

JAN 18 2019

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# 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 forty-three states  
2 and the District of Colombia permit a losing candidate, voter,  
3 group of voters, or other concerned parties to petition for a  
4 recount. In addition, twenty states and the District of  
5 Colombia require an automatic recount if the margin of victory  
6 between the top two candidates is within certain parameters.  
7 The legislature further finds that Hawaii is one of the few  
8 states that does not allow anyone to petition for a recount.  
9 Existing law requires a contest of the results be done through  
10 the court system pursuant to article II, section 10 of the  
11 Hawaii State Constitution and part XI of chapter 11, Hawaii  
12 Revised Statutes. A recount can only be done if a losing  
13 candidate files a complaint with the Hawaii supreme court  
14 alleging overages, underages, provable fraud, or any other  
15 reason for a difference in the election results, and the court  
16 grants a recount.



1           The purpose of this Act is to strengthen public confidence  
2 in elections by automatically requiring a recount when the  
3 margin of victory between the apparently qualified candidate and  
4 the apparently losing candidate and the margin of victory  
5 between a vote in the affirmative and a vote in the negative for  
6 ballot measures is equal to or less than one-half of one per  
7 cent. This Act will not disrupt the vast majority of elections,  
8 as it is rare for an election in Hawaii to result in a one-half  
9 of one per cent margin. Had the provisions of this Act been in  
10 place beginning in 2010, over the previous five elections, only  
11 one state race and five county races would have required a  
12 recount due to a narrow margin of victory.

13           SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended  
14 by adding two new sections to part X to be appropriately  
15 designated and to read as follows:

16           "§11-A Mandatory recount of votes; election contests. (a)  
17 The chief election officer, or the clerk in the case of county  
18 elections, shall conduct a recount of all votes cast for any  
19 office at any election if the official canvass of all of the  
20 returns for that office reveals that the difference in the  
21 number of votes cast for a candidate apparently qualified for



1 the general election ballot or elected to office and the number  
2 of votes cast for the closest apparently defeated opponent is  
3 equal to or less than one-half of one per cent of the total  
4 number of votes cast for the contest.

5 (b) No cost of a mandatory recount under this section may  
6 be charged to any candidate.

7 (c) All mandatory recounts of votes under this section  
8 shall be completed and the results publicly announced no later  
9 than the ninth day following the election.

10 (d) The chief election officer shall adopt rules pursuant  
11 to chapter 91 for the mandatory recount of votes under this  
12 section; provided that the rules shall:

13 (1) Authorize candidates affected by the recount, or their  
14 designated representatives, to attend and witness the  
15 recount; and

16 (2) Require the notification of the parties described in  
17 paragraph (1) of the time and place of the recount no  
18 later than one day prior to the date of the recount.

19 (e) This section shall apply to votes counted pursuant to  
20 section 11-151.



1       §11-B Mandatory recount of votes; ballot measures. (a)

2       The chief election officer, or the clerk in the case of county  
3       ballot measures, shall conduct a recount of all votes cast for  
4       any ballot measure concerning proposed state constitutional  
5       amendments, proposed county charter amendments, or proposed  
6       initiative or referendum issues if the official canvass of all  
7       of the returns for a ballot measure concerning proposed state  
8       constitutional amendments, proposed county charter amendments,  
9       or proposed initiative or referendum issues reveals that the  
10       difference in the number of votes cast for a vote in the  
11       affirmative for the ballot measure and the number of votes cast  
12       for a vote in the negative for the ballot measure is equal to or  
13       less than one-half of one per cent of the total number of votes  
14       cast for the ballot measure.

15       (b) All mandatory recounts of votes under this section  
16       shall be completed and the results publicly announced no later  
17       than the ninth day following the election.

18       (c) The chief election officer shall adopt rules pursuant  
19       to chapter 91 for the mandatory recount of votes under this  
20       section.



1        (d) This section shall apply to votes counted pursuant to  
2 section 11-151."

3        SECTION 3. Section 11-155, Hawaii Revised Statutes, is  
4 amended to read as follows:

5        "§11-155 Certification of results of election. On receipt  
6 of certified tabulations from the election officials concerned,  
7 the chief election officer or county clerk in county elections  
8 shall compile, certify, and release the election results after  
9 the expiration of the time for bringing an election contest.

10 The certification shall be based on a comparison and  
11 reconciliation of the following:

- 12        (1) The results of the canvass of ballots conducted  
13                pursuant to chapter 16;
- 14        (2) The audit of pollbooks (and related record books) and  
15                resultant overage and underage report;
- 16        (3) The audit results of the manual audit team;
- 17        (4) The results of the absentee ballot reconciliation  
18                report compiled by the clerks; [~~and~~]
- 19        (5) The results of any mandatory recount of votes  
20 conducted pursuant to sections 11-A and 11-B; and



1       ~~[(5)]~~ (6) All logs, tally sheets, and other documents  
2                   generated during the election and in the canvass of  
3                   the election results.

4 A certificate of election or a certificate of results declaring  
5 the results of the election as of election day shall be issued  
6 pursuant to section 11-156; provided that in the event of an  
7 overage or underage, a list of all precincts in which an overage  
8 or underage occurred shall be attached to the certificate. The  
9 number of candidates to be elected receiving the highest number  
10 of votes in any election district shall be declared to be  
11 elected. Unless otherwise provided, the term of office shall  
12 begin or end as of the close of polls on election day. The  
13 position on the question receiving the appropriate majority of  
14 the votes cast shall be reflected in a certificate of results  
15 issued pursuant to section 11-156."

16       SECTION 4. Section 11-173.5, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18       "(a) In primary and special primary election contests, and  
19 county election contests held concurrently with a regularly  
20 scheduled primary or special primary election, the complaint  
21 shall be filed in the office of the clerk of the supreme court



1 not later than 4:30 p.m. on the sixth day after a primary or  
2 special primary election, or county election contests held  
3 concurrently with a regularly scheduled primary or special  
4 primary election, and shall be accompanied by a deposit for  
5 costs of court as established by rules of the supreme court[-];  
6 provided that a complaint pertaining to votes subject to a  
7 mandatory recount pursuant to section 11-A shall be filed no  
8 later than 4:30 p.m. on the thirteenth calendar day following  
9 the election or the third calendar day following a recount,  
10 whichever occurs first. The clerk shall issue to the defendants  
11 named in the complaint a summons to appear before the supreme  
12 court not later than 4:30 p.m. on the fifth day after service  
13 [~~thereof-~~] of summons."

14 SECTION 5. In codifying the new sections added by section  
15 2 of this Act, the revisor of statutes shall substitute  
16 appropriate section numbers for the letters used in designating  
17 the new sections in this Act.

18 SECTION 6. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

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# S.B. NO. 1059

1 SECTION 7. This Act shall take effect on July 1, 2019.

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INTRODUCED BY:

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# S.B. NO. 1059

**Report Title:**

Elections; Mandatory Recount of Votes; Margin of Victory; Ballot Measures

**Description:**

Requires an automatic recount of election votes when the margin of victory for election contests and ballot measures is equal to or less than one-half of one per cent of the votes cast.

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

