

LATE TESTIMONY

STATE OF HAWAII
DEPARTMENT OF DEFENSE

TESTIMONY ON HOUSE BILL 461 HD1
A BILL FOR AN ACT RELATING TO MILITARY AND OVERSEAS VOTERS
ACT

PRESENTATION TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR

BY

MAJOR GENERAL DARRYLL D. M. WONG
ADJUTANT GENERAL
February 2, 2012

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

I am Major General Darryll D. M. Wong, State Adjutant General. I am testifying on House Bill 461 HD1.

We strongly support House Bill 461 HD1. This measure allows military personnel deployed or stationed outside the United States and other overseas voters an opportunity to vote and submit their ballots for federal, state, and county office in a general, special, primary, or runoff election.

Thank you for the opportunity to provide this written testimony.



January 31, 2012

**TESTIMONY IN SUPPORT OF HOUSE BILL 461
RELATING TO THE UNIFORMED MILITARY AND OVERSEAS VOTERS
ACT**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**HEARING ON THURSDAY, FEBRUARY 2ND, AT 9:30 AM, IN CONFERENCE
ROOM 016**

Aloha Chair Hee: The Oahu Veterans Council's delegates are honored to serve at the pleasure of our veterans and their families. On January 26th, our Legislative Committee voted unanimously to support House Bill 461.

We are extremely grateful for your efforts to enact The Uniform Military and Overseas Voters Act provisions in our Great State, and to authorize their ballots and balloting materials to be transmitted by facsimile or electronic mail. Effective July 1, 2020. (HB461 HD1.

Providing this equal opportunity, to participate in all federal, state and local elections, is so important to members of our military and other eligible voters who are deployed overseas. They serve so selflessly and ask for no more recognition than we would expect for ourselves.

The Oahu Veterans Council respectfully urges your committee to consider passing House Bill 461 as written. Mahalo, for allowing us to testify, regarding this extremely important issue.

Dennis Egge

Dennis Egge; Chairman, Legislative Committee



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JEFFREY T. KUWADA
County Clerk



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Deputy County Clerk

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LATE TESTIMONY

TESTIMONY OF

JEFFREY T. KUWADA, COUNTY CLERK, COUNTY OF MAUI

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

ON HOUSE BILL NO. 461, HD 1

RELATING TO THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT

February 2, 2012

Chair Hee and members of the Senate Committee on Judiciary and Labor, thank you for the opportunity to testify in opposition to House Bill No. 461, HD 1 ("Bill" or "proposed chapter").

I offer the following comments and observations concerning notable issues raised by the Bill:

THE BILL WOULD ALLOW NON-RESIDENTS TO VOTE IN STATE AND COUNTY ELECTIONS IN VIOLATION OF THE STATE CONSTITUTION

The Bill extends coverage to U.S. citizens living abroad who are not residents of the State of Hawaii, and allows them to vote in state and county elections. Specifically, the definition of "covered voter" in section 2 of the proposed chapter includes voters who "*except for a state residency requirement, otherwise satisfies this State's voter eligibility requirements.*" Section 3 of the proposed chapter refers to elections for federal, state, and local government offices. If the purpose of the Bill is to allow non-resident individuals to vote in state and county elections, then a constitutional amendment is required.

Article II, Section 1, of The Hawaii State Constitution provides:

[e]very citizen of the United States who shall have attained the age of eighteen years, have been *a resident of this State* not less than one year next preceding the election and be *a voter registered* as provided by law, shall be *qualified to vote in any state or local election.* (Emphases added).

Under the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), covered voters are permitted to vote in elections for *federal office*. 42 USC § 1973ff-1. The federal law does not authorize such covered voters to vote in state elections, since eligibility to

vote in state elections is controlled by state law. Normally, this is a non-issue as most individuals seeking to vote in elections for federal office also meet the state requirement to vote in state and county elections (i.e., being a resident of the state). These covered voters are provided a combined federal/state/county ballot.

However, there are individuals who were residents of the State of Hawaii, but subsequently left for overseas, and are now residing outside the United States *indefinitely* as opposed to *temporarily*. In order to be a registered voter, Hawaii law requires the filling out of an application to register which includes a statement that the person is a legal resident. HRS § 11-15. Residence is essentially defined as “that place in which the person’s habitation is fixed, and to which, whenever the person is absent, *the person has the intention to return.*” HRS § 11-13(1) (emphasis added). Consistent with this definition, Hawaii law recognizes that state residents who are members of the military, students, and others who are away *temporarily* and who intend to return are still state residents and as such able to vote. HRS § 11-13(5)&(6). It does not recognize individuals who are indefinitely away. There are also overseas voters born outside the United States, but whose parents were last eligible to vote in the State of Hawaii before they left the country.

Individuals who are indefinitely out of the state or who have never resided in Hawaii do not meet the requirement of being residents of the State of Hawaii. Therefore, under our state constitution they cannot vote in state and county elections. Article II, Section 1. However, under federal law, such voters to self designate that they are “U.S. CITIZEN RESIDING OUTSIDE THE U.S. INDEFINITELY”, and as such are permitted to vote for *federal offices only*.

OPERATIONAL AND ADMINISTRATIVE ISSUES

County Special Elections

Sections 3 and 11 of the proposed chapter applies to all state and county elections, in addition to those elections in which a federal office is on the ballot. This means that all county special elections will be subject to the provisions of UOCAVA, including the requirement that ballots be mailed out at least forty five days prior to an election and in utilizing the federal write in absentee ballot. This amendment conflicts with county charter provisions that require vacancies to be filled in a prescribed time period.

Acceptance of Ballot Applications

Section 8 of the proposed chapter would require ballot applications to be accepted for covered voters up to five days prior to the election as opposed to seven days for non-covered voters.

Earlier Deadline to Mail Ballots

Section 9 of the proposed chapter would require ballots to be mailed out 46 days as opposed to the 45 days required by federal law. Specifically, the 45TH day prior to the General Election is a Saturday. While election officials plan to mail out ballots no later than that day, the proposed section would require ballots to be mailed out on Friday since Saturday is a weekend day. With an already tight election timeline, there is no reason that it needs to be further shortened in this manner.

Extended Deadline for Casting and Receipt of Ballots

Sections 10 and 12 of the proposed chapter provides that ballots could be mailed as late as 12:01 a.m. on the day of the election and still be counted regardless of when they are received. This is a major policy change from the current law which requires that absentee ballots be received by the close of polls. HRS § 15-9. This creates two categories of absentee voters, some who have to have their ballots returned by the close of polls, and those who have an indeterminate amount of time for the ballot to be received by election officials. It also raises issues as to when elections are finally completed.

Election Notice

Section 16 of the proposed chapter creates a requirement that an election notice be issued prior to ballots being finalized under HRS § 11-119 (75 days prior to an election), in an attempt to facilitate voters who may wish to utilize the Federal Write-In Absentee Ballot. The Federal Write-In Absentee Ballot is simply a form which can be downloaded from internet anywhere in the world. It can then be filled in and mailed to local election officials.

It should be noted that the ballot questions will not be known until they are submitted in compliance with HRS § 11-119. As for candidates, the deadline for candidate filing is not until 67 days prior to the election, not taking into account the time period in which nomination papers could be challenged. HRS §§ 12-6 & 12-8. Simply put, the contents of the ballots are not known prior to compliance with the deadline in HRS § 11-119.

Additionally, the Federal Write-In Absentee Ballot is supposed to be a fail safe tool for those who did not receive their ballot which was mailed out to them 45 days prior to the election, or who do not have the ability get a copy of their ballot sent to them electronically during an even shorter period of time. It is not clear how providing an incomplete list 100 days prior to an election accomplishes anything. Specifically, a voter's ballot is supposed to be mailed to him or her 45 days prior to an election. If the voter does not receive the ballot, he or she can simply go to the Office of Elections' website at that time to see facsimiles of his or her ballot, which the voter can use in filling out a Federal Write-In Absentee Ballot.

Litigation

Section 18 of the proposed chapter authorizes a private cause of action by any covered voter to sue for an injunction or other equitable relief if they believe a violation of the proposed chapter has occurred. Under UOCAVA, no private cause of action is statutorily provided. Instead, UOCAVA only provides that the Attorney General may bring a civil action to carry out the purposes of the law. Under state law, an election contest can only be filed by a candidate, a qualified political party, or thirty voters of an election district. HRS § 11-172. The idea of such laws was to discourage frivolous litigation before the courts that would unnecessarily interrupt the elections.

Administrative Conflicts

The definition of “covered voter” and “overseas voter” in section 2 of the proposed chapter, in combination with sections 6 and 7 of the proposed chapter, regarding methods of registering to vote and applying for an absentee ballot, may create administrative problems in determining the population of voters covered by this law and in ensuring the timely processing of voter registration and absentee ballot applications for all voters.

Specifically, with the expansion of “covered voter” and “overseas voter,” this expands the source document for applications from the Federal Post Card Application, to the standard voter registration application and absentee ballot application used by all voters. What was originally a small number of forms that could be easily identified and given special treatment under UOCAVA, would now be replaced by a requirement to review the total universe of all voter registration and absentee ballot applications received by the county clerks. The clerks would be required to look for any evidence that the voter might declare themselves to be a “covered voter.”

Thank you for the opportunity to testify in opposition to House Bill No. 461, HD 1, in its present form.

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County Clerk

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LATE TESTIMONY

TESTIMONY OF RICKY R. WATANABE
COUNTY CLERK, COUNTY OF KAUA'I
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON HOUSE BILL NO. 461, HD 1
RELATING TO THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT
February 2, 2012

Chairman Hee and members of the Senate Committee on Judiciary and Labor,

Thank you for the opportunity to provide testimony in opposition to House Bill No. 461, HD 1. The purpose of this bill is to apply provisions of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 USC §§ 1973ff) to all elections for federal, state, and local (county) offices.

The Office of the County Clerk notes that the State of Hawai'i's laws are already in compliance with the Military and Overseas Voter Empowerment Act of 2009 (MOVE), which amends UOCAVA.

Specifically, Hawai'i Administrative Rules (HAR) section 3-174-22 already authorizes absent uniformed services citizens and their families as well as citizens residing abroad (hereinafter collectively referred to as UOCAVA voters) to:

- utilize the federal postcard form to simultaneously register to vote and apply for absentee mail ballots;
- utilize a federal write-in absentee ballot;
- vote in-person at the clerk's office upon presentation of proper identification;
- request voter registration and absentee ballot by mail or electronically;
- receive blank ballots by mail or electronically; and
- determine whether their absentee ballots were received by election officials via a free access system.

While we wholeheartedly support the voting rights of UOCAVA voters, HB 461, HD 1 will do nothing to ensure the State's compliance with federal law since we are already compliant. In fact, it appears that certain provisions within the bill contradict voter eligibility requirements in the State Constitution and Hawai'i Revised Statutes (HRS).

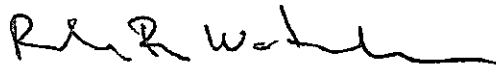
Under UOCAVA, covered voters are permitted to participate in elections for federal office but nowhere does it reference covered voters being allowed to vote in state elections since state laws governs eligibility to vote in state elections.

Though many UOCAVA voters do in fact qualify for a full ballot which includes federal, state, and county contests, a large number of UOCAVA voters do not because they do not meet State residency requirements. It appears that section 3 of the bill (Elections Covered) will permit individuals who fail to meet State residency requirements the right to vote in state and county elections.

In addition to the apparent conflict with existing State law, we are opposing HB 461, HD 1 because of numerous operational and fiscal concerns.

- Sections 4, 6 and 7 of the bill reference an "electronic transmission system" which is not defined but implies that a covered voter will be able to "apply for and receive" various election materials. Though we appear to currently meet this requirement through the use of email, if the intent of the bill is a more robust system, further details and an appropriation would be necessary to develop the system.
- Sections 3 and 11 of the bill would apply to all state and county elections so all county special elections would be subject to UOCAVA provisions. This requirement would conflict with county charter provisions which specify vacancies be filled in a prescribed period of time.
- Section 8 of the bill would establish different application deadlines for covered voters (five days prior to the election) and non-covered voters (seven days prior to the election).
- Sections 10 and 12 would create two categories of absentee voters. Non-covered voters would still be required to submit their voted ballots by the close of the polls on election day while covered voters would essentially not be subject to a deadline to submit their ballots since ballots for covered voters cannot be rejected on the basis that it has a late, unreadable, or no postmark.

Thank you for this opportunity to submit testimony in opposition to House Bill No. 461, HD 1.



RICKY R. WATANABE
County Clerk