

JAN 25 2017

A BILL FOR AN ACT

RELATING TO ELECTIONS.

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

1 SECTION 1. The legislature finds that all states make an
2 effort to inform the electorate about upcoming elections, where
3 and when the elections will be held, and how to vote. Each
4 state determines what information will be provided and how it
5 will be distributed. Many states provide sample ballots that
6 are posted in polling places, published in newspapers, printed
7 and distributed by request, or printed and mailed to each
8 household or registered voter. In Hawaii, the chief election
9 officer or county clerk, in the case of a county election, is
10 required to have printed informational posters with facsimile
11 ballots that depict the official ballots that will be used in
12 the election. Precinct officials are required to post these
13 informational posters near the entrance to the polling place so
14 that the posters may be easily seen by voters prior to voting.

15 Other states publish and distribute voters' pamphlets to
16 registered voters. Voters' pamphlets may include candidate
17 information, judicial performance reviews, descriptions of



1 elected offices, or background information on constitutional
2 amendments or ballot measures. The purpose of these pamphlets
3 is to allow voters to exercise their fundamental right to vote
4 by informing them about each of the ballot measures and
5 candidates seeking office, reading both sides of an argument to
6 each of the ballot measures, and learning where each of the
7 candidates stand on the issues that affect the voters.

8 The purpose of this Act is to increase the amount of
9 information provided to registered voters in Hawaii by:

- 10 (1) Requiring the chief election officer to publish and
11 disseminate a voters' pamphlet; and
- 12 (2) Appropriating funds to allow the chief election
13 officer to produce and distribute a voters' pamphlet
14 for each election.

15 SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended
16 by adding a new part to be appropriately designated and to read
17 as follows:

18 "PART . VOTERS' PAMPHLET

19 §11-A Definitions. As used in this part, unless the
20 context requires otherwise:



1 "Ballot issue" means a proposed constitutional amendment,
2 county charter amendment, or initiative or referendum issue
3 listed on a ballot at the next applicable election.

4 **§11-B Voters' pamphlet; content; form.** (a) The chief
5 election officer, with the assistance from the clerk for
6 elections involving county offices and countywide ballot issues,
7 shall be responsible for the voters' pamphlet for each election.

8 (b) The voters' pamphlet shall contain:

9 (1) Information regarding each ballot issue listed on a
10 ballot in accordance with section 11-112;

11 (2) Candidate statements from candidates whose names are
12 listed on a ballot in accordance with section 11-112;

13 (3) Contact information for the campaign spending
14 commission;

15 (4) Contact information for the political parties that are
16 subject to part V of this chapter; and

17 (5) Any information, including voter registration
18 information, voting instructions, and voter education,
19 as deemed necessary by the chief election officer.

20 (c) The chief election officer shall determine the format
21 and layout of the voters' pamphlet; provided that the voters'



1 pamphlet shall include a table of contents. The voters'
2 pamphlet shall be printed in clear, readable type on a size,
3 quality, and weight of paper that best serves voters, as
4 determined by the chief election officer.

5 **§11-C Publication; distribution.** The chief election
6 officer, with the assistance from the clerk for elections
7 involving county offices and countywide ballot issues, shall
8 publish a voters' pamphlet for each election. The chief
9 election officer shall distribute the voters' pamphlet using any
10 means, as determined by the chief election officer, that will
11 best serve the interests of all registered voters and meet
12 federal or state election requirements. The means of
13 distribution shall include but not be limited to:

- 14 (1) Through postal mail;
- 15 (2) At public libraries, polling places, or absentee
16 polling places;
- 17 (3) In braille, large print, or audio recording;
- 18 (4) In a daily or weekly publication of statewide
19 circulation or countywide circulation in the affected
20 county; or
- 21 (5) In electronic form.



1 The chief election officer shall distribute the voters'
2 pamphlets no later than days prior to each election.

3 **§11-D Ballot issue; information.** The voters' pamphlet
4 shall include the following information for each ballot issue:

- 5 (1) The number and title of the ballot issue;
- 6 (2) An explanatory statement prepared by the attorney
7 general for a statewide ballot issue or corporation
8 counsel or county attorney for a countywide ballot
9 issue in accordance with section 11-E;
- 10 (3) A fiscal impact statement prepared by the attorney
11 general for a statewide ballot issue or corporation
12 counsel or county attorney for a countywide ballot
13 issue in accordance with section 11-F;
- 14 (4) The total number of votes cast for and against the
15 ballot issue on the last reading of the ballot issue
16 in the senate and house of representatives for a
17 statewide ballot issue, or county council or charter
18 commission for a countywide ballot issue, as
19 applicable;
- 20 (5) An argument advocating the voters' approval of the
21 ballot issue together with any statement in rebuttal



1 of the opposing argument in accordance with section
2 11-G;

3 (6) An argument advocating the voters' rejection of the
4 ballot issue together with any statement in rebuttal
5 of the opposing argument in accordance with section
6 11-G;

7 (7) The names of the committee members established under
8 section 11-G(b) for each argument or rebuttal
9 statement; and

10 (8) The full text of the ballot issue.

11 **§11-E Ballot issue; explanatory statement.** (a) An
12 explanatory statement shall be prepared by the attorney general
13 for each statewide ballot issue or corporation counsel or county
14 attorney for each countywide ballot issue listed on a ballot in
15 accordance with section 11-112. Explanatory statements shall be
16 written in clear and concise language, and use of legal and
17 technical terms shall be avoided whenever possible. The content
18 and maximum length of these statements shall be prescribed by
19 the chief election officer.

20 (b) The chief election officer shall receive all
21 explanatory statements prepared by the attorney general for



1 statewide ballot issues or corporation counsel or county
2 attorney for countywide ballot issues by a date determined by
3 the chief election officer for each election. The chief
4 election officer may authorize the clerk to receive explanatory
5 statements for countywide ballot issues for each respective
6 county, as applicable; provided that these explanatory
7 statements are received by the chief election officer by the
8 date determined by the chief election officer for each election.

9 **§11-F Ballot issue; fiscal impact statement.** (a) A
10 fiscal impact statement shall be prepared by the attorney
11 general for each statewide ballot issue or corporation counsel
12 or county attorney for each countywide ballot issue listed on a
13 ballot in accordance with section 11-112. The attorney general
14 or corporation counsel or county attorney, as applicable, shall
15 consult with appropriate fiscal state or county agencies in
16 preparing the fiscal impact statements. Fiscal impact
17 statements shall be written in clear and concise language, and
18 use of legal and technical terms shall be avoided whenever
19 possible. Fiscal impact statements may include easily
20 understood graphics. The content and maximum length of these
21 statements shall be prescribed by the chief election officer.



1 (b) The chief election officer shall receive all fiscal
2 impact statements prepared by the attorney general for statewide
3 ballot issues or corporation counsel or county attorney for
4 countywide ballot issues by a date determined by the chief
5 election officer for each election. The chief election officer
6 may authorize the clerk to receive fiscal impact statements for
7 countywide ballot issues for each respective county, as
8 applicable; provided that these fiscal impact statements are
9 received by the chief election officer by the date determined by
10 the chief election officer for each election.

11 **§11-G Ballot issue; argument statements in support or**
12 **opposition; rebuttals; committees.** (a) Committees shall write
13 and submit argument statements advocating the approval or
14 rejection of each statewide or countywide ballot issue and
15 rebuttals of those argument statements. The argument statements
16 shall be written in clear and concise language, and use of legal
17 and technical terms shall be avoided whenever possible. The
18 content and maximum length of these argument statements shall be
19 prescribed by the chief election officer.

20 (b) The chief election officer, in consultation with state
21 and county legislative bodies and clerks, shall appoint the



1 initial two members of each committee. In making these
2 committee appointments, the chief election officer shall
3 consider legislators and stakeholders known to advocate for or
4 oppose the ballot issue. The initial two members may select up
5 to four additional members, and the committee shall elect a
6 chairperson. The committees shall obtain the explanatory and
7 fiscal impact statements prepared in accordance with sections
8 11-E and 11-F, respectively, before preparing their argument
9 statements.

10 (c) After a committee established pursuant to subsection
11 (b) submits its initial argument statement to the chief election
12 officer, the chief election officer shall transmit the statement
13 to the opposite committee. The opposite committee may then
14 prepare a rebuttal statement. Rebuttal statements may not
15 interject new points. All argument and rebuttal statements
16 shall be submitted to the chief election officer by dates
17 determined by the chief election officer for each election.

18 (d) The voters' pamphlet shall only contain argument and
19 rebuttal statements prepared in accordance with this section.
20 Argument and rebuttal statements may contain graphs and charts
21 supported by factual statistical data and pictures or other



1 illustrations; provided that illustrations shall not include
2 cartoons or caricatures.

3 **§11-H Candidate statements.** (a) Candidates whose names
4 are listed on a ballot in accordance with section 11-112 may
5 write and submit a statement and photograph advocating their
6 candidacy. The content and maximum length of the candidate
7 statement shall be prescribed by the chief election officer.

8 (b) A candidate statement shall not contain false or
9 misleading statements about the candidate's opponent. A
10 candidate who believes that the candidate has been defamed or
11 libeled under an opponent's statement may commence an action
12 under section 11-I.

13 (c) All candidate statements shall be submitted to the
14 chief election officer by a date determined by the chief
15 election officer for each election.

16 **§11-I Rejection or dispute of arguments or statements.**

17 (a) In the opinion of the chief election officer, if any
18 argument, rebuttal, or candidate statement submitted pursuant to
19 this part for inclusion in the voters' pamphlet contains obscene
20 matter or matter that is otherwise prohibited by law for
21 distribution through postal, electronic, or audio or visual



1 means, the chief election officer may petition the circuit court
2 of competent jurisdiction for a judicial determination that the
3 argument, rebuttal, or candidate statement may be rejected for
4 publication or edited to delete the matter. The court shall not
5 enter an order unless it concludes that the matter is obscene or
6 otherwise prohibited for distribution.

7 (b) A candidate may petition the circuit court of
8 competent jurisdiction for a judicial determination if the
9 candidate believes an argument, rebuttal, or candidate statement
10 submitted for inclusion in the voters' pamphlet defames the
11 candidate. The court shall not enter an order unless it
12 concludes that the statement is untrue and the petitioner has a
13 very substantial likelihood of prevailing in a defamation
14 action. An action under this subsection shall be filed and
15 served no later than days after the deadline for the
16 submission of the argument, rebuttal, or candidate statement to
17 the chief election officer. If the chief election officer
18 notifies a person named or identified in an argument, rebuttal,
19 or candidate statement of the contents of the statement within
20 days after the deadline for submission to the chief
21 election officer, the State shall not be liable for damages



1 resulting from the publication of the argument, rebuttal, or
2 candidate statement unless the chief election officer publishes
3 the statement in violation of the order entered under this
4 subsection. Nothing in this subsection shall create a duty on
5 the part of the chief election officer to identify, locate, or
6 notify the person.

7 (c) Parties to a dispute under this section may agree to
8 resolve the dispute by rephrasing the argument, rebuttal, or
9 candidate statement, even if the deadline for submission to the
10 chief election officer has lapsed, unless the chief election
11 officer determines that the process of publication is too far
12 advanced to permit the change. The chief election officer shall
13 promptly provide any revision to any committee entitled to
14 submit a rebuttal statement. If that committee has not yet
15 submitted its rebuttal statement, its deadline to submit a
16 rebuttal statement is extended by days. If it has
17 submitted a rebuttal statement, the committee may revise the
18 rebuttal statement to address the change within days of
19 the filing of the revised argument with the chief election
20 officer.



1 (d) In any action under this section, the committee or
2 candidate shall be named as a defendant and may be served with
3 process by certified mail directed to the address contained in
4 the chief election officer's records for that party. The chief
5 election officer shall be a nominal party to an action brought
6 under subsection (b) solely for the purpose of determining the
7 content of the voters' pamphlet. The circuit court shall give
8 these actions priority on its calendar.

9 **§11-J Deceptively similar campaign materials prohibited.**

10 (a) No person or entity may publish or distribute any campaign
11 material that is deceptively similar in design or appearance to
12 a voters' pamphlet that is published by the chief election
13 officer.

14 (b) The chief election officer shall take reasonable
15 measures to prevent or stop violations of this section,
16 including petitioning the court for a temporary restraining
17 order or other appropriate injunctive relief.

18 **§11-K Public inspection; arguments and statements.** (a)
19 An argument, rebuttal, or candidate statement submitted to the
20 chief election officer for publication in the voters' pamphlet
21 is not available for public inspection or copying until:



- 1 (1) In the case of candidate statements:
- 2 (A) All statements by all candidates who have filed
- 3 for a particular office have been received,
- 4 except those who informed the chief election
- 5 officer that they will not submit statements; or
- 6 (B) The deadline for submission has elapsed;
- 7 (2) In the case of argument statements supporting or
- 8 opposing a ballot issue:
- 9 (A) The argument statements on both sides have been
- 10 received, unless a committee was not appointed
- 11 for one side; or
- 12 (B) The deadline for submission of argument
- 13 statements has elapsed; and
- 14 (3) In the case of rebuttal statements:
- 15 (A) The rebuttal statements on both sides have been
- 16 received, unless a committee was not appointed
- 17 for one side; or
- 18 (B) The deadline for submission of rebuttal
- 19 statements has elapsed.



1 (b) Nothing in this section shall prohibit the chief
2 election officer from releasing information in accordance with
3 chapter 92F.

4 **§11-L Rules.** The chief election officer shall adopt rules
5 in accordance with chapter 91 to implement this part."

6 SECTION 3. Section 11-2, Hawaii Revised Statutes, is
7 amended by amending subsection (d) to read as follows:

8 "(d) The chief election officer shall be responsible for
9 public education with respect to voter registration and
10 information[-] and the publication and dissemination of a
11 voters' pamphlet in accordance with part _____."

12 SECTION 4. Section 11-184, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§11-184 Election expenses and responsibilities in**
15 **combined state and county elections.** Election expenses in
16 elections involving both state and county offices shall be
17 shared as set forth below:

18 (1) The State shall pay and be responsible for:

19 (A) Precinct officials;

20 (B) Instruction of precinct officials when initiated
21 or approved by the chief election officer;



- 1 (C) Boards of registration;
- 2 (D) Polling place costs other than supplies:
- 3 installation rentals, ballot boxes, voting
- 4 booths, custodians, telephones, and maintenance;
- 5 (E) Other equipment such as ballot transport
- 6 containers;
- 7 (F) Temporary election employees hired to do strictly
- 8 state work; [~~and~~]
- 9 (G) Compilation, printing, and dissemination costs
- 10 associated with a voters' pamphlet pursuant to
- 11 part _____ ; and
- 12 [~~(G)~~] (H) Extraordinary voter registration and voter
- 13 education costs when approved by the chief
- 14 election officer.
- 15 (2) The county shall pay and be responsible for:
- 16 (A) Normal voter registration, voters list
- 17 maintenance, and all printing connected with
- 18 voter registration, including printing of the
- 19 voters list;
- 20 (B) Temporary election employees hired to do strictly
- 21 county work;



1 (C) Maintenance of existing voting machines,
2 including parts, freight, storage, programming,
3 and personnel;

4 (D) Maintenance and storage of voting devices and
5 other equipment; and

6 (E) Employees assigned to conduct absentee polling
7 place functions.

8 (3) The remaining election expenses shall be divided in
9 half between the State and the counties. Each county
10 will pay a proration of expenses as a proportion of
11 the registered voters at the time of the general
12 election. These expenses shall include but not be
13 limited to:

14 (A) Polling place supplies;

15 (B) All printing, including ballots, but excluding
16 printing connected with voter registration;

17 (C) Temporary election employees not including voting
18 machine programmers doing work for both the State
19 and county;

20 (D) Ballot preparation and packing; and



1 (E) All other costs for which the State or county are
2 not specifically responsible relating to the
3 operation of voting machines, electronic voting
4 systems, and other voting systems except paper
5 ballots to include but not be limited to real
6 property rentals, equipment rentals, personnel,
7 mileage, telephones, supplies, publicity,
8 computer programming, and freight.

9 The responsibility for [~~the above~~] these
10 functions shall be determined by the chief election
11 officer where the responsibility for [~~such~~] these
12 functions has not been assigned by the legislature.

13 Any future expenses not presently incurred under any voting
14 system now in use or to be used shall be assigned to
15 [~~paragraphs~~] the expenses under paragraph (1), (2), or (3)
16 [~~above~~] by the chief election officer upon agreement with the
17 clerks or by the legislature."

18 SECTION 5. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so
20 much thereof as may be necessary for fiscal year 2017-2018 and
21 the same sum or so much thereof as may be necessary for fiscal



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1 year 2018-2019 for the chief election officer to publish and
2 disseminate a voters' pamphlet for each election starting with
3 the 2018 primary election.

4 The sums appropriated shall be expended by the office of
5 elections for the purposes of this Act.

6 SECTION 6. If any provision of this Act, or the
7 application thereof to any person or circumstance, is held
8 invalid, the invalidity does not affect other provisions or
9 applications of the Act that can be given effect without the
10 invalid provision or application, and to this end the provisions
11 of this Act are severable.

12 SECTION 7. In codifying the new sections added by section
13 2 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect on July 1, 2017.

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S.B. NO. 878

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Report Title:

Elections; Voters' Pamphlet; Office of Elections; Chief Election Officer; Appropriation

Description:

Requires the chief election officer, with the assistance from the county clerks for elections involving county offices and countywide ballot issues, to publish and disseminate a voters' pamphlet. Appropriates moneys to allow the chief election officer to produce and distribute a voters' pamphlet for each election.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

