

JAN 21 2022

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 elections will be held, and how voters may cast
4 ballots. Each state determines the information that will be
5 provided and how the information will be distributed. Many
6 states provide sample ballots that are posted in polling places,
7 published in newspapers, printed and distributed by request, or
8 printed and mailed to each household or registered voter. In
9 Hawaii, the chief election officer or county clerk, in the case
10 of a county election, is required to have printed informational
11 posters with facsimile ballots that depict the official ballots
12 that will be used in the election.

13 The legislature further finds that other states publish and
14 distribute voter pamphlets to registered voters. Voter
15 pamphlets may include candidate information, judicial
16 performance reviews, descriptions of elected offices, and
17 background information about constitutional amendments or ballot



1 measures. The purpose of these pamphlets is to inform voters
2 about applicable ballot measures, including opposing sides of
3 ballot measures, and candidates seeking office, including
4 candidate positions on issues that affect voters.

5 Accordingly, the purpose of this Act is to increase the
6 amount of information provided to registered voters in Hawaii
7 by:

- 8 (1) Requiring the chief election officer to publish voter
9 pamphlets on the internet;
- 10 (2) Requiring the chief election officer to disseminate
11 postcards notifying voters of the online pamphlet's
12 website address; and
- 13 (3) Appropriating moneys to allow the chief election
14 officer to publish an online voter pamphlet and
15 distribute the informational postcards for each
16 election.

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



1 **"PART . ONLINE VOTER PAMPHLET**

2 **§11-A Definitions.** As used in this part, unless the
3 context requires otherwise, "ballot issue" means a proposed
4 constitutional amendment, county charter amendment, or
5 initiative or referendum issue listed on an election ballot.

6 **§11-B Online voter pamphlet; content; form.** (a) The
7 chief election officer, with assistance from the clerk for
8 elections involving county offices and countywide ballot issues,
9 shall be responsible for publication of an online voter pamphlet
10 for each election.

11 (b) The online voter pamphlet shall contain:

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

14 (2) Statements from candidates who are listed on a ballot
15 in accordance with section 11-112;

16 (3) Contact information for the campaign spending
17 commission;

18 (4) Contact information for political parties that are
19 subject to part V of this chapter; and



1 (5) Any information deemed necessary by the chief election
2 officer, including voter registration information,
3 voting instructions, and voter education.

4 (c) The chief election officer shall determine the format
5 and layout of the online voter pamphlet.

6 (d) The online voter pamphlet shall be posted on the
7 public website of the office of elections and links to the
8 online voter pamphlet shall be posted in a conspicuous location
9 on the office of elections website homepage.

10 **§11-C Online voter pamphlet postcards; publication;**

11 **distribution.** (a) The chief election officer, with assistance
12 from the clerk for elections involving county offices and
13 countywide ballot issues, shall publish and distribute a
14 postcard containing the website address of the online voter
15 pamphlet for each election.

16 (b) The chief election officer shall distribute the
17 postcards using any means that the chief election officer deems
18 necessary to best serve the interests of all registered voters
19 and satisfy any federal or state election requirements.

20 (c) The means of distribution of the postcards shall
21 include but not be limited to:



- 1 (1) Through postal service mail;
- 2 (2) At public libraries, polling places, or absentee
- 3 polling places;
- 4 (3) In a daily or weekly publication of statewide
- 5 circulation, or countywide circulation in the affected
- 6 county; or
- 7 (4) In electronic form.

8 (d) The chief election officer may publish the postcards
9 in braille, large print, or audio recording.

10 (e) The chief election officer shall attempt to distribute
11 the postcards in conjunction with any other mailers that the
12 office of elections sends to eligible voters; provided that the
13 chief election officer shall distribute the postcards no later
14 than days prior to each election.

15 **§11-D Ballot issue; information.** The online voter
16 pamphlet shall include the following information for each ballot
17 issue:

- 18 (1) The number and title of the ballot issue;
- 19 (2) An explanatory statement prepared by the attorney
- 20 general for a statewide ballot issue, or corporation



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



1 submitting the argument statements and rebuttals
2 pursuant to section 11-G(b); and

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

4 **§11-E Ballot issue; explanatory statement.** (a) An
5 explanatory statement shall be prepared by the attorney general
6 for each statewide ballot issue, or corporation counsel or
7 county attorney for each countywide ballot issue, listed on a
8 ballot in accordance with section 11-112. The attorney general,
9 corporation counsel, or county attorney shall write the
10 explanatory statement in clear and concise language and avoid
11 the use of legal and technical terms whenever possible. The
12 chief election officer shall prescribe the content and maximum
13 length of these statements.

14 (b) For each election, the chief election officer shall
15 determine the date by which the chief election officer shall
16 receive all explanatory statements prepared by the attorney
17 general for statewide ballot issues, or corporation counsel or
18 county attorney for countywide ballot issues. The chief
19 election officer may authorize the clerk to receive explanatory
20 statements for countywide ballot issues for each respective
21 county, as applicable; provided that these explanatory



1 statements shall be received by the chief election officer by
2 the date determined by the chief election officer for each
3 election.

4 **§11-F Ballot issue; fiscal impact statement.** (a) A
5 fiscal impact statement shall be prepared by the attorney
6 general for each statewide ballot issue, or by the corporation
7 counsel or county attorney for each countywide ballot issue,
8 that is listed on a ballot in accordance with section 11-112.
9 The attorney general, corporation counsel, or county attorney,
10 as applicable, shall consult with appropriate fiscal state or
11 county agencies in preparing the fiscal impact statement. Each
12 fiscal impact statements shall be written in clear and concise
13 language and the use of legal and technical terms shall be
14 avoided whenever possible. Fiscal impact statements may include
15 easily understood graphics. The chief election officer shall
16 prescribe the content and maximum length of these statements.

17 (b) For each election, the chief election officer shall
18 determine the date by which the chief election officer shall
19 receive all fiscal impact statements prepared by the attorney
20 general for statewide ballot issues, or by the corporation
21 counsel or county attorney for countywide ballot issues. The



1 chief election officer may authorize the clerk to receive fiscal
2 impact statements for countywide ballot issues for each
3 respective county, as applicable; provided that these fiscal
4 impact statements shall be received by the chief election
5 officer by the date determined by the chief election officer for
6 each election.

7 **§11-G Ballot issue; committees; argument statements in**
8 **support or opposition; rebuttals.** (a) An argument statement
9 committee shall be formed with regard to each statewide or
10 countywide ballot issue. The chief election officer, in
11 consultation with state and county legislative bodies and
12 clerks, shall appoint the initial two members of each argument
13 statement committee. In making these committee appointments,
14 the chief election officer shall consider legislators and
15 stakeholders known to support or oppose the ballot issue. The
16 initial two members of each committee may select up to four
17 additional members, and each committee shall elect a
18 chairperson.

19 (b) Each committee shall write and submit argument
20 statements advocating for the approval or rejection of each
21 statewide or countywide ballot issue and rebuttals of those



1 argument statements. Each committee shall obtain the
2 explanatory and fiscal impact statements prepared in accordance
3 with sections 11-E and 11-F, respectively, before preparing the
4 committee's argument statements. The committees shall write the
5 argument statements in clear and concise language and avoid the
6 use of legal and technical terms whenever possible. The chief
7 election officer shall prescribe the content and maximum length
8 of these argument statements.

9 (c) After a committee submits its initial argument
10 statement to the chief election officer, the chief election
11 officer shall transmit the statement to its counterpart
12 committee. The counterpart committee may then prepare a
13 rebuttal statement. Rebuttal statements may not interject new
14 points. For each election, the chief election officer shall
15 determine the date by which all argument and rebuttal statements
16 shall be submitted to the chief election officer.

17 (d) Each online voter pamphlet prepared pursuant to
18 section 11-3 shall only contain argument and rebuttal statements
19 prepared in accordance with this section. Argument and rebuttal
20 statements may contain graphs and charts supported by factual



1 statistical data and pictures or other illustrations; provided
2 that illustrations shall not include cartoons or caricatures.

3 **§11-H Candidate statements.** (a) Each candidate whose
4 name is listed on a ballot in accordance with section 11-112 may
5 submit a written statement and photograph advocating for the
6 candidate's candidacy. The chief election officer shall
7 prescribe the content and maximum length of the candidate
8 statements.

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

14 (c) For each election, the chief election officer shall
15 determine the date by which all candidate statements shall be
16 submitted to the chief election officer.

17 **§11-I Rejection or dispute of arguments or statements.**

18 (a) If the chief election officer determines that an argument,
19 rebuttal, or candidate statement submitted pursuant to this part
20 for inclusion in the online voter pamphlet contains obscene
21 matter or matter that is otherwise prohibited by law for



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

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



1 deadline for submission to the chief election officer, the State
2 shall not be liable for damages resulting from the publication
3 of the argument, rebuttal, or candidate statement unless the
4 chief election officer publishes the statement in violation of
5 the order entered under this subsection. Nothing in this
6 subsection shall create a duty on the part of the chief election
7 officer to identify, locate, or notify the person named or
8 identified in the applicable argument, rebuttal, or candidate
9 statement.

10 (c) Parties to a dispute under this section may agree to
11 resolve the dispute by rephrasing the argument, rebuttal, or
12 candidate statement, regardless of whether the deadline for
13 submission to the chief election officer has lapsed, unless the
14 chief election officer determines that the process of
15 publication has progressed too far to permit the change. The
16 chief election officer shall promptly provide any revision to
17 any committee entitled to submit a rebuttal statement. If that
18 committee has not yet submitted the committee's rebuttal
19 statement, the committee's deadline to submit a rebuttal
20 statement shall be extended by days. If the committee has
21 submitted a rebuttal statement, the committee may revise the



1 rebuttal statement to address the change within days of
2 the filing of the revised argument with the chief election
3 officer.

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

12 **§11-J Deceptively similar campaign materials prohibited.**

13 (a) No person or entity shall publish or distribute any
14 campaign material that is deceptively similar in design or
15 appearance to an online voter pamphlet or online voter pamphlet
16 postcard that is published by the chief election officer.

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



1 **§11-K Public inspection; arguments and statements.** (a)

2 The chief election officer shall not make any argument,
3 rebuttal, or candidate statement submitted to the chief election
4 officer for publication in an online voter pamphlet available on
5 the office of elections website until:

6 (1) In the case of candidate statements:

7 (A) The chief election officer has received all
8 statements from all candidates who have filed for
9 a particular office, except those candidates who
10 have informed the chief election officer that the
11 candidate will not submit any candidate
12 statements; or

13 (B) The deadline for submission of candidate
14 statements has elapsed;

15 (2) In the case of argument statements supporting or
16 opposing a ballot issue:

17 (A) The chief election officer has received the
18 argument statements from both sides, unless a
19 committee was not appointed for one side; or

20 (B) The deadline for submission of argument
21 statements has elapsed; and



1 (3) In the case of rebuttal statements:

2 (A) The chief election officer has received the
3 rebuttal statements from both sides, unless a
4 committee was not appointed for one side; or

5 (B) The deadline for submission of rebuttal
6 statements has elapsed.

7 (b) Nothing in this section shall prohibit the chief
8 election officer from releasing information in accordance with
9 chapter 92F.

10 **§11-L Expenses.** The State shall be responsible for
11 compilation, printing, internet web hosting, and distribution
12 costs associated with online voter pamphlets and online voter
13 pamphlet postcards pursuant to this part.

14 **§11-M Rules.** The chief election officer shall adopt rules
15 in accordance with chapter 91 to implement this part."

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

18 "(d) The chief election officer shall be responsible for
19 public education [~~with respect to~~] on voter registration and
20 information[-] and the publication and distribution of online



1 voter pamphlets and online voter pamphlet postcards in
2 accordance with part _____."

3 SECTION 3. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ _____ or so
5 much thereof as may be necessary for fiscal year 2022-2023 for
6 the chief election officer to publish an online voter pamphlet
7 and publish and distribute postcards notifying voters of the
8 pamphlet's website address for each upcoming election.

9 The sum appropriated shall be expended by the office of
10 elections for the purposes of this Act.

11 SECTION 4. If any provision of this Act, or the
12 application thereof to any person or circumstance, is held
13 invalid, the invalidity does not affect other provisions or
14 applications of the Act that can be given effect without the
15 invalid provision or application, and to this end the provisions
16 of this Act are severable.

17 SECTION 5. In codifying the new sections added by section
18 2 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections in this Act.



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2022.

4

INTRODUCED BY: *[Signature]*



S.B. NO. 2525

Report Title:

Office of Elections; Chief Election Officer; Elections; Online Voter Pamphlet; Postcards; Appropriation

Description:

Requires the chief election officer, with assistance from the county clerks for elections involving county offices and countywide ballot issues, to publish an online voter pamphlet on the Office of Elections public website and publish and distribute postcards notifying voters of the online voter pamphlet website address. Appropriates moneys to allow the chief election officer to produce and distribute an online voter pamphlet and voter pamphlet postcards for each election.

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