter period the voter specifies, including for any runoff
5 elections that occur as a result of those elections. An
6 election official shall provide a military-overseas ballot to a
7 voter who makes a standing request for each election to which
8 the request is applicable. A covered voter who is entitled to
9 receive a military-overseas ballot for a primary election under
10 this subsection is entitled to receive a military-overseas
11 ballot for the general election.

12 **§ -15 Publication of election notice.** (a) As soon as
13 practicable before an election, an official in each jurisdiction
14 charged with printing ballots and balloting material shall
15 prepare an election notice for that jurisdiction, to be used in
16 conjunction with a federal write-in absentee ballot. The
17 election notice must contain a list of all of the ballot
18 measures and federal, state, and local offices that as of that
19 date the official expects to be on the ballot on the date of the
20 election. The notice may contain specific instructions for how
21 a voter is to indicate on the federal write-in absentee ballot



1 the voter's choice for each office to be filled and for each
2 ballot measure to be contested.

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

7 (c) As soon as ballot styles are finalized pursuant to
8 section 11-119, and no later than the date ballots are required
9 to be transmitted to voters under section 15-4, the official
10 charged with preparing the election notice under subsection (a)
11 shall update the notice with the certified candidates for each
12 office and ballot measure questions and make the updated notice
13 publicly available.

14 (d) A local election jurisdiction that maintains an
15 internet website shall make the election notice prepared under
16 subsection (a) and updated versions of the election notice
17 regularly available on the website.

18 (e) The chief election officer or clerk in the case of
19 county elections may satisfy the requirements of this section by
20 making available ballot facsimiles or a certified list of
21 candidates and ballot measures available on their respective
22 websites.



1 **§ -16 Prohibition of nonsubstantive requirements.** (a)

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

14 (b) Notarization is not required for the execution of a
15 document under this chapter. An authentication, other than the
16 declaration on the federal postcard application and federal
17 write-in absentee ballot, shall not be required for execution of
18 a document under this chapter. The declaration and any
19 information in the declaration may be compared with information
20 on file to ascertain the validity of the document.

21 **§ -17 Equitable relief.** A court may issue an injunction
22 or grant other equitable relief appropriate to ensure



1 substantial compliance with or enforce this chapter on
2 application by:

3 (1) A covered voter alleging a grievance under this
4 chapter; or

5 (2) The attorney general of the State.

6 No award of attorney fees or costs shall be permitted in any
7 private cause of action initiated under this chapter.

8 **§ -18 Relation to Electronic Signatures in Global and**
9 **National Commerce Act.** This chapter modifies, limits, and
10 supersedes the Electronic Signatures in Global and National
11 Commerce Act, 15 U.S.C. section 7001 et seq., but does not
12 modify, limit, or supersede section 101(c) of that Act, 15
13 U.S.C. section 7001(c), or authorize electronic delivery of any
14 of the notices described in section 103(b) of that Act, 15
15 U.S.C. section 7003(b)."

16 SECTION 2. Section 15-5, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) If mailed absentee ballots are not received by the
19 voter within five days of an election, [~~the~~] a covered voter
20 under chapter may request that absentee ballots be forwarded
21 by facsimile. Upon receipt of such a request and confirmation
22 that proper application was made, the clerk may transmit



1 appropriate ballots by facsimile together with a form requiring
2 the affirmations and information required by section 15-6, and a
3 form containing a waiver of the right to secrecy, as provided by
4 section 11-137. The voter may return the voted ballots and
5 executed forms by facsimile or mail; provided that they are
6 received by the issuing clerk no later than the close of polls
7 on election day. Upon receipt, the clerk shall verify
8 compliance with the requirements of section 15-9(c), and prepare
9 the ballots for counting pursuant to section 15-10."

10 SECTION 3. Section 15-3.5, Hawaii Revised Statutes, is
11 repealed.

12 ~~["§15-3.5 Federal write in absentee ballot.~~
13 ~~Notwithstanding the provisions of this chapter and chapters 11~~
14 ~~and 16, the federal write in absentee ballot for overseas voters~~
15 ~~in general elections for federal office which must be prescribed~~
16 ~~under section 1973ff of title 42, United States Code, as~~
17 ~~amended, may be used in general elections for federal offices."]~~

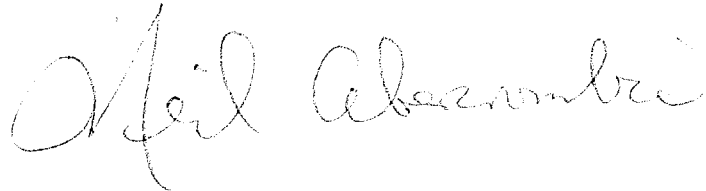
18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act shall take effect on July 1, 2012.



H.B. NO. 461
H.D. 1
S.D. 1

APPROVED this 5 day of JUL , 2012

A handwritten signature in cursive script, appearing to read "Neil Abernethy".

GOVERNOR OF THE STATE OF HAWAII