

JAN 20 2017

A BILL FOR AN ACT

RELATING TO ELECTIONS.

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

1 SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended
2 by adding two new sections to part VII to be appropriately
3 designated and to read as follows:

4 "§11-A Elections by mail required. (a) Beginning with
5 the 2018 primary election, counties with a population of less
6 than 100,000 shall implement elections by mail.

7 (b) Beginning with the 2020 primary election, counties
8 with a population of less than 500,000 shall implement elections
9 by mail.

10 (c) Beginning with the 2022 primary election, all
11 elections shall be conducted by mail in accordance with this
12 title.

13 (d) Prior to the 2022 primary election, any election not
14 already required by this section to be conducted by mail may be
15 conducted by mail, in whole or in part, as determined by the
16 chief election officer for state or federal elections or the
17 county clerk for county elections. To the extent an election is



1 conducted only in part by mail, any proclamation shall clearly
2 state the precincts that will continue to have polling places
3 and those precincts that will not have polling places.

4 (e) All voters in an election by mail precinct or county
5 shall be considered a permanent absentee voter under section 15-
6 4.

7 (f) Absentee polling places under section 15-7 shall
8 continue to operate in an election by mail. At least one
9 absentee polling place in each county shall be open on election
10 day and may be established at other sites as designated by the
11 county clerk. Voting in any other manner authorized by law for
12 absentee voters shall be permitted for voters in an election by
13 mail precinct or county.

14 (g) All active registered voters in an election by mail
15 precinct or county shall be mailed a ballot. Inactive voters
16 shall have the ability to update their registration to become an
17 active registered voter. Active registered voters with a
18 questionable address notation in their record shall be mailed a
19 ballot but shall be required to complete a voter registration
20 form or a form prescribed by the chief election officer
21 affirming that the voter claims the address listed on the



1 register as the voter's legal residence, in conjunction with the
2 return of the ballot. All active registered voters shall be
3 permitted to vote at an absentee walk site, in lieu of voting by
4 mail, so long as their mail ballot has not already been received
5 and deemed cast by election officials.

6 (h) Unless the context clearly indicates otherwise,
7 chapter 15, regarding absentee voting, shall be equally
8 applicable to an election by mail, including the following:

- 9 (1) Request for ballot;
10 (2) Delivery of ballots;
11 (3) Return envelope, ballot envelope, instructions;
12 (4) Postage;
13 (5) Absentee polling place;
14 (6) Return and receipt of ballots; and
15 (7) Counting of ballots.

16 (i) When used in this section, "election by mail" has the
17 same meaning as in section 15-1.

18 §11-B Election expenses; responsibilities for elections by
19 mail. (a) Election expenses in an election by mail shall be
20 shared as follows:



- 1 (1) In regularly scheduled elections by mail involving the
2 primary election and general election, expenses
3 unrelated to voter registration shall be divided in
4 half between the State and the counties. Each county
5 shall pay a proration of expenses as a proportion of
6 the registered voters associated with the prior
7 general election. The counties shall separately be
8 responsible for expenses associated with voter
9 registration. All counties shall be subject to these
10 provisions, including those that may not in a
11 particular year have county candidates or county
12 questions on the primary election or general election
13 ballot;
- 14 (2) In non-regularly scheduled elections by mail not
15 otherwise covered by paragraph (1) and involving both
16 state and county elections, or federal and county
17 elections, expenses unrelated to voter registration
18 shall be divided in half between the State and the
19 counties. Each county shall pay a proration of
20 expenses as a proportion of the registered voters
21 associated with the prior general election. The



1 counties shall separately be responsible for expenses
2 associated with voter registration;

3 (3) In non-regularly scheduled elections by mail not
4 otherwise covered by subsection (b)(1) and involving
5 solely county elections, all expenses shall be borne
6 by the county and paid out of appropriations made by
7 the council; and

8 (4) In non-regularly scheduled elections by mail not
9 otherwise covered by subsection (b)(1) and involving
10 only state or federal elections, all expenses
11 unrelated to voter registration shall be borne by the
12 State and paid out of appropriations made by the
13 legislature.

14 (b) Election responsibilities in elections by mail shall
15 be shared and set forth as follows:

16 (1) In regularly scheduled elections by mail involving the
17 primary election and general election, the counties
18 shall be responsible for voter registration, absentee
19 voting, absentee polling places, and the mailing and
20 receipt of ballots, while the State shall be
21 responsible for the printing and counting of ballots.



1 The State and counties may mutually agree to the
2 delegation of these responsibilities to each other.
3 Any responsibilities not established above may be
4 assigned to the counties or the State by the chief
5 election officer. All counties shall be subject to
6 these provisions, including those that may not in a
7 particular year have county candidates or county
8 questions on the primary election or general election
9 ballot;

10 (2) In non-regularly scheduled elections by mail not
11 otherwise covered by paragraph (1) and involving both
12 state and county elections, or federal and county
13 offices, the counties shall be responsible for voter
14 registration, absentee voting, absentee polling
15 places, and the mailing and receipt of ballots, while
16 the State shall be responsible for the printing and
17 counting of ballots. The State and counties may
18 mutually agree to the delegation of these
19 responsibilities to each other. Any responsibilities
20 not established above may be assigned to the counties
21 or the State by the chief election officer;



1 (3) In non-regularly scheduled elections by mail not
2 otherwise covered by paragraph (1) and involving
3 solely county elections, the county will be
4 responsible for the elections; and

5 (4) In non-regularly scheduled elections by mail not
6 otherwise covered by paragraph (1) and involving only
7 state or federal elections, the counties shall be
8 responsible for voter registration and absentee
9 voting, and absentee polling places, while the State
10 shall be responsible for the printing, mailing and
11 receipt, and counting of ballots. Any
12 responsibilities not established above shall be
13 assigned to the counties or the State by the chief
14 election officer.

15 (c) To the extent an election is conducted by mail for
16 certain precincts or counties and utilizes election day polling
17 places for other precincts or counties, the chief election
18 officer shall determine state and county responsibilities and
19 expenses, consistent with this section and section 11-184."

20 SECTION 2. Section 11-15.2, Hawaii Revised Statutes, is
21 amended by amending subsection (c) to read as follows:



1 "(c) The registration clerk shall process applications for
2 any person not registered to vote who submits a signed affidavit
3 in accordance with section 11-15, which shall include a sworn
4 affirmation:

5 (1) Of the person's qualification to vote;

6 (2) Acknowledging that the person has not voted and will
7 not vote at any other polling place for that election
8 and has not cast and will not cast any absentee ballot
9 pursuant to chapter 15 for that election; and

10 (3) Acknowledging that providing false information [~~may~~
11 ~~result in~~] is a class C felony [~~, punishable by a fine~~
12 ~~not exceeding \$1,000 or imprisonment not exceeding~~
13 ~~five years, or both]~~."

14 SECTION 3. Section 15-1, Hawaii Revised Statutes, is
15 amended by adding two new definitions to be appropriately
16 inserted and to read as follows:

17 "Absentee voting" means voting in any manner authorized
18 under this chapter, including by mail, in-person at an absentee
19 polling place prior to the day of the election or on the day of
20 the election, or by electronic transmission.



1 "Election by mail" means an election in which all voters in
2 a precinct, county, or the State, as applicable, are deemed
3 permanent absentee voters under section 15-4, and election day
4 polling places are no longer operated."

5 SECTION 4. Section 15-4, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending subsection (h) to read:

8 "(h) Except as provided in subsection (c) [~~7~~] or if the
9 voter resides in an election by mail precinct or county, a
10 voter's permanent absentee voter status shall be terminated if
11 any of the following conditions apply:

12 (1) The voter requests in writing that [~~such~~] the status
13 be terminated;

14 (2) The voter dies, loses voting rights, registers to vote
15 in another jurisdiction, or is otherwise disqualified
16 from voting;

17 (3) The voter's absentee ballot, voter notification
18 postcard, or any other election mail is returned to
19 the clerk as undeliverable for any reason [~~7~~], or
20 change of address information supplied by the postal
21 service through its licensees indicates that the



1 registrant has moved or that mail cannot be delivered
2 to the address provided; or

3 (4) The voter does not return a voter ballot by 6:00 p.m.
4 on election day in both the primary and general
5 election of an election year."

6 2. By amending subsection (i) to read:

7 "(i) If a voter's permanent absentee voter status, in a
8 non-vote by mail county or precinct, has been terminated due to
9 one or more of the conditions specified in subsection (h), the
10 voter shall be responsible for again requesting permanent
11 absentee status as specified in subsection (e). A permanent
12 absentee voter that resides in an election by mail county or
13 precinct will cease to be a permanent absentee voter if the
14 voter requests to cancel the voter's voter registration, dies,
15 loses voting rights, registers to vote in another jurisdiction,
16 or is otherwise disqualified from voting."

17 SECTION 5. Section 15-5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§15-5 Delivery of ballots.** (a) Immediately upon receipt
20 of a request for absentee ballot within the time limit specified
21 in section 15-4, the clerk shall examine the records to



1 ascertain whether the voter is lawfully entitled to vote as
2 requested. If the clerk ascertains that the voter is lawfully
3 entitled to vote as requested, no earlier than [~~thirty~~] forty-
4 five days before the election, unless the forty-fifth day is a
5 weekend or holiday, then consistent with section 15D-9, no
6 earlier than the business day preceding the forty-fifth day, the
7 clerk shall mail in a forwarding envelope, or deliver in person
8 if the voter appears at the office of the clerk, an official
9 ballot and other materials prescribed in section 15-6, except
10 that an incapacitated voter may send a representative to obtain
11 the voter's ballots pursuant to the rules adopted by the chief
12 election officer; provided that official ballots and other
13 materials prescribed in section 15-6 shall be mailed or
14 delivered:

- 15 (1) To uniform military and overseas voters pursuant to
16 section 15D-9; and
17 (2) No later than twenty-four hours after receipt of the
18 request for absentee ballot for requests received on
19 the last day specified in section 15-4.

20 (b) If absentee ballots or permanent absentee ballots
21 requested under section 15-4 are not received by a voter within



1 five days of an election, if a voter requires a replacement
2 ballot within five days of an election, or if a voter would
3 otherwise not be able to return a properly issued ballot by the
4 close of polls, then a voter may request that absentee ballots
5 be forwarded by electronic transmission. Upon receipt of such a
6 request and confirmation that proper application was made, the
7 clerk may transmit appropriate ballots, together with a form
8 requiring the affirmations and information required by section
9 15-6, and a form containing a waiver of the right to secrecy, as
10 provided by section 11-137. The voter may return the voted
11 ballots and executed forms by electronic transmission or mail;
12 provided that they are received by the issuing clerk no later
13 than the close of polls on election day. Upon receipt, the
14 clerk shall verify compliance with the requirements of section
15 15-9(c) and prepare the ballots for counting pursuant to section
16 15-10; provided that if the voter returns multiple voted
17 absentee ballots for the same election, the clerk shall, for
18 purposes of counting ballots, prepare only the first absentee
19 ballot returned that is not spoiled."

20 SECTION 6. Section 15-7, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By amending subsection (b) to read:

2 " (b) The absentee polling places shall be open no later
3 than ten working days before election day, and all Saturdays
4 falling within that time period, or as soon thereafter as
5 ballots are available [~~provided that all absentee polling~~
6 ~~places shall be open on the same date statewide, as determined~~
7 ~~by the chief election officer~~]. The dates and hours of
8 operation of the absentee polling places shall be determined by
9 the county clerk."

10 2. By amending subsection (e) to read:

11 "(e) The registration clerk shall process applications for
12 any person not registered to vote who submits a signed affidavit
13 in accordance with section 11-15, which shall include a sworn
14 affirmation:

15 (1) Of the person's qualification to vote;

16 (2) Acknowledging that the person has not voted and will
17 not vote at any other polling place for that election
18 and has not cast and will not cast any absentee ballot
19 pursuant to chapter 15 for that election; and

20 (3) Acknowledging that providing false information [~~may~~
21 ~~result in~~] is a class C felony [~~punishable by a fine~~



1 ~~not exceeding \$1,000 or imprisonment not exceeding~~
2 ~~five years, or both]."~~

3 SECTION 7. Section 15-8, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§15-8 Absentee [ballot box.] polling place operations.

6 An absentee [~~ballot box or boxes shall be provided in the~~
7 absentee] polling place [~~for the purpose of depositing the~~
8 ~~return envelopes and the ballot envelopes of those who vote in~~
9 ~~person at the absentee]~~ shall be operated in substantially the
10 same manner as an election day polling place[~~. The ballot box~~
11 ~~shall be secured in accordance with rules promulgated by the~~
12 ~~chief election officer.~~

13 ~~Tampering with the ballot box or opening it before the time~~
14 ~~prescribed in section 15-9 shall be an election offense under~~
15 ~~section 19-6.]~~ , including the handling and counting of ballots,
16 under chapters 11 and 16, unless the context indicates
17 otherwise. Sections 15-9 and 15-10 shall not apply to absentee
18 ballots voted at an absentee polling place."

19 SECTION 8. Section 15-9, Hawaii Revised Statutes, is
20 amended by amending subsections (b), (c), (d), and (e) to read
21 as follows:



1 "(b) Upon receipt of the return envelope from any person
2 voting under this chapter, the clerk may prepare the ballots for
3 counting pursuant to this section and section 15-10. As
4 provided in section 15-6, the voter shall be provided a ballot,
5 a ballot envelope to seal the ballot in, and a return ballot
6 envelope to seal the ballot envelope in. The preparation of the
7 ballots may include the opening of the return envelope and the
8 validating of the signature on the return envelope, but shall
9 not include the opening of the ballot envelope within the return
10 envelope.

11 (c) [~~Prior to~~] Unless stated otherwise by election
12 officials, the opening [the] of return [and ballot] envelopes
13 and [counting the ballots, the] validation of signatures may
14 begin the day immediately after absentee ballots are transmitted
15 to voters and continue through the day of the election.
16 Official observers, designated in section 16-45, may elect to be
17 present at any time during this time frame. The return
18 envelopes shall be checked for the following:

19 (1) Signature on the affirmation statement;



1 (2) Whether the signature corresponds with the absentee
2 request or register as prescribed in the rules adopted
3 by the chief election officer; and

4 (3) Whether the person is a registered voter and has
5 complied with the requirements of sections 11-15 and
6 11-16.

7 (d) If any of the above requirements is not met or if the
8 return or ballot envelope appears to be tampered with, other
9 than by the return envelope having been opened by election
10 officials, the [clerk or the absentee ballot team official]
11 election officials shall mark across the face of the envelope
12 "invalid" and it shall be kept in the custody of the clerk and
13 disposed of as prescribed for ballots in section 11-154.
14 However, the determination that the requirements of subsection
15 (c) have not been met shall not be made until the close of polls
16 on election day. Specifically, to the extent the county clerk
17 receives the ballot at least five business days prior to
18 election day, the county clerk shall make a reasonable attempt
19 to notify the voter by first class letter, telephone, electronic
20 mail, or similar means to provide the voter a procedure to
21 correct the deficiency by the close of polls on election day.



1 The county clerk may similarly attempt to notify a voter if the
2 ballot is received less than five business days prior to
3 election day.

4 (e) If an absentee polling place is established at the
5 clerk's office or any other location prior to or on election
6 day, [~~the officials of the absentee polling place shall check~~
7 ~~the return or ballot envelopes for the above requirements prior~~
8 ~~to depositing them in the correct absentee ballot box.~~] this
9 section shall not be applicable to any ballots cast at that
10 location."

11 SECTION 9. Section 15-10, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§15-10 Counting of absentee ballots. (a) If the
14 requirements in section 15-9 are met, the [~~return and~~] ballot
15 envelopes may be opened and the ballot counted as prescribed by
16 law for the voting system in use.

17 [~~In those absentee polling places using paper ballots,~~
18 ~~counting of the absentee ballots may begin after noon of~~
19 ~~election day.~~

20 ~~In those absentee polling places using the electronic~~
21 ~~voting system, the absentee ballots shall be transported to the~~



1 ~~counting center in a manner and by a schedule as provided in the~~
2 ~~rules promulgated by the chief election officer. In no case,~~
3 ~~however, shall the results of the absentee count become publicly~~
4 ~~known before the polls have officially closed.~~

5 ~~Any person violating this section shall be guilty of an~~
6 ~~election offense under section 19-6.]~~

7 (b) The counting of absentee ballots may begin no earlier
8 than the forty-fifth day prior to an election. The counting of
9 absentee ballots shall generally involve, depending on the
10 voting system utilized, the following stages:

11 (1) Removing the ballot envelope or ballot, if the voter
12 did not utilize the ballot envelope, from the return
13 envelope;

14 (2) Opening the ballot envelope;

15 (3) Duplicating any damaged ballot so it may be counted by
16 the vote counting equipment; and

17 (4) Scanning or otherwise allowing the ballot to be
18 counted by the vote counting equipment.

19 In the case of absentee polling places, these stages shall
20 not apply, to the extent voters directly utilize an electronic
21 voting system or voting machine. Similarly, these stages shall



1 not apply to voters utilizing fax, electronic mail, electronic
2 transmission, or any other means authorized by law.

3 (c) Official observers, as provided for in section 16-45,
4 shall be given reasonable notice of the times and places where
5 the ballots will be counted. Official observers may elect to be
6 present at any time during this timeframe.

7 (d) No person present during the counting of ballots shall
8 disclose any information to the public concerning how voters
9 voted on a particular contest or question."

10 SECTION 10. Section 16-43, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§16-43 Ballot handling. In every case where the precinct
13 ballots are handled by election officials or election employees,
14 from the time the ballots are delivered to the several precincts
15 to the time they are returned to the chief election officer or
16 clerk in county elections for disposition upon completion of the
17 tabulation, they [~~shall~~] may be [~~handled in the presence of not~~
18 ~~less than two officials~~] observed by an official assigned in
19 accordance with sections 11-71 and 11-72 or section 16-45. This
20 section shall not apply to absentee ballots handled in
21 accordance with sections 15-9 and 15-10."



1 SECTION 11. Section 16-46, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§16-46 Counting defective ballots. Counting center
4 employees [~~in the presence of at least two official observers~~]
5 shall prepare a new ballot to replace each defective ballot.
6 The defective ballots shall be segregated and the replacement
7 ballots counted pursuant to rules promulgated by the chief
8 election officer."

9 SECTION 12. Section 16-47, Hawaii Revised Statutes, is
10 repealed.

11 [~~"[§16-47] Preparation of absentee ballots. Counting~~
12 ~~center employees in the presence of at least two official~~
13 ~~observers shall prepare absentee ballots for counting by~~
14 ~~automatic tabulating equipment in a manner that shall accurately~~
15 ~~reflect the votes cast by the absentee voters."~~]

16 SECTION 13. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.



S.B. NO. 459

1 SECTION 14. This Act shall take effect upon approval;
2 provided that section 2 shall take effect on January 1, 2018.

3

INTRODUCED BY: *M. N. M.*
By Request



S.B. NO. 459

Report Title:

Office of Elections Package; Elections; Elections by Mail;
Absentee Voting; Registration

Description:

Requires elections by mail, beginning first with certain counties in the 2018 primary election, until the 2022 primary elections, when all elections are to be by mail. Clarifies the election laws to provide for elections by mail, including defining "absentee voting" and "election by mail", and stating how absentee ballots are to be prepared for counting and how and when the ballots are counted.

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

