



**STATE OF HAWAII  
OFFICE OF ELECTIONS**

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SCOTT T. NAGO  
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**TESTIMONY OF THE  
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS  
TO THE HOUSE COMMITTEE ON JUDICIARY  
ON HOUSE BILL NO. 2397  
RELATING TO PRIMARY ELECTIONS**

February 4, 2010

Chair Karamatsu and members of the House Committee on Judiciary, thank you for the opportunity to testify in support of House Bill No. 2397. The purpose of this bill is to implement an amendment to federal law concerning voting by military and overseas voters.

Specifically, President Barack Obama signed into law the National Defense Authorization Act for Fiscal Year 2010 on October 28, 2009. Subtitle H of that law, which may be cited as the Military and Overseas Voter Empowerment Act (MOVE), amended various parts of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 USC §§ 1973ff et seq.)

Among these amendments is a provision requiring states to transmit absentee ballots to uniformed and overseas voters no later than forty-five days prior to a federal election. 42 USC § 1973ff-1(a)(8). This provision is effective as of the 2010 General Election. The present law provides for the Primary Election to be held on the second to the last Saturday in September in every even numbered year, provided that in no case does it precede the General Election by less than forty-five days. HRS § 12-2. Given that the General Election is held on the first Tuesday following the first Monday in November in every even numbered year, most Primary Elections are exactly forty-five days prior to the General Election. Haw. Const. Article II, § 8 (State Elections); 2 USC §§ 1 & 7 (Congressional Elections); and 3 USC § 1 (Presidential Elections).<sup>1</sup>

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<sup>1</sup> The Primary Election is forty-five days prior to the general election in 2010, 2014, 2018, and 2020. In 2012 and 2022 the Primary Election is fifty-two days prior to the General Election, due to first day of November in those years being a Tuesday, thus causing an additional week to elapse before the first Tuesday after the first Monday in November.

A period of forty-five days between the Primary and General Election is insufficient to finalize election results, address legal challenges, proof the contents of the General Election ballot, print the ballots, and finally mail them out in compliance with the new federal law. Specifically, challenges to the Primary Election results can be filed up to six days after the election and the resolution of said challenge by the Hawaii Supreme Court may take up to an additional nine days. HRS § 11-173.5. Separately, the proofing of the General Election ballot as to candidates, ballot questions, and ballot types takes approximately seven days. After which, it takes approximately fourteen days to print out the ballots, before they can even be mailed out forty-five days in advance of the General Election.

As such, it would be difficult to meet this new federal requirement, barring a change in our laws. It should be noted that the federal law allows for states to request a waiver of the requirement on an election by election basis, if it can show that it has alternative means by which it can ensure access to the ballot for overseas voters. 42 USC § 1973ff-1(g)(1). The law further provides that the request must be made more than ninety days before the general election and that the approval or denial of the request will occur no later than sixty-five days before the general election. 42 USC § 1973ff-1(g)(3).

With this in mind, we have sought to immediately submit the State of Hawaii's application, but we have been informed by the Federal Voting Assistance Program that it is still consulting with the Department of Justice on the specifics of the waiver application process. 42 USC § 1973ff-1(g)(2). As such, until that time no application can be submitted or considered.

The present bill addresses the Office of Elections' previously noted concerns about timing, by moving Hawaii's Primary Election date to the second Saturday in August and the deadline for filing nomination papers to the first Tuesday in June.

Thank you for the opportunity to testify in support of House Bill No. 2397.

BARBARA WONG  
EXECUTIVE DIRECTOR



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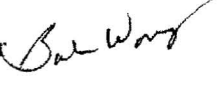
**STATE OF HAWAII**  
**CAMPAIGN SPENDING COMMISSION**  
235 SOUTH BERETANIA STREET, ROOM 300  
HONOLULU, HAWAII 96813

February 4, 2010

TO: The Honorable Jon Riki Karamatsu, Chair  
House Judiciary Committee

The Honorable Ken Ito, Vice-Chair  
House Judiciary Committee

Members of the House Judiciary Committee

FROM: Barbara U. Wong, Executive Director   
Campaign Spending Commission

**SUBJECT: Testimony on H.B. No. 2397, Relating to Elections**

Thursday, February 4, 2010  
2:30 p.m. in Conference Room 325

Chair Karamatsu, Vice-Chair Ito, and Members of the House Judiciary Committee, thank you for the opportunity to testify on this bill which proposes to:

- Change the date of the primary election from the second to the last Saturday in September to the second Saturday in August for primary elections, including the OHA Board; and
- Change the filing deadline for nomination papers to the first Tuesday in June, except for special primary or special elections.

The bill would apply to the primary elections held prior to the regularly scheduled general election held in November 2010, and every election thereafter, but shall not apply to any special election held before November 2010.

In order to maintain the same level of reporting and transparency that the campaign finance laws currently provide, the reporting deadlines need to be adjusted to align with the changed primary date. We also ask the Committee to consider adding an additional report for noncandidate committees.

## I. Candidate Committee Reports

### A Current deadlines

Under current law, reports must be filed during the remainder of 2010 by candidates for the House of Representatives, Kauai Mayor and Neighbor Island County Council<sup>1</sup> as follows:

Due date	Reporting period	Candidate Committee Report
August 2, 2010	January 1 through June 30, 2010	1 <sup>st</sup> Preliminary Primary Report
September 8, 2010	July 1 through September 3, 2010	2 <sup>nd</sup> Preliminary Primary Report
September 15, 2010	September 4 through September 14, 2010	Late Contributions Report <sup>2</sup>
<i>September 18, 2010</i>		<i>Primary Election</i>
October 8, 2010	September 4 through September 18, 2010	Final Primary Report
October 8, 2010	January 1 through September 16, 2010	Expenditures of Public Funds <sup>3</sup>
October 25, 2010	September 19 through October 18, 2010	Preliminary General Report <sup>4</sup>
October 25, 2010	January 1 through October 18, 2010	Preliminary General Report <sup>5</sup>
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report <sup>6</sup>
<i>November 2, 2010</i>		<i>General Election</i>
December 2, 2010	October 19 through November 2, 2010	Final Election Period Report; <sup>7</sup> or
December 2, 2010	September 19 through November 2, 2010	Final Election Period Report; <sup>8</sup> or
December 2, 2010	January 1 through November 2, 2010	Final Election Period Report <sup>9</sup>
December 2, 2010	January 1 through November 2, 2010	Expenditures of Public Funds

### B. Reporting deadlines under H.B. No. 2397

This bill, as drafted, would require candidate committees to file reports for an August 14, 2010 primary election as follows (changes are in boldface):

<sup>1</sup> There are several reporting schedules with slight differences depending on the office sought.

<sup>2</sup> This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fifteen calendar days through four calendar days prior to the Primary Election. Late Contributions must also be reported on the Final Primary Report. The report is not required if there are no Late Contributions.

<sup>3</sup> This form is required for candidates who received partial public financing in the primary election.

<sup>4</sup> This form is for candidates that were successful in the Primary Election and have advanced to the General Election. This report is not required for candidates that won outright or were unsuccessful in the Primary Election. See the Final Election Period Report

<sup>5</sup> This is the first report for candidates for the Office of Hawaiian Affairs.

<sup>6</sup> This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions or if a candidate won outright or was unsuccessful in the Primary Election.

<sup>7</sup> For candidates that filed the Preliminary General Report.

<sup>8</sup> For candidates that won outright or were unsuccessful in the Primary Election and who did not file the Preliminary General Report.

<sup>9</sup> For candidates whose aggregate contributions and aggregate expenditures for the election period total \$1,000 or less. All previous reports, with the exception of the Organizational Report, are not required to be filed.

Due date	Reporting period	Candidate Committee Report
August 2, 2010 <sup>10</sup>	January 1 through June 30, 2010	1 <sup>st</sup> Preliminary Primary Report
[September 8, 2010] August 4, 2010	July 1 through [September 3, 2010] July 30, 2010	2 <sup>nd</sup> Preliminary Primary Report <sup>11</sup>
[September 15, 2010] August 11, 2010	[September 4 through September 14, 2010] July 31 through August 10, 2010	Late Contributions Report <sup>12</sup>
[September 18, 2010] August 14, 2010		Primary election
[October 8, 2010] September 13	[September 4 through September 18, 2010] July 31 through August 14, 2010	Final Primary Report <sup>13</sup>
[October 8, 2010] September 13, 2010	January 1 through [September 18, 2010] August 14, 2010	Expenditures of Public Funds
October 25, 2010	[September 19] August 15 through October 18, 2010	Preliminary General Report
October 25, 2010	January 1 through October 18, 2010	Preliminary General Report
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report
November 2, 2010		General election
December 2, 2010	October 19, 2010 through November 2, 2010	Final Election Period Report; or
December 2, 2010	[September 19] August 15 through November 2, 2010	Final Election Period Report; or
December 2, 2010	January 1 through November 2, 2010	Final Election Period Report
December 2, 2010	January 1 through November 2, 2010	Expenditures of Public Funds

H.B. No. 2397 would, among other things:

- Require that the first preliminary primary report and second preliminary primary report be filed by the candidate committee within two days of each other (August 2 and August 4, respectively); and

<sup>10</sup> If H.B. No. 1130 passes, this reporting date would be changed to July 31, 2008.

<sup>11</sup> "(a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk's office. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the following dates:

- (A) July thirtieth of the year of the primary election;
- (B) Ten calendar days prior to each primary and initial special election; and
- (C) Ten calendar days prior to a special or general election.

(2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of other preliminary reports..." HRS section 11-212(a).

<sup>12</sup> "Each candidate, candidate's committee, or committee, that within the period of fifteen calendar days through four calendar days prior to a primary, special primary, general, or special general election, makes contributions aggregating more than \$500, or receives contributions from any person or entity aggregating more than \$500, shall file a report with the commission or appropriate county clerk's office on forms provided by the commission, no later than 4:30 p.m., three calendar days prior to the election." HRS section 11-207.5(a).

<sup>13</sup> "Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary or initial special election." HRS section 11-213(a).

- Present a 42-day gap in the 2010 election between the committee's final primary report filed on September 13, 2010 (for the reporting period from July 31 through August 14, 2010) and the preliminary general report filed on October 25, 2010 (reporting period from August 15 through October 18, 2010). There would be less transparency for the public as information regarding candidates' contributions and expenditures would not be available to the public during this gap. Under current law, the time-period between the regular reports filed during the peak election time of 2010 varies from seventeen to thirty days based on how close to each election day it is (i.e., reports would be due in 2010 on September 8, October 8, and October 25).

**C. Recommendation – amend section 11-212(a), HRS, so that the first preliminary primary report is filed on July 5 and second preliminary primary report is filed on July 30; amend the law to add a second preliminary general report to be filed on September 30**

We recommend amending section 11-212(a), HRS as follows:

“(a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk's office. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the following dates:

- (A) July [~~thirtieth~~] fifth of the year of the primary election;
- (B) Ten calendar days prior to each primary and initial special election;
- ~~[and]~~
- (C) September 30 of the year of the primary election; and
- ~~[(C)]~~ (D) Ten calendar days prior to a special or general election.

(2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and September and fifth calendar day prior to the filing of other preliminary reports...”

If our recommendations are incorporated in this bill, candidate committees would be required to file reports as follows:

Due date	Reporting period	Candidate Committee Report
<del>[August 2, 2010]</del> <b>July 6, 2010</b>	January 1 through June 30, 2010	1 <sup>st</sup> Preliminary Primary Report
<del>[September 8, 2010]</del> <u>August 4, 2010</u>	July 1 through <del>[September 3, 2010]</del> <u>July 30, 2010</u>	2 <sup>nd</sup> Preliminary Primary Report <sup>14</sup>

<sup>14</sup> “(a) (1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk's office. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the following dates:



Due date	Reporting period	Candidate Committee Report
[ <del>September 15, 2010</del> August 11, 2010]	[ <del>September 4 through September 14, 2010</del> July 31 through August 10, 2010]	Late Contributions Report <sup>15</sup>
[ <del>September 18, 2010</del> August 14, 2010]		Primary election
[ <del>October 8, 2010</del> September 13]	[ <del>September 4 through September 18, 2010</del> July 31 through August 14, 2010]	Final Primary Report <sup>16</sup>
[ <del>October 8, 2010</del> September 13, 2010]	January 1 through [September 18, 2010] August 14, 2010	Expenditures of Public Funds
September 30, 2010	August 10 through September 25, 2008	<b>1<sup>st</sup> Preliminary General Report</b>
October 25, 2010	[ <del>September 19</del> ] August 15 through October 18, 2010 <b>September 26 through October 18, 2010</b>	<b>2<sup>nd</sup> Preliminary General Report</b>
October 25, 2010	January 1 through October 18, 2010	Preliminary General Report
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report
<del>November 2, 2010</del>		General election
December 2, 2010	October 19, 2010 through November 2, 2010	Final Election Period Report; or
December 2, 2010	[ <del>September 19</del> ] August 15 through November 2, 2010	Final Election Period Report; or
December 2, 2010	January 1 through November 2, 2010	Final Election Period Report
December 2, 2010	January 1 through November 2, 2010	Expenditures of Public Funds

## II. Noncandidate Committee Reports

### A. Current reporting deadlines

Due date	Reporting period	Noncandidate Committee Report
September 6, 2010	January 1 through September 3, 2010	Preliminary Primary Report
September 15, 2010	September 4 through September 14, 2010	Late Contributions Report <sup>17</sup>

(A) July thirtieth of the year of the primary election;

(B) Ten calendar days prior to each primary and initial special election; and

(C) Ten calendar days prior to a special or general election.

(2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of other preliminary reports..." HRS section 11-212(a).

<sup>15</sup> "Each candidate, candidate's committee, or committee, that within the period of fifteen calendar days through four calendar days prior to a primary, special primary, general, or special general election, makes contributions aggregating more than \$500, or receives contributions from any person or entity aggregating more than \$500, shall file a report with the commission or appropriate county clerk's office on forms provided by the commission, no later than 4:30 p.m., three calendar days prior to the election." HRS section 11-207.5(a).

<sup>16</sup> "Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary or initial special election." HRS section 11-213(a).

<i>September 18, 2010</i>		<i>Primary election</i>
October 8, 2010	September 4 through September 18, 2010	Final Primary Report
October 25, 2010	September 17 through September 18, 2010	Preliminary General Report
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report <sup>18</sup>
<i>November 2</i>		<i>General election</i>
December 2, 2010	October 19 through November 2, 2010	Final Election Period Report

**B. Reporting deadlines under H.B. No. 2397**

Due date	Reporting period	Noncandidate Committee Report
[ <del>September 6, 2010</del> ] August 4, 2010	January 1 through [ <del>September 3, 2010</del> ] July 30, 2010	Preliminary Primary Report
<i>August 9, 2010</i>		<i>Primary election</i>
[ <del>September 15, 2010</del> ] August 11, 2010	[ <del>September 4 through September 14, 2010</del> ] July 31 through August 10, 2010	Late Contributions Report <sup>19</sup>
<del>September 18, 2010</del>		<del>Primary election</del>
[ <del>October 8, 2010</del> ] September 13, 2010	[ <del>September 4 through September 18, 2010</del> ] July 31 through August 14, 2010	Final Primary Report
October 25, 2010	[ <del>September 19</del> ] August 15 through October 18, 2010	Preliminary General Report
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report <sup>20</sup>
<i>November 2</i>		<i>General election</i>
December 2, 2010	October 19 through November 2, 2010	Final Election Period Report

This bill presents a 42-day gap in the 2010 election between the committee's final primary report filed on September 13, 2010 (for the reporting period from July 31 through August 14, 2010) and the preliminary general report filed on October 25, 2010 (reporting period from August 15 though October 18, 2010).

<sup>17</sup> This form is for reporting contributions received from any person or entity that aggregates more than \$500 and for reporting contributions made to candidates that aggregate more than \$500 during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions.

<sup>18</sup> This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions or if a candidate won outright or was unsuccessful in the Primary Election.

<sup>19</sup> This form is for reporting contributions received from any person or entity that aggregates more than \$500 and for reporting contributions made to candidates that aggregate more than \$500 during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions.

<sup>20</sup> This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions or if a candidate won outright or was unsuccessful in the Primary Election.



**C. Recommendation – amend the law to add a second preliminary general report to be filed on September 30**

We recommend amending section 11-212(b), HRS as follows:

“(b) Each noncandidate committee shall file a preliminary report with the commission, on forms provided by the commission, no later than 4:30 p.m. on the tenth calendar day prior to each primary election, September 30, and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:

(1) The aggregate sum of all contributions and other campaign receipts received;

(2) The amount and date of deposit of the contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$100 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;

(3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;

(4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and

(5) A current statement of the balance on hand.”

If these recommendations are incorporated in this bill, noncandidate committees would be required to file reports as follows:

Due date	Reporting period	Noncandidate Committee Report
<del>[September 6, 2010]</del> August 4, 2010 <del>August 9, 2010</del>	January 1 through <del>[September 3, 2010]</del> July 30, 2010	Preliminary Primary Report
		<i>Primary election</i>
<del>[September 15, 2010]</del> August 11, 2010 <del>[September 18, 2010]</del>	<del>[September 4 through September 14, 2010]</del> July 31 through August 10, 2010	Late Contributions Report <sup>21</sup>
		<del><i>Primary election</i></del>
<del>[October 8, 2010]</del> September 13, 2010	<del>[September 4 through September 18, 2010]</del> July 31 through August 14, 2010	Final Primary Report

<sup>21</sup> This form is for reporting contributions received from any person or entity that aggregates more than \$500 and for reporting contributions made to candidates that aggregate more than \$500 during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions.

September 30, 2010	August 10 through September 25, 2008	<b>1<sup>st</sup> Preliminary General Report</b>
October 25, 2010	[ <del>September 19</del> ] <u>August 15</u> through October 18, 2010 <b>September 26 through October 18, 2010</b>	<b>2<sup>nd</sup> Preliminary General Report</b>
October 25, 2010	[ <del>September 19</del> ] <u>August 15</u> through October 18, 2010	Preliminary General Report
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report <sup>22</sup>
<i>November 2</i>		<i>General election</i>
December 2, 2010	October 19 through November 2, 2010	Final Election Period Report

<sup>22</sup> This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions or if a candidate won outright or was unsuccessful in the Primary Election.