HOUSE OF REPRESENTATIVES TWENTY-SECOND LEGISLATURE, 2004 STATE OF HAWAII

H.B. NO.

A BILL FOR AN ACT

RELATING TO GOVERNMENT.

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

- 1 SECTION 1. The purpose of this Act is to amend laws relating to the office of elections and campaign spending 2 commission. Part I of this Act allows the campaign spending 3 commission and the office of elections: 4 5 To communicate directly with the legislature and the (1)6 governor, to make all personnel decisions, and 7 purchase equipment without the approval of the
- department head; and 9 (2)
- To be exempt from collective bargaining under chapter 10 89, Hawaii Revised Statutes.
- Part I also allows the office of elections to hire its own 11 . 12 private attorney.
- 13 Part II of this Act establishes a commission to oversee the 14 office of elections.
- 15 PART I
- 16 SECTION 2. Part I of chapter 11, Hawaii Revised Statutes,
- 17 is amended by adding a new section to be appropriately
- 18 designated and to read as follows:

		• .
1	" <u>§</u> 11	L- Exemptions. The office of elections shall be
2	exempt fr	com section 26-35(1), (4), and (5) and shall:
3		Make direct communications with the governor and
4		legislature;
5	(2)	Make all decisions regarding employment, appointment,
6		promotion, transfer, demotion, discharge, and job
7		descriptions of all officers and employees of or under
8		the jurisdiction of the office of elections without
9		the approval of the comptroller; and
10	<u>(3)</u>	Purchase all supplies, equipment, or furniture without
11		the approval of the comptroller.
12	The c	office of elections shall follow all applicable
13	personnel	laws."
14	SECTI	ON 3. Section 11-5, Hawaii Revised Statutes, is
15	amended by	amending subsection (a) to read as follows:
16	"(a)	[The] Pursuant to section 11- , the chief election
17	officer ma	y employ a staff without regard to [chapter 76,]
18		6 and 89 and section 28-8.3. The office of elections
19	staff may,	but shall not be limited to [supervise] supervising
20	state elect	cions; [maximize] maximizing registration of eligible
21	voters thro	oughout the State; [maintain] maintaining data
22		registered voters, elections, apportionment, and

- 1 districting; and to [perform] performing other duties as
- 2 prescribed by law. The chief election officer or county clerk
- 3 may employ precinct officials and other election employees as
- 4 the chief election officer or county clerk may find necessary,
- 5 none of whom shall be subject to [chapter 76.] chapters 76 and
- 6 89."
- 7 SECTION 4. Section 11-193, Hawaii Revised Statutes, is
- 8 amended to read as follows:
- 9 "S11-193 Duties of the commission. (a) The duties of the
- 10 commission under this subpart are:
- 11 (1) To develop and adopt reporting forms required by this
- subpart;
- 13 (2) To adopt and publish a manual for all candidates and
- 14 committees, describing the requirements of this
- subpart, including uniform and simple methods of
- recordkeeping;
- 17 (3) To preserve all reports required by this subpart for
- at least ten years from the date of receipt;
- 19 (4) To permit the inspection, copying, or duplicating of
- any report required by this subpart pursuant to rules
- adopted by the commission; provided that no
- 22 information or copies from the reports shall be sold

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1	or used by any person for the purpose of soliciting
2	contributions or for any commercial purpose;

To ascertain whether any candidate, committee, or (5) party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to these persons. commission shall publish in the newspaper, and on its website, the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of \$50. Failure to respond after a newspaper notification or website publication shall result in an additional penalty of \$50 for each day a report

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		remains overdue or uncorrected. All penalties
2		collected under this section shall be deposited in the
3		Hawaii election campaign fund;
4	(6)	To hold public hearings;
5	(7)	To investigate and hold hearings for receiving
6		evidence of any violations;
7	(8)	To adopt a code of fair campaign practices as a part
8		of its rules;
9	(9)	To establish rules pursuant to chapter 91;
10	(10)	
11		violation of this subpart pursuant to section 11-229;
12	(11)	
13		funds under this subpart;
14	(12)	To suggest accounting methods for candidates, parties,
15		and committees, as the commission may deem advisable,
16	`	in connection with reports and records required by
17		this subpart;
18	(13)	To employ or contract, without regard to [chapter]
19		chapters 76 and 89 and section 28-8.3, and, at
20		pleasure, to dismiss persons it finds necessary for
21		the performance of its functions, including a full-

1	ti	me executive director, and to fix their
2		mpensation;
3	(14) To	do random audits, field investigations, as
4		cessary;
5	(15) To	file for injunctive relief when indicated;
6		censure any candidate who fails to comply with the
7		de of fair campaign practices; and
8	(17) To	render advisory opinions upon the request of any
9		didate, candidate committee, noncandidate
10	com	mittee, or other person or entity subject to this
11		pter, as to whether the facts and circumstances of
12		articular case constitute or will constitute a
13	vio	lation of the campaign spending laws. If no
14	adv:	isory opinion is rendered within ninety days after
15	all	information necessary to issue an opinion has been
16	obta	sined, it shall be deemed that an advisory opinion
17	was	rendered and that the facts and circumstances of
18		particular case do not constitute a violation of
19	the	campaign spending laws. The opinion rendered or
20	deem	ed rendered, until amended or revoked, shall be
21	bind	ing on the commission in any subsequent charges
22	conce	erning the candidate, candidate committee.

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noncandidate committee, or other person or entity
subject to this chapter, who sought the opinion and
acted in reliance on it in good faith, unless material
facts were omitted or misstated by the persons in the
request for an advisory opinion.
(b) In performing the functions and duties under this
subpart, the commission may subpoena witnesses, examine them
under oath, and require the production of books, papers,
documents, or objects, to the commission office at any place in
the State whether or not the subpoena is in connection with any
hearing; provided that the person or documents subpoenaed shall
be relevant to a matter under study or investigation by the
commission. The books, papers, documents, or objects may be
retained by the commission for a reasonable period of time for
the purpose of examination, audit, copying, testing, and
photographing. The subpoena power shall be exercised by the
chairperson of the commission, or such other person as the
chairperson may designate. Upon application of the commission,
obedience to the subpoena shall be enforced by the circuit court
in the county where the person subpoenaed resides or is found in
the same manner as a subpoena issued by a circuit court.

1	<u>(c)</u>	The commission shall be exempt from section 26-35(1),
2	(4), and	(5) and shall:
3	(1)	Make direct communications with the governor and
4		legislature;
5	(2)	Make all decisions regarding employment, appointment,
6		promotion, transfer, demotion, discharge, and job
7		descriptions of all officers and employees of or under
8		the jurisdiction of the commission without the
9		approval of the comptroller; and
10	(3)	Purchase all supplies, equipment, or furniture without
11		the approval of the comptroller.
12	The c	commission shall follow all applicable personnel laws."
13	SECTI	ON 5. Section 28-8.3, Hawaii Revised Statutes, is
14	amended by	amending subsection (a) to read as follows:
15		No department of the State other than the attorney
16	general ma	y employ or retain any attorney, by contract or
17	otherwise,	for the purpose of representing the State or the
18	department	in any litigation, rendering legal counsel to the
19	department	or drafting legal documents for the department;
20	provided th	nat the foregoing provision shall not apply to the
21	employment	or retention of attorneys:

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1	(1)	By the public utilities commission, the labor and
2		industrial relations appeals board, and the Hawaii
3		labor relations board;
4	(2)	By any court or judicial or legislative office of the
5		State;
6	(3)	By the legislative reference bureau;
7	(4)	
8		from time to time;
9	(5)	By the real estate commission for any action involving
10		the real estate recovery fund;
11	(6)	By the contractors license board for any action
12		involving the contractors recovery fund;
13	(7)	
14		agency recovery fund;
15	(8)	By the office of Hawaiian affairs;
16	(9)	By the department of commerce and consumer affairs for
17		the enforcement of violations of chapters 480 and 485;
18	(10)	As grand jury counsel;
19	(11)	By the Hawaiian home lands trust individual claims
20		review panel;
21	(12)	By the Hawaii health systems corporation or any of its
22		facilities;

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          (13)
                By the auditor:
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                By the office of ombudsman;
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                By the insurance division;
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                By the University of Hawaii;
          (16)
                By the Kahoolawe island reserve commission;
          (17)
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                By the division of consumer advocacy; [ex]
          (18)
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               By the office of elections;
         (19)
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               By the campaign spending commission; or
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         [\frac{(19)}{(21)}] By a department, in the event the attorney
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               general, for reasons deemed by the attorney general
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               good and sufficient, declines, to employ or retain an
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               attorney for a department; provided that the governor
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               thereupon waives the provision of this section."
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                                  PART II
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          SECTION 6. Part I of chapter 11, Hawaii Revised Statutes,
     is amended by adding five new sections to be appropriately
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    designated and to read as follows:
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                 Elections commission. (a) There is established an
          "§11-a
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    elections commission within the department of accounting and
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    general services for administrative purposes. The elections
    commission shall consist of nine members who shall be selected
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    as follows:
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	1 (1)	· ,
	<u>(1)</u>	The president of the senate shall select two elections
2	2	commission members;
3	(2)	The speaker of the house of representatives shall
4	ı	select two elections commission members;
5	(3)	The senators belonging to a party or parties different
6	;	from the president of the senate shall designate one
7	,	senator to select two elections commission members;
8	(4)	The representatives belonging to a party or parties
9		different from the speaker of the house of
10		representatives shall designate one representative to
11		select two elections commission members; and
12	(5)	One member, who shall serve as chairperson of the
13		elections commission, shall be selected by the members
14		of the elections commission selected pursuant to
15		paragraphs (1) to (4);
16	provided t	hat each group of four elections commission members
17	selected by	y each house shall include one elections commission
18	member from	n each of the four counties.
19		The chairperson of the elections commission under
20	subsection	(a) (5) shall be selected by a two-thirds vote.
21	(c) A	vacancy in the elections commission shall be filled
22	in the same	manner as the original appointment as specified in
		general appointment as specified in

- 1 subsection (a) within fifteen days. A vacancy in the elections
- 2 commission shall be filled with a person from the same county as
- 3 the departing elections commission member. Elections commission
- 4 member vacancies not filled within the times specified shall be
- 5 filled promptly thereafter by the chief justice of the supreme
- 6 court.
- 7 (d) The elections commission shall act by majority vote of
- 8 its membership and shall establish its own procedures, except as
- 9 may be provided by law.
- (e) Notwithstanding section 26-34, elections commission
- 11 member appointments shall not be subject to senatorial
- 12 confirmation.
- (f) The term of the elections commissioners shall be four
- 14 years, except that with respect to the terms of the initial
- 15 elections commission members, one member selected from each of
- subsection (a) (1) to (4) shall serve for a term of two years.
- (g) The elections commissioners shall serve without
- 18 compensation, but shall be reimbursed for reasonable expenses,
- including travel expenses, necessary for the performance of
- 20 their duties.
- 21 <u>§11-B</u> <u>Duties of the elections commission.</u> The duties of
- 22 the elections commission are to:

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1	(1)	Hold public hearings;
2	(2)	Investigate and hold hearings for receiving evidence
3		of any violations and complaints;
4	(3)	Adopt rules pursuant to chapter 91;
5	(4)	Employ, without regard to chapter 76, a full-time
6		chief election officer, pursuant to section 11-1.6;
7		and
8	(5)	Advise the chief election officer on matters relating
9		to elections.
10	<u>§11-</u>	C Elections commission; political activities. (a) No
11	elections	commission member shall take an active part in
12	political	management or in political campaigns.
13	(b)	Each elections commission member shall retain the
14	right to:	member sharr retain the
15	(1)	Register and vote as the elections commission member
16	`	chooses in any election;
17	(2)	Participate in the nonpartisan activities of a civic,
18		community, social, labor, or professional
19		organization, or of a similar organization;
20		Be a member of a political party or other political
21	9	organization and participate in its
22	<u>•</u>	extent consistent with law;
		Taw;

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1	<u>(4)</u>	Make a financial contribution to a political party or
2		organization;
3	(5)	Serve as an election judge or clerk or in a similar
4		position to perform nonpartisan election duties, as
5		prescribed by law; and
6	(6)	Otherwise participate fully in public affairs, except
7		as prohibited by law, in a manner which does not
8		materially compromise the elections commission
9		member's efficiency or integrity as an elections
10		commission member or the neutrality, efficiency, or
11		integrity of the elections commission.
12	(c)	An elections commission member may request an advisory
13	opinion fr	com the state ethics commission to determine whether a
14	particular	activity constitutes or would constitute a violation
15		de of ethics or this section.
16		Elections review program. The elections commission
17		lop and implement an elections review program to:
18		Review the operation and performance of elections;
19		Make recommendations to the chief election officer on
20		methods to improve elections;

1	(3)	Establish policies for the administration of an
2		elections observer program, to include ensuring the
3		validity and reliability of election results;
4	(4)	
5		elections;
6	<u>(5)</u>	Submit the findings and recommendations from the
7		biennial evaluation to the legislature, not less than
8		twenty days prior to the convening of each regular
9		session held in odd-numbered years; and
10	(6)	Adopt rules in accordance with chapter 91 to carry out
11		the purposes of this section.
12	<u>§11-</u>	E Exemptions. The elections commission shall be
13		om section 26-35(1), (4), and (5) and shall:
14	(1)	
15		Make direct communications with the governor and legislature;
16	<u>(</u> 2)	
17	<u> </u>	Make all decisions regarding employment, appointment,
18		promotion, transfer, demotion, discharge, and job
19		descriptions of all officers and employees of or under
		the jurisdiction of the elections commission without
20		the approval of the comptroller; and
2122	<u>(3)</u>	Purchase all supplies, equipment, or furniture without

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The elections commission shall follow all applicable 1 2 personnel laws." 3 SECTION 7. Section 11-1, Hawaii Revised Statutes, is amended by amending the definition of "chief election officer" 4 5 to read as follows: 6 ""Chief election officer", the individual appointed by the [elections appointment and review panel] elections commission 7 pursuant to section 11-1.6 to supervise state elections." 8 9 SECTION 8. Section 11-1.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows: 10 11 The office of elections shall provide staff support "(b) to the [elections appointment and review panel,] elections 12 commission, as requested by the [panel.] elections commission." 13 14 SECTION 9. Section 11-1.6, Hawaii Revised Statutes, is 15 amended as follows: 16 1. By amending subsection (a) to read: 17 The chief election officer shall be appointed by the "(a) [elections appointment and review panel,] elections commission, 18 19 without regard to chapter 76. The appointment shall not be subject to the advice and consent of the senate. In the event 20

of a vacancy, the [panel] elections commission shall meet

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- 1 expeditiously to select and appoint a new chief election officer
- 2 to serve the remainder of the unexpired term."
- 3 2. By amending subsections (f) and (g) to read:
- 4 "(f) The chief election officer may petition the [panel]
- 5 <u>elections commission</u> for reappointment. The [panel] <u>elections</u>
- 6 commission may reappoint an incumbent chief election officer
- 7 based on the performance [evaluation] of the chief election
- 8 officer [conducted by the panel]. The [panel] elections
- 9 <u>commission</u> may authorize the chief election officer to hold
- 10 office until a successor is appointed.
- 11 (g) The chief election officer may be removed by the
- 12 [panel] elections commission at any time for good cause."
- SECTION 10. Section 11-2.5, Hawaii Revised Statutes, is
- 14 repealed.
- 15 ["\$11-2.5 Elections appointment and review panel
- 16 established; composition; term; removal; operations. (a)
- 17 Notwithstanding any law to the contrary, there is established an
- 18 elections appointment and review panel, consisting of five
- 19 members who shall select and appoint the chief election officer;
- 20 review the operation of elections; evaluate the performance of
- 21 the chief election officer as required by section 11 2.7; and
- 22 perform such other duties as may be required by law.

1	(b)	The members of the elections appointment and review
2		all be appointed as follows:
3	(1)	One member to be appointed by the president of the
4		senate;
5	(2)	One member to be appointed by the speaker of the house
6		of representatives;
7	(3)	One member to be appointed by the minority leader of
8		the senate;
9	(4)	One-member-to-be-appointed-by-the minority leader of
10		the house of representatives; and
11	(5)	One member to be selected with the governor's complete
12		discretion.
13	The appoin	ntments shall not require the advice and consent of the
14	senate.	
15	(e)	The term of each member shall be six years; provided
16	that:	
17	(1)	The first term for the members appointed by the
18		president of the senate, the minority leader of the
19		house of representatives, and the governor, shall be
20		six years and shall commence upon the appointment of
21		the first member to the elections appointment and

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1	review panel and shall expire six years from that
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3	(2) The first term of the remaining members shall be four
4	years and shall commence upon the appointment of the
5	first member to the elections appointment and review
6	paner and shall expire four years from that date.
7	No person shall be appointed consecutively to more than two
8	terms as a member of the panel. Vacancies shall be filled for
9	the remainder of any unexpired term in the same manner as the
10	original appointment. Any member of the panel whose term has
11	expired and who is not disqualified for membership may continue
12	in office as a holdover member until a successor is appointed;
13	provided that a holdover member shall not hold office for more
14	than six months after expiration of the member's term of office.
15	(d) The governor may remove or suspend any member of the
16	panel for cause, upon the filing of a written finding with the
17	panel and upon service of a copy of the written finding on the
18	member removed or suspended; provided that any vacancy due to
19	removal or suspension shall be filled by the respective
20	appointing authority established in subsection (b).
21	(e) The chairperson of the panel shall be selected by a
22	majority vote of the panel from among its members. The panel

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shall act by majority vote of its membership and shall establish
  1
     its own procedures, except as may be provided by law.
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          (f) The members of the panel shall serve without
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     compensation but shall be reimbursed for reasonable expenses,
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     including travel expenses, incurred in the discharge of their
  5
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     duties.
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          (g) No panel member shall be eligible for appointment as
     chief election officer so long as the person is a member of the
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     elections appointment and review panel and for a period of one
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     year thereafter.
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         (h) The elections appointment and review panel shall be
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    placed within the department of accounting and general services
    for administrative purposes."]
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         SECTION 11. Section 11-2.6, Hawaii Revised Statutes, is
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    repealed.
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         ["[$11-2.6] Elections appointment and review panel;
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    political activities. (a) No panel member shall take an active
    part in political management or in political campaigns.
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         (b) Each panel member shall retain the right to:
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         (1) Register and vote as the panel member chooses in any
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              election.
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1	(2)	Participate in the nonpartisan activities of a civie,
2		community, social, labor, or professional
3		organization, or of a similar organization;
4	(3)	Be a member of a political party or other political
5		organization and participate in its activities to the
6		extent consistent with law;
7	(4)	Make a financial contribution to a political party or
8		organization;
9	(5)	Serve as an election judge or clerk or in a similar
10		position to perform nonpartisan election duties as
11		prescribed by law; and
12	(6)	Otherwise participate fully in public affairs, except
13		as prohibited by law, in a manner which does not
14		materially compromise the panel-member's efficiency or
15	× .	integrity as a panel member or the neutrality,
16		efficiency, or integrity of the elections appointment
17		and review panel.
18	(c)	A panel member may request an advisory opinion from
19	the state	ethies commission to determine whether a particular
20	activity co	enstitutes or would constitute a violation of the code
21		er this section."]

1	SECT	ION 12. Section 11-2.7, Hawaii Revised Statutes, is
2	repealed.	
3	[" [11-2.7] Elections review program. The elections
4	appointme	nt-and-review panel shall develop and implement an
5	elections	review program, the purposes of which shall be to:
6	(1)	Establish performance standards for the operation of
7		elections and the performance of the chief election
8		officer. The performance standards shall provide the
9		criteria by which the operation of elections and the
10		performance of the chief election officer will be
11		evaluated;
12	(2)	Review the operation of elections and the performance
13		of the chief election officer;
14	(3)	Make-recommendations to the chief election officer on
15		methods to improve the operation of elections;
16	(4)	Establish policies for the administration of an
17		elections observer program, to include ensuring the
18		validity and reliability of election results;
19	(5)	Conduct a biennial performance evaluation of the
20		operation of elections and the performance of the
21		chief election officer:

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1	(6) Submit the findings and recommendations from the
2	biennial performance evaluation to the legislature,
3	not less than twenty days prior to the convening of
4	each regular session held in odd numbered years; and
5	(7) Adopt rules in accordance with chapter 91 to carry out
6	the purposes of this section."]
7	SECTION 13. In codifying the new sections added by
8	section 6 of this Act, the revisor of statutes shall substitute
9	appropriate section numbers for the letters used in designating
10	the new sections in this Act.
11	SECTION 14. All appropriations, records, equipment,
12	machines, files, supplies, contracts, books, papers, documents,
13	maps, and other personal property heretofore made, used,
14	acquired, or held by the elections appointment and review panel
15	relating to the functions transferred to the elections
16	commission established under section 6 of this Act shall be
17	transferred with the functions to which they relate.
18	SECTION 15. All rules, policies, and procedures adopted
19	and enforced by the elections appointment and review panel shall
20	remain in full force and effect until such time that the
21	elections commission established under to section 6 of this Act
22	may adopt, amend, or repeal such rules, policies, or procedures.

- 1 SECTION 16. Statutory material to be repealed is bracketed
- 2 and stricken. New statutory material is underscored.
- 3 SECTION 17. This Act shall take effect upon its approval.

APPROVED this

day of

,2004

GOVERNOR OF THE STATE OF HAWAII

HB No. 267 HD2 SD2

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 16, 2004 Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Final Reading in the House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004.

Calvin K.Y. Say

Speaker

House of Representatives

Patricia Mau-Shimizu Chief Clerk House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: April 13, 2004 Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Third Reading in the Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004.

Robert Bunda

President of the Senate

Paul Kawaguchi Clerk of the Senate