



**STATE OF HAWAII  
OFFICE OF ELECTIONS**

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SCOTT T. NAGO  
CHIEF ELECTION OFFICER

TESTIMONY OF THE  
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS  
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR  
ON HOUSE BILL NO. 401, HD 2  
RELATING TO VOTING

February 5, 2016

Chair Keith-Agaran and members of the Senate Committee on Judiciary and Labor, thank you for the opportunity to testify in support of House Bill No. 401, HD 2. The purpose of this bill is to require an applicant for a driver's license or civil identification card to choose to register to vote or not before their application will be processed.

The Office of Elections believes that this bill will increase voter registration as it requires the applicant to directly address the question of whether they wish to be automatically registered to vote or to opt out as part of the driver's license and state identification card application process.

We proposed amending this bill to allow for the electronic transmission of voter registration data between the driver's licensing/state identification card database and the statewide voter registration system. This would include the ability to update the voter file based on updates to the driver's license/state identification card file such as name or address change. We propose the following language for your consideration.

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**§11-A Automatic registration.** (a) Notwithstanding any law to the contrary, an affidavit on an application for voter registration shall be a part of the application associated with the issuance of a civil identification card under section 286-301 and a driver's license under section 286-109.

(b) Applications for an identification card or driver's license shall not be processed until the applicant either clearly indicates on the application that the applicant declines to register to vote or completes the portion of the application related to voter registration. Each application shall include a space to request a permanent absentee ballot.

(c) To the extent an applicant for a civil identification card or driver's license is already a registered voter, the application shall serve to automatically update the applicant's voter registration residence address, mailing address, or name, as may be applicable. A notice to this effect shall be stated on any application or change of address or name form utilized by the examiner of drivers.

(d) The examiner of drivers shall electronically transmit, on a real time basis, the following information associated with each person who submits an application for a driver's license, civil identification card, or who submits a notice of a change of name or address:

- (1) Name;
- (2) Date of birth;
- (3) Residence address;
- (4) Mailing address;
- (5) Digitized signature;
- (6) Telephone number;
- (7) Email address;
- (8) Gender;
- (9) Any address associated with a previous registration in another state the person authorizes to be canceled;
- (10) A notation that the applicant has attested that he or she meets all voter eligibility requirements, including United States citizenship;
- (11) Whether the person chooses to become a permanent absentee voter;
- (12) Whether the applicant was informed, if they are currently a registered voter, that their name, residence address, and mailing address associated with their voter registration record will be updated to reflect what has been provided in their application;
- (13) An electronic copy of the application in portable document format;



(14) Whether the person indicated they wished to register to vote or was not interested in registering to vote;

and

(15) Other information specified by the chief election officer.

(e) Databases maintained or operated by the counties or the state department of transportation containing driver's license or civil identification card information, including any documents or images, shall be directly accessible to and provided electronically to election officials and the statewide voter registration system, to allow for the timely processing of voter registration applications, ensure the integrity of the voter registration rolls, or for any other government purpose, as determined by the chief election officer.

Thank you for the opportunity to testify in support of House Bill No. 401,  
HD 2.



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COMMITTEE ON JUDICIARY AND LABOR  
FRIDAY, Feb. 5, 2016, 9:00 A.M., CONFERENCE ROOM 016  
HB 401, HD2 RELATING TO VOTING

**TESTIMONY**

Janet Mason, Legislative Co-Chair, League of Women Voters of Hawaii

Chair KEITH-AGARAN, Vice-Chair Shimabukuro, and Committee Members:

**The League of Women Voters of Hawaii strongly supports HB 401, HD2** which provides that all applicants for a new or renewed driver's license, provisional license, instructional permit, or civil identification card must clearly decline to register to vote or fill out the voter affidavit on their application before their application can be processed.

We request careful legal review of the measure by the Office of Elections and the State Attorney General, but it appears to comply with provisions of the National Voter Registration Act that require an "opt out" clause for those who do not wish to register to vote, and also assures that should an applicant decline to register to vote this decision be kept confidential.

It is a good idea to include a voter registration affidavit as part of this type of registration. This helps maintain the integrity of voter registration records. Likewise, we are very happy to see the application is to include a request to receive a permanent absentee ballot; this feature boosts efforts to convert Hawaii to voting by mail.

While not specifically required in the measure, a database maintained by the Department of Transportation and counties containing information required for Automatic Voter Registration is implied, and this may require an appropriation for these agencies. Obviously, as called for in the bill, information needs to be electronically accessible by County and State elections officials, so applications to vote can be processed in a timely way and the integrity of the voter registration rolls maintained.

There are nine versions of "automatic voter registration" bills under consideration by the legislature. This and SB 2165 are the League's preferences. Thanks in part to its careful construction this measure is further along in the legislative process and we urge you to pass it. Thank you for the opportunity to submit testimony.



Senate Judiciary and Labor Committee  
Chair Gil Keith-Agaran, Vice Chair Maile Shimabukuro

Friday, 02/05/2016 at 9:00AM in Room 016  
HB 401 – Relating to Voting

TESTIMONY / COMMENTS  
Carmille Lim, Executive Director, Common Cause Hawaii

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Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Judiciary and Labor Committee:

**Common Cause Hawaii supports the intent of HB 401, and offers comments.**

**HOUSE BILL 401** would require that all applicants for a new or renewed driver's license, provisional license, instructional permit, or civil identification card must either clearly decline to register to vote or fill out the voter affidavit on their application before their application can be processed.

We believe HB401 as currently drafted moves away from the original intent of the bill and does not propose the best system for automatic voter registration. Instead, we encourage replacement of this bill with a simpler, more affirmative alternative.

As it stands, HB 401 specifies that “[a]pplications for an identification card or driver’s license shall not be processed until the applicant either clearly indicates on the application that the applicant declines to register to vote or completes the portion of the application related to voter registration.” We believe that this language adds very little – if anything at all – to Hawaii’s current obligation under the National Voter Registration Act, 42 U.S.C. § 1973gg. That federal law states that “[e]ach [covered] State motor vehicle driver’s license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless that applicant fails to sign the voter registration application.”<sup>i</sup> Our motor vehicle offices in the state are already required to affirmatively provide voter registration opportunities to applicants unless the applicant, in writing, declines to register to vote; all that is added by this bill is an added mandate that the motor vehicle clerk *require* that any applicant complete the voter registration portion of an application or affirmatively specify that he or she does not want to so register. First, this is a minor addition that adds virtually nothing to our agencies’ current responsibilities and would have little impact on increasing our registration rate – and thus voter turnout rate. Second, this requires one additional step for our motor vehicle clerks, which further complicates the system and adds extra time to each transaction. We believe this process can be streamlined.

#### **A MORE EFFECTIVE ALTERNATIVE**

We know from empirical research that wide-scale behavioral change takes effect when institutions and governments “nudge” individuals toward reform without taking away their freedom of choice. As such, opt-out programs have been shown to be much more successful in creating positive behavioral change than opt-in ones.<sup>ii</sup> Oregon’s “New Motor Voter” system is such a program.

Even with the requirement that a motor vehicle clerk take the added step of requiring an applicant to definitively say “no” if he/she failed to complete the voter registration application component, HB 401 still sets up an opt-in system where each applicant is responsible for filling out their own form. We recommend legislation that enables motor vehicle offices, and other agencies that maintain the required information to confirm a voter’s eligibility, to share that

information with the Office of Elections, so that the responsibility is on the state and county clerks to maintain the voter rolls. Once the Office of Elections and county clerks have the information about eligible but unregistered voters they provide notice of (1) the process for opting-out of registering (which may be as simple as returning a post card) and (2) if the eligible but unregistered voter does not decline to be registered the clerk will add them to the voter rolls. Such a system is cleaner and more efficient, making the process easier for elections administrator and voters alike. We propose that this form of “automated registration” begin at all motor vehicle offices state-wide, and gradually take effect at other public agencies to ensure that all Hawaii’s populations – not just those conducting business at a motor vehicle office – benefit from this reform.

For this reason, we believe that this proposal does not violate the mandates set forth in the National Voter Registration Act (NVRA), which sets a floor as to what states must affirmatively do with respect to providing voter registration services during covered transactions, but does not impose a ceiling.<sup>iii</sup> Going above and beyond the NVRA’s mandates to make efficient use of the data already collected by government agencies to build and maintain the state’s voter rolls is well within the state’s right, and the proposed alternative does not contradict any of the federal law’s requirements.<sup>iv</sup> It simply provides the state with an added ability to engage its citizenry and remove barriers for political participation.

The bipartisan Presidential Commission on Election Administration (PCEA), in a report issued in January of 2014, recommended that all states “adopt procedures that lead to the seamless integration of data between DMVs and election offices.”<sup>v</sup> Adoption of a more efficient system, such as the one being voted on in Oregon, will help catapult Hawaii’s citizenry into higher levels of engagement. Canada maintains its voter rolls in large part by gathering records from government agencies, including motor vehicle offices, and 93 percent of its eligible population is registered.<sup>vi</sup> By contrast, in 2012 the Pew Charitable Trusts found that 51 million Americans – nearly one in four eligible voters – were not registered to vote.<sup>vii</sup>

We commend your consideration of this important step to use existing technology and pathways to improve the process for registering eligible voters, and urge the Senate Judiciary Committee to consider an alternative legislative proposal to HB 401 in order to set up the best pro-voter system of automatic voter registration.

Thank you for the opportunity to **offer comments on HB 401**.

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<sup>i</sup> 42 U.S.C. §1973gg-3(a)(1)

<sup>ii</sup> Richard H. Thaler and Cass R. Sunstein, Nudge: Improving Decisions about Health, Wealth, and Happiness (Penguin Books 2008).

<sup>iii</sup> See 42 U.S.C. §1973gg; see also U.S. CONST, art 1, sec 4 (allowing states to prescribe time, place, and manner of holding elections for Senators and Representatives).

<sup>iv</sup> Language requiring motor vehicle offices to transmit data from all applicants to the Office of Elections for purposes of registration does not violate the NVRA’s prohibitions. For example, the prohibition that “[n]o information relating to the failure of an applicant for a State motor vehicle driver’s license to sign a voter registration application may be used for any purpose other than voter registration” does not prevent the motor vehicle office from transmitting the applicant’s data to the Office of Elections because that data is being used specifically for voter registration purposes. 42 U.S.C. §1973gg(3)(b). Under the NVRA, departments of motor vehicles would still be required to affirmatively offer the opportunity to vote, but clerks would not have to follow up with questions to those who failed to complete the voter registration part of the DMV application, and instead would be required to provide all data to the Office of Elections Officials, which would take on the task of registering to vote all those who are eligible.

<sup>v</sup> The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration 30, 31 (January 2014)

<sup>vi</sup> See N.Y. Times Editorial “How to Expand the Voter Rolls” (April 6 2012), available at <http://www.nytimes.com/2012/04/07/opinion/how-to-expand-the-voter-rolls.html>

<sup>vii</sup> The Pew Center on the States, *Inaccurate, Costly, and Inefficient: Evidence That America’s Voter Registration System Needs an Upgrade* 1-2 (Feb. 14, 2012) available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Election\\_reform/Pew\\_Upgrading\\_Voter\\_Registration.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Election_reform/Pew_Upgrading_Voter_Registration.pdf).

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 04, 2016 10:43 AM  
**To:** JDLTestimony  
**Cc:**  
**Subject:** \*Submitted testimony for HB401 on Feb 5, 2016 09:00AM\*

**HB401**

Submitted on: 2/4/2016

Testimony for JDL on Feb 5, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Support	No

Comments:

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