



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:
S.B. NO. 2210, RELATING TO ELECTIONS.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 3, 2022 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Reese Nakamura, Deputy Attorney General or
Patricia Ohara, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purpose of the bill is to assist registered voters in making informed decisions when casting their ballots by: (1) requiring the Chief Election Officer to publish and distribute to registered voters a pamphlet for each election; and (2) appropriating funds to allow the Chief Election Officer to publish and distribute a voters' pamphlet for each election.

While we appreciate the intent of this bill, we have concerns the bill may create confusion in the implementation of its provisions. For example, the Department is concerned that its proposed role in drafting an "explanatory statement" for each statewide ballot issue and a "fiscal impact statement" for inclusion in the voters' pamphlet may be misconstrued by voters as a legal endorsement by the Department when the statement's content will be prescribed by the Chief Election Officer. See page 5, lines 18-19.

Section 11-B(b)(3)(B), at page 2, lines 15-18, provides that the voters' pamphlet shall contain:

- (B) An explanatory statement prepared in accordance with section 11-D, by the attorney general for a statewide ballot issue or corporation counsel or county attorney for a countywide ballot issue;

Section 11-B(b)(3)(C), at page 2, line 19, through page 3, line 2, requires that the Department prepare for inclusion in the voters' pamphlet, a fiscal impact statement for each statewide ballot issue:

- (C) A fiscal impact statement prepared by the attorney general for a statewide ballot issue or corporation counsel or county attorney for a countywide ballot issue in accordance with section 11-E;

We note that while section 11-B(b)(3)(C) holds the Department responsible to prepare fiscal impact statements, section 11-E(a) requires the Department of Budget and Finance to also prepare the fiscal impact statements. See page 6, lines 9-21.

Another section that may be problematic is section 11-H at page 9, line 11, through page 11, line 18. It requires that if the Chief Elections Officer determines that proposed candidate submissions for the voters' pamphlet contain obscene or otherwise legally prohibited material, or if a candidate believes that false or defamatory information may be included in the voters' pamphlet, either may petition the circuit court for a judicial determination. However, section 11-H continues that if a petition is filed, the court is prohibited from issuing an order unless the court determines the statement is obscene, otherwise legally prohibited by law for distribution, false, or the petitioner has a very substantial likelihood of prevailing in a defamation action. See page 9, line 20, to page 10, line 2, and page 10, lines 7-10. This could be construed to mean that the court cannot issue an order if the statement is legally permissible. The lack of an order would create ambiguity and prolong the dispute because the parties and the Chief Elections Officer would be unable to take further action without a determination from the court.

Section 11-H(b), at page 10, lines 13-17, highlights some of the possible confusion: "The State shall not be liable for damages resulting from the publication of the argument, rebuttal, or candidate statement unless the chief election officer publishes the statement in violation of the order entered under this subsection." This wording appears to require that the court issue an order. If an order does not issue, the Chief Elections Officer will not know whether to publish certain material and may deprive a candidate who prevailed in court from having truthful information published. The delay

that may be caused by waiting for an order that may never be issued would also compromise the timely issuance of a voters' pamphlet.

The Department further recommends the deletion of section 11-H(d), at page 11, lines 11-18. It provides: "[t]he chief election officer shall be a nominal party to an action brought under subsection (b) solely for the purpose of determining the content of the voters' pamphlet." Under Hawaii Rules of Civil Procedure Rule 17, every action shall be prosecuted in the name of the real party in interest. Because any dispute arising under this statute would be between other parties, the Chief Election Officer is not a real party in interest as required by the court rules.

Finally, notwithstanding the above, the new responsibilities and obligations required of the Chief Elections Officer, Office of Elections, and others, are broadly described. The Department believes that the adoption of rules to clearly delineate the requirements of the respective parties' new responsibilities prior to the implementation of this bill would be greatly beneficial.

The Department therefore respectfully recommends that the bill be amended to delete sections 11-B(b)(3)(B), 11-B(b)(3)(C), 11-D, and 11-H(d). The Department also recommends that section 11-H be amended to clarify the procedure to address disputes or issues regarding potentially obscene, or otherwise illegal, or defamatory material in candidate arguments or statements, and that section 11-K and the effective date of the bill be amended to require rules to be adopted prior to the implementation of this new part to chapter 11.

Thank you for the opportunity to provide these comments.



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
elections.hawaii.gov

SCOTT T. NAGO
CHIEF ELECTION OFFICER

TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON JUDICIARY
ON SENATE BILL NO. 2210
RELATING TO ELECTIONS

February 3, 2022

Chair Rhoads and members of the Senate Committee on Judiciary, thank you for the opportunity provide comments on Senate Bill No. 2210. This bill requires the Chief Election Officer, with assistance from the county clerks for elections that involve county offices and countywide ballot issues, to publish and distribute a voters' pamphlet; and appropriates moneys to allow the Chief Election Officer to publish and distribute a voters' pamphlet for each election.

We believe an informed electorate is important for the health of our democracy, however, our office must remain apolitical. As such, to compile a voter information guide, we would ask all candidates to submit a photo and statement for inclusion in a voters' pamphlet when they file their nomination paper. After the candidate filing deadline, we would translate and compile these statements and materials to print and disseminate to voters. The voters' pamphlet would need to be disseminated at least 45 days before each election to coincide with ballots being sent to uniformed and overseas voters.

We estimate that the voters' pamphlet would be 500 pages for the primary election for approximately 320 candidates in three languages: English, Chinese, and Ilocano. For a general election, we estimate the pamphlet would be 300 pages also available in three languages. For mailing, the current estimate of active registered voters is 783,000. Based on the requirements of this bill and our assumptions, the table below is the estimated cost. However, we would note that changing the parameters, such as limiting it to one per household, may reduce the cost to produce.

	Primary	General	Total
Printing	7,832,000.00	4,801,200.00	12,633,200.00
Translation	43,327.50	14,840.00	58,167.50
Mailing	1,080,540.00	1,040,000.00	2,120,540.00
Publishing	910,000.00	560,000.00	1,470,000.00
Accessibility	2,960.00	1,970.00	4,930.00
Total	\$9,868,827.50	\$6,418,010.00	\$16,286,837.50

We would also ask that the effective date for this measure be January 1, 2023, for the 2024 Elections.

Thank you for the opportunity to provide comments on Senate Bill No. 2210.



COMMITTEE ON JUDICIARY
Chair Karl Rhoads, Vice Chair Jarrett Keohokalole

Thursday, February 3, 2022, 9:30 a.m. Via Videoconference

SB 2210 RELATING TO ELECTIONS

TESTIMONY

Janet Mason, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice Chair Keohokalole, and Committee Members:

The League of Women Voters of Hawaii supports SB 2210 that requires the Chief Election Officer, with assistance from the county clerks for elections that involve county offices and countywide ballot issues, to publish and distribute a voters' pamphlet. The bill also requires an appropriation to publish and distribute a voters' pamphlet for each election.

Hawaii already provides logistical information to make sure voters know when, where, and how to cast their ballots. But quality voter education involves providing our voters with access to information on candidates and ballot issues, with this effort being funded by taxpayers.

The scope of the informational "pamphlet" described in this bill is good: statements for and against each candidate and question, prepared by the Office of Elections with help from experts and offered to any voter who gets a ballot mailed to them.

We rely on the Office of Elections and County Clerks to provide cost estimates for this service. To help control cost, such a "Pamphlet" could be maintained online by the Office of Elections, with hard copies made available for free to anyone who asked. Also, how would the cost for production and distribution be allocated between the State and County?

The League of Women Voters of Hawaii strongly supports legislation that will fund such efforts. Other vote-by-mail states do this, and their turnout is wonderful. Educated voters are empowered, and empowered voters VOTE!

Thank you for the opportunity to submit testimony.

League of Women Voters of Hawaii
P.O. Box 235026 ♦ Honolulu, HI 96823
Voicemail 808.377.6727 ♦ my.lwv.org/hawaii ♦ voters@lwvhi.org

Statement Before The
SENATE COMMITTEE ON JUDICIARY

Thursday, February 3, 2022

9:30 AM

Via Videoconference

in consideration of

SB 2210**RELATING TO ELECTIONS.**

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii supports SB 2210, which requires the Chief Election Officer, with assistance from the county clerks for elections that involve county offices and countywide ballot issues, to publish and distribute a voters' pamphlet and appropriate moneys to allow the Chief Election Officer to publish and distribute a voters' pamphlet for each election.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to upholding the core values of our representative democracy through efforts that increase civic engagement, voter turnout, and voter participation in our democratic processes.

A voter information guide would create a more informed voting public and hopefully increase voter participation in our elections. A significant number of states have official voter guides published by the state secretary of state, which is equivalent to our State Office of Elections. See https://ballotpedia.org/Features_of_official_voter_guides,_compared_by_state#Comparison_of_voter_guides (retrieved Jan. 28, 2022); see also <https://www.ncsl.org/research/elections-and-campaigns/fiscal-impact-statements.aspx> (retrieved Jan. 28, 2022).

For voter information guides to be trusted and useful to the public, they must:

- Be neutral and written in plain language.
- Be readily available to the public. They should not be disseminated by one means only, such as via electronic means, mail, or in the newspaper. As the current pandemic has revealed, many people do not have access to broadband and/or reliable mail delivery. Voter information guides must be made available at banks, grocery stores, community centers, public libraries, government buildings, and other locations where people are likely to gather.
- Be translated into different languages for all of Hawaii's citizens to be able to access. Hawaii is the most diverse state in the nation with a diversity index of 76% according to the 2020 U.S. Census. The April 2016 DBEDT Research and Economic Analysis Division report on Non-English Speaking Population in Hawaii indicates that Non-English speakers at home in Hawaii increased by 44% from 1980 to 2014. See https://files.hawaii.gov/dbedt/economic/data_reports/Non_English_Speaking_Population_in_Hawaii_April_2016.pdf at Executive Summary pg. i (retrieved Jan. 28, 2022). Ilocano, Tagalog, and Japanese were the top three most common non-English languages spoken at home in Hawaii. *Id.*
- Be accessible to all our various disability community.

Common Cause Hawaii supports SB 2210 in creating voter information guides for a more informed and engaged public for the betterment of our representative democracy.

Thank you for the opportunity to testify in support of SB 2210. If you have any questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON JUDICIARY
ON
SENATE BILL NO. 2210

February 3, 2022
9:30 a.m.
Via Videoconference

RELATING TO ELECTIONS

The Department of Budget and Finance (B&F) offers comments on Senate Bill (S.B.) No. 2210.

S.B. No. 2210 requires the Chief Election Officer (CEO), with assistance from the county clerks for elections that involve county offices and countywide ballot issues, to publish and distribute a voters' pamphlet. The bill also appropriates unspecified general funds in FY 23 to the Office of Elections for the CEO to publish and distribute a voters' pamphlet for each election starting with the 2024 general election.

B&F notes that the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and

- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.

JADE K. FOUNTAIN-TANIGAWA
County Clerk

Telephone: (808) 241-4800
TTY: (808) 241-5116



SCOTT K. SATO
Deputy County Clerk

Facsimile: (808) 241-6207
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**ELECTIONS DIVISION
OFFICE OF THE COUNTY CLERK**
4386 RICE STREET, SUITE 101
LIHU'E, KAUA'I, HAWAII 96766-1819

February 3, 2022

**TESTIMONY OF JADE K. FOUNTAIN-TANIGAWA
COUNTY CLERK, COUNTY OF KAUA'I
TO THE SENATE COMMITTEE ON JUDICIARY
ON SENATE BILL NO. 2210
RELATING TO ELECTIONS**

Dear Chair Rhoads and Committee Members:

Thank you for the opportunity to comment on Senate Bill No. 2210. This Bill requires the Chief Election Officer, with assistance from the county clerks, for elections that involve county offices and countywide ballot issues, to publish and distribute a voters' pamphlet. The Bill also appropriates moneys to allow the Chief Election Officer to publish and distribute a voters' pamphlet for each election.

We have no position on this Bill, but note that in section 11-H, Rejection or dispute of arguments or statements, specifically lines 13 through 17 on page 10, the State is shielded from liability for the publication of the argument, rebuttal, or candidate statement unless the chief election officer publishes the statement in violation of a court order entered under the subsection. We ask that this same protection also be extended to the Counties since the Bill requires the corporation counsel or county attorney to prepare an explanatory statement and requires that the "respective county counterpart agency" to the department of budget and finance to prepare a fiscal impact statement.

Thank you for this opportunity to comment on Senate Bill No. 2210.

Sincerely,

JADE K. FOUNTAIN-TANIGAWA
County Clerk

SB2210

To: The Senate Judiciary

The Green Party of Hawai'i asks you to support SB2210 to create a voter information guide that is neutral and written in plain language. The voter's guide would be available to all candidates on the ballot at no charge, which eliminates one of the obstacles that create an environment for corruption. The passage of SB2210 encourages more candidates to come forward to represent their districts and constituencies. Please support SB2210.

Mahalo,

Green Party of Hawai'i

Co-Chair GPH Susan Roberts Emery

SB-2210

Submitted on: 1/30/2022 7:49:30 AM

Testimony for JDC on 2/3/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Barbara Best	Individual	Support	No

Comments:

This would help to allow more informed voters and possibly increase voting.

The guide should be neutral, understandable by all and available where people gather.

SB-2210

Submitted on: 1/31/2022 8:43:26 AM

Testimony for JDC on 2/3/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lisa Huynh Eller	Individual	Support	No

Comments:

A voter information guide would create a more informed voting public and hopefully increase voter participation in our elections.

A significant number of states have official voter guides published by the state secretaries of state, which is equivalent to our State Office of Elections.

SB-2210

Submitted on: 1/31/2022 11:48:23 AM

Testimony for JDC on 2/3/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Nanea Lo	Individual	Support	No

Comments:

Testimony

Hello,

My name is Nanea Lo. I come from Papakōlea, O‘ahu born and raised. I'm writing in support of SB2210. This is important for folks to be informed in Hawai‘i.

me ke aloha ‘āina,
Nanea Lo

Mō‘ili‘ili District 1

SB-2210

Submitted on: 1/31/2022 12:15:01 PM

Testimony for JDC on 2/3/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Susan Dursin	Individual	Support	No

Comments:

Please support SB2210, which would create a voter information guide. Hawai`i has done a good job protecting and extending voting rights but is deficient in making information on candidates and issues easily accessible to voters.

For almost twenty years, I have brought requests to the Legislature, asking for a voter information guide. When I lived in Alaska earlier, the voting guide helped farflung residents understand what they would see on their ballots. Now it is time for Hawai`i to join those states that believe in disseminating voter information which is neutral and easily understandable.

VOTE411, the Hawai`i League of Women Voters' website, has become the only single website where voters can view neutral information about candidates and issues. Speaking from personal experience, I can tell you that voters are fulsome in their praise for the site. However, it requires hundreds of volunteer hours and some organizational expense to post the information. As much as LWV tries to publicize the site, many voters do not hear of it and vote blindly. Furthermore, many voters do not have access to the internet.

The responsibility for a voter guide disseminated through various avenues belongs to the state. Please support SB2210.

SB-2210

Submitted on: 1/31/2022 6:47:10 PM

Testimony for JDC on 2/3/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Will Caron	Individual	Support	No

Comments:

I strongly support this bill. We need more voter education and civics education more broadly if we expect our democratic system to endure the onslaught of disinformation and propaganda that has led to events like Jan. 6, 2021.

SB-2210

Submitted on: 2/1/2022 7:06:37 AM

Testimony for JDC on 2/3/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
David Anderson	Individual	Support	No

Comments:

A voter information guide would create a more informed voting public and hopefully increase voter participation in our elections.

A significant number of states have official voter guides published by the state secretaries of state, which is equivalent to our State Office of Elections.

For voter information guides to be trusted and useful to the public, they must:

- Be neutral and written in plain language.
- Be readily available to the public. They should not be disseminated by one means only, such as via electronic means, mail, or in the newspaper. As the current pandemic has revealed, many people do not have access to broadband and/or reliable mail delivery. Voter information guides must be made available at banks, grocery stores, community centers, public libraries, government buildings, and other locations where people are likely to gather.
- Be translated into different languages for all of Hawaii’s citizens to be able to access. Hawaii is the most diverse state in the nation with a diversity index of 76% according to the 2020 U.S. Census. The April 2016 DBEDT Research and Economic Analysis Division report on Non-English Speaking Population in Hawaii indicates that Non-English speakers at home in Hawaii increased by 44% from 1980 to 2014. Ilocano, Tagalog, and Japanese were the top three most common non-English languages spoken at home in Hawaii.
- Be accessible to our disability community.
- Include county ballot initiatives and charter amendments and constitutional amendments and not be limited to candidates.

Thank you for the opportunity to submit testimony in support of this bill.

LATE

SB-2210

Submitted on: 2/2/2022 9:29:18 PM

Testimony for JDC on 2/3/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ryden Iwamoto	Individual	Support	No

Comments:

In strong support.