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H. B. NO. 752

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Declaration of purpose. Due to the initiation of new voting systems, new parties, a rapidly increasing and mobile population, and actions of the 1968 Constitutional Convention, a thorough revision of the election laws of the State and county is necessary.

SECTION 2. The Hawaii Revised Statutes, as amended, is amended by adding the following new chapters to be numbered and to read as follows:

CHAPTER 11

ELECTIONS, GENERALLY

PART I. GENERAL PROVISIONS

§11-1 Definitions. Whenever used in this title, the words and phrases in this title shall, unless the same is inconsistent with the context, be construed as follows:

“Ballot,” a ballot including an absentee ballot is a written or printed, or partly written and partly printed paper or papers containing the names of persons to be voted for, the office to be filled, and the questions or issues to be voted on. A ballot may consist of one or more cards or pieces of paper depending on the number of offices, candidates to be elected thereto, questions or issues to be voted on, and the voting system in use. It shall also include the face of the mechanical voting machine when arranged with cardboard or other material within the ballot frames, containing the names of the candidates and questions to be voted on.

2. “Chief election officer,” the lieutenant governor as set forth in section 11-

“Clerk,” the county clerks of the respective counties.

“County,” the counties of Hawaii, Maui, Kauai, and the city and county

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of Honolulu, as the context may require. For the purposes of this title, the county of Kalawao shall be deemed to be included in the county of Maui.

“Election,” all elections, primary, general, special, or county, unless otherwise specifically stated.

“Election officials,” inspectors, clerks, and other persons designated as such by the chief election officer.

“Office,” an elective public office.

“Political party” or “party,” a political party qualified under part V of this chapter.

“Precinct,” the smallest political subdivision established by law.

“Primary,” a preliminary election in which the voters nominate candidates for office as provided for in chapter 12.

“Voter,” any person duly registered to vote.

“Voting system,” the use of paper ballots, electronic ballot cards, voting machines, or any system by which votes are cast and counted.

§11-2 Chief election officer. (a) The lieutenant governor shall be the chief election officer for the administration of this title. He shall supervise all state elections. The chief election officer may delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons.

(b) The chief election officer shall be responsible for the maximization of registration of eligible electors throughout the State. In maximizing registration the chief election officer shall make an effort to equalize registration between districts, with particular effort in those districts in which he determines registration is lower than desirable. The chief election officer in carrying out this function may make surveys, carry on house to house canvassing, and assist or direct the clerk in any other area of registration.

(c) The chief election officer shall maintain data concerning registered voters, elections, apportionment, and districting. He shall use this data to assist the reapportionment commission provided for under Article III, Section 4 of the Constitution.

§11-3 Application of chapter. This chapter shall apply to all elections, primary, general, special, or county, held in the State, under all voting systems used within the State, so far as applicable and not inconsistent herewith.

§11-4 Rules and regulations. The chief election officer may make, amend, and repeal such rules and regulations governing elections held under this title, election procedures, and the selection, establishment, use, and operation of all voting systems now in use or to be adopted in the State, and all other similar matters relating thereto as in his judgment shall be necessary to carry out this title.

In making, amending, and repealing rules and regulations for voters who cannot vote at the polls in person and all other voters, the chief election officer shall provide for voting by such persons in such manner as to insure secrecy of the ballot and to preclude tampering with the ballots of these voters and other election frauds. Such rules and regulations, when adopted in conformity with

chapter 91 and upon approval by the governor, shall have the force and effect of law.

§11-5 Employees. The chief election officer or county clerk may employ election inspectors, clerks, and such other temporary election employees as he may find necessary, none of whom shall be subject to the civil service or classification laws of the State or be required to become members of the employees retirement system.

PART II. REGISTRATION

§11-11 Registration. A person who registers as required by law shall be entitled to vote at any election and to be listed upon the appropriate county general register and precinct list. The county clerk shall be responsible for voter registration in the respective counties and the keeping of the general register and the precinct lists within the county.

§11-12 Age; place of registering. Every person who has reached the age of twenty years, or who will have reached the age of twenty years prior to the date of the next election, and is otherwise qualified to register may do so in the precinct in which he resides. No person shall register or vote in any other precinct than that in which he resides except as provided in section 11-21.

§11-13 Rules for determining residency. In determining residency in the State a wife may treat herself separate from her husband; provided that, if the husband is a resident of this State, as defined herein, then the residency of the husband shall determine the residency of the wife. The following rules shall determine residency for State and precinct purposes:

- (1) The residence of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return;
- (2) A person does not gain residence in any precinct into which he comes without the present intention of establishing his permanent dwelling place within such precinct;
- (3) If a person resides with his family in one place, and does business in another, the former is his place of residence; but any person having a family, who establishes his dwelling place other than with his family, with the intention of remaining there shall be considered a resident where he has established such dwelling place;
- (4) The mere intention to acquire a new residence without physical presence at such place, does not establish residency, neither does mere physical presence without the concurrent present intention to establish such place as his residence. For the purposes of the election laws there can only be one residence;
- (5) A person does not gain or lose a residence solely by reason of his presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison;

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- (6) No member of the armed forces of the United States, his spouse or his dependent is a resident of this State solely by reason of being stationed in the State;
- (7) A person loses his residence in this State if he votes in an election held in another state by absentee ballot or in person;
- (8) The term of residence is computed by including the day on which the person's residence commences and by excluding the day of election;
- (9) In case of question, final determination of residence shall be made by the clerk, subject to appeal to the board of registration under part III of this chapter.

§11-14 General county register. The clerk of each county shall register all the voters in his county in the general county register. The register shall contain the information required by section 11-15. The voter's name shall be maintained alphabetically in the register and be capable of segregation by precinct and representative district. The clerk shall keep the original or photographic copy of the affidavit of registration required by section 11-15. The general county register shall, at all times during business hours, be open to public inspection, and shall be a public record.

In all primary elections held in 1970 and subsequently the clerk shall include in the general county register information to show the primary ballot selected by each of the voters at the next preceding primary election, or the registered change of primary ballot selection by any voter. Newly registered voters who did not choose a party upon registering, those who failed to vote in any primary, voters who voted for a disqualified party, and those who voted in a separate ballot for the board of education only shall have no such information recorded.

§11-15 Application to register. Any person qualified to and desiring to register as a voter in any county, may present himself at any time during business hours to the clerk of the county, then and there to be examined under oath as to his qualifications as a voter. Each applicant shall make and subscribe to an application in the form of an affidavit.

The affidavit shall contain the following information:

- (1) Name;
- (2) Social security number, if any;
- (3) Date of birth;
- (4) Age;
- (5) Residence;
- (6) Place of current employment, if any;
- (7) That the person has or will have resided in the State for a period of not less than one year immediately preceding the date of the next primary, general, or special election;

- (8) That the residence stated in the affidavit is not simply because of the person's presence in the State but that the residence was acquired with the intent to make Hawaii the person's legal residence;
- (9) That the person is a citizen.

The applicant shall swear to the truth of the allegations in his application before the clerk, who is authorized to administer oaths. Unless contested by a qualified voter, the clerk may accept, as prima facie evidence, the allegation of the applicant in information required in the affidavit in item 8. In any other case where the clerk shall so desire or believe the same to be expedient, he may demand that the applicant furnish substantiating evidence to the allegations of his application.

If the clerk is satisfied that the applicant is entitled to be registered as a voter, the applicant shall then affix his signature to the affidavit and the clerk shall affix his signature; or the clerk shall enter "Unable to sign" and the reason in the space for the applicant's signature. A voter having once been registered shall not be required to register again for any succeeding election, except as hereinafter provided. The affidavits so approved or accepted by the clerk shall thereupon be numbered appropriately, filed by the clerk and kept in some convenient place so as to be open to public inspection and examination.

The clerk may designate a subordinate or subordinates to act in his place and stead in all matters covered by this section.

§11-16 Application when not made in person. Any qualified person unable for any cause to present himself in person before the clerk for registration may secure from the clerk an application form which may be filled out. This form may be sworn to before any commissioned officer in the active service of the Armed Forces, any member of the merchant marine of the United States designated for this purpose by the Secretary of Commerce, the head of any department or agency of the United States, or by an employee specifically designated by such head, or any civilian official empowered by state or federal law to administer oaths.

Upon receipt of the properly executed application, the clerk shall proceed to number the same and register the name of the voter in the general county register as provided in section 11-15. In registering persons under this section the clerk may accept requests for absentee ballot submitted in accordance with the Federal Voting Assistance Act of 1955 or other similar federal law as being sufficient for registration purposes.

§11-17 Removal from register upon failure to vote; reregistration. The clerk shall, within sixty days after every general election, remove the name of any registered voter failing to vote at the election if such voter also failed to vote at the preceding primary election. For this purpose "to vote" shall mean the depositing of the ballot in the ballot box whether such ballot be blank or later rejected for any reason. In the case of voting machines "to vote" shall mean the voter has activated the proper mechanism and fed his vote into the machine. In the case of absentees "to vote" shall mean seasonably mailing the absentee ballot to the county clerk whether or not such ballot was counted. It

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shall include those ballot envelopes that were marked "questionable" due to an illegible postmark.

Any voter whose name has been removed from the register may at any time prior to the closing of the register, as provided in section 11-24, have his name restored in the register by presenting himself to the clerk and reregistering pursuant to section 11-15, or by making application by mail or otherwise pursuant to procedures established by the clerk. The clerk shall compare the signature with the signature of the voter as previously registered, and if found by him not to be similar, he may require further proof. The names of all such voters shall be reentered in the register.

§11-18 Reregistration on removal from one precinct to another in same county. A registered voter who changes his residence from one precinct to another shall notify the clerk and change his registration to the proper precinct; provided, that no such change of registration shall be allowed or required on account of any change of residence made within three months before an election unless from one precinct to another within the same representative district.

§11-19 Reregistration on removal from one county to another. Whenever any person who has registered as a voter in any county removes to and desires to register in some other county, he shall apply to the clerk of the county in which he desires to be registered. Thereupon such clerk, if the person applying is legally qualified to register, shall accept such registration and shall immediately thereafter forward to the clerk of the county in which the person was formerly registered, a notice that the name of the registered voter is to be removed from the general county register of that county. No such change of registration shall be allowed between the date of a primary election and the immediately succeeding general election as to any person who exercised the privilege of voting in such primary election unless the voter meets the other requirements of residency and applied for transfer in accordance with section 11-21.

§11-20 Transfers; name changes; initiated by clerk. The clerks shall use all reliable and pertinent information to keep the general register up to date. The county clerks may request information from, but are not limited to, the following sources:

- (1) The office of the lieutenant governor for any change of name;
- (2) Courts for any changes of name, divorces, separations, or other changes affecting voter status;
- (3) The department of health for marriages, deaths, or other changes affecting voter status;
- (4) Utility companies concerning commencement or changes of service;
- (5) Residential apartments, cooperative apartments, and condominiums as to changes of occupancy.

In requesting such information the clerk shall give reasonable notice and time for furnishing the information.

If the clerk has evidence indicating that a voter's registration should be transferred, then at least ninety days prior to the primary the clerk shall notify the person by first-class mail and within three days thereafter publish in a newspaper of general circulation notice of intent to transfer registration. Notice by mail shall be sent to the address shown on the current voter list and any alleged new address. The notifications shall include:

- (1) Any evidence that the clerk may have indicating why a transfer or change should be made;
- (2) The residence, precinct, and district of the voter according to current registration lists;
- (3) The alleged new address, precinct, and district;
- (4) A reply form which shall contain a space for the voter's agreement or objection to the transfer and the reasons for the objection;
- (5) Notice that unless the completed form is returned within fifteen days of mailing the voter shall be subject to challenge at the polls under the terms of section 11-25 on the basis of not being registered in the precinct where he resides.

If no response is received by the clerk within fifteen days, a second notification shall be made no later than sixty days prior to the primary, by telephone or personal contact. A record shall be maintained of all the phone calls or attempted personal contacts noting the date, time, person calling, person called, and reply received.

If, on the basis of the evidence available the clerk has good reason to believe that the voter does actually reside at some address other than the one carried on the registration list, the clerk shall transfer the voter to such new address. A list of those transferred, and the precinct to which they were moved, will be available at the old precinct on election day. A voter may contest such transfer on or before election day by presenting evidence that he actually resides at the old address which, if found valid by the clerk or the board of registration, shall entitle the voter to be returned to the old voting list by executive order.

A list of all voters with questionable addresses who fail to respond to notification attempts of the clerk, but who have not been transferred, shall be posted at the precinct wherein he is registered on election day and shall be made available to the public at least forty-five days prior to the primary election.

§11-21 Change of name, transfer at primary. The county clerk shall designate a registration clerk, who may be an election official, at all of the polling places in his county on the day of the election. These registration clerks shall take applications for change of name from voters who have been married or who have had their name changed since the last election. Any person whose residence has changed since the last election, and who the county clerk has not transferred under section 11-20 may apply at his old polling place on the day of the election for transfer of his registration to the precinct of his new residence.

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Where a person was incorrectly placed on a list of voters of a precinct in which he does not actually reside he may correct his registration. No person shall be prevented from voting at the election in the precinct in which his name appears on the voters list due to a change of name, change of registration, or other correction made under this section. However any voter registered in the wrong precinct who shall refuse to correct his registration may be challenged in accordance with law. Any person changing his name or transferring shall receive a copy of the change or transfer form.

§11-22 Changing register; correction of errors. The clerk shall correct the register if at any time it shall be manifest to him that the name of a person registered has been accidentally misspelled, or that he has been misnamed therein, or that he has been accidentally registered under the wrong precinct.

In any case where the clerk refuses to correct the register the person may appeal to the board of registration and the register shall be changed upon a written order of the board of registration, setting forth the reasons for the change. The order shall be directed to the clerk or to the election inspectors of the election precinct where the voter is entitled to vote if the register has been closed. The inspectors shall thereupon correct the list of voters furnished them according to the terms of the order, noting on the list the reasons for the correction, and shall send the original order to the clerk as soon as may be after the close of the polls. The clerk, upon receipt of any order from the board of registration or from the inspectors, as the case may be, shall correct the register according to the terms of the order, making on the register a reference to the order. The order shall thereafter be given the same number as the affidavit of the voter registered and filed with the affidavit in some convenient manner so as to be open to public inspection.

§11-23 Changing register; striking names of disqualified voters. Whenever the clerk receives from the department of health or any informing agency information of the death, loss of voting rights of a person sentenced for a felony as provided in section 716-2, adjudication of insanity or feeble-mindedness, loss of citizenship, or any other disqualification to vote, of any person registered to vote in his county, or who he has reason to believe may be registered to vote therein, he shall thereupon make such investigation as he may deem necessary to prove or disprove the information, giving the person concerned, if available, notice and an opportunity to be heard. If after the investigation he finds that the person is dead, or non compos mentis, or has lost his voting rights pursuant to section 716-2, or has lost his citizenship, or is disqualified for any other reason to vote, he shall remove the name of the person from the register.

The clerk shall make and keep an index of all information furnished to him under any requirements of law concerning any of the matters in this section. Whenever any person applies to register as a voter, the clerk shall, before registering the person, consult the index for the purpose of ascertaining whether or not the person is in any manner disqualified to vote. Any person whose name is removed from the register of voters under this section may appeal in the manner provided by sections 11-26 and 11-51, and such proceedings shall be had upon the appeal as in other appeals under these sections.

§11-24 Closing register; list of voters. (a) Forty-five days prior to the day for holding each special or primary election (but if such day is a Saturday, Sunday, or holiday then at midnight of the first working day immediately preceding), the general county register shall be closed to registration for persons seeking to vote at such a special or primary election and remain closed to such registration until after the election, subject to change only as provided in sections 11-21, 11-22, 11-25, 11-26, and this section.

Notwithstanding the closing of the register for registration to vote at the primary election, the register shall remain open for the registration of persons seeking to vote at the general election, up to midnight of the fifth day following the primary election, at the end of which period the general county register shall be closed to registration and remain closed until after the general election next following, subject to change only as provided in sections 11-21, 11-22, 11-25, and 11-26.

Immediately upon the closing of the general county register, the clerk shall proceed to prepare a list of all registered voters in each precinct, separately. The list shall contain, in alphabetical order, without designation of the race or age of voters, the names of all voters so registered in each precinct, and the residence of each. In primary elections the list shall include the party affiliation or nonpartisanship of the voter, if so contained in the general county register. The list shall be available for inspection at the office of the county clerk prior to election day. On election day the election inspectors shall post the list at the precinct polling place.

§11-25 Challenge by voters; grounds; procedure. (a) Challenging prior to election day. Any registered voter may, for any cause not previously decided by the board of registration or the supreme court in respect to the same person, challenge the right of that person to be or to remain registered as a voter in any precinct. The challenge shall be in writing, setting forth the grounds upon which it is based, and be signed by the person making the challenge. The challenge shall be delivered to the clerk who shall forthwith serve notice thereof on the person challenged. The clerk shall, as soon as possible, investigate and rule on the challenge.

(b) Challenging on election day. Any voter rightfully in the polling place may challenge the right of any person, presenting himself to the election inspectors to vote. The challenge shall be on the grounds that the voter is not the person he alleges himself to be, that the voter is not entitled to vote in that precinct, or in a primary election that the voter is not entitled to vote because he refuses to state his party preference or nonpartisanship except where he desires to vote only for the board of education. No other or further challenge shall be allowed. The challenge shall be considered and decided immediately by the inspectors and the ruling announced.

(c) If neither the challenger nor the challenged voter shall appeal the ruling of the clerk or the inspectors, then the voter shall either be allowed to vote or be prevented from voting in accordance with the ruling. If an appeal is taken to the board of registration, the challenged voter shall be allowed to vote; provided that his ballot is placed in a sealed envelope to be later counted or re-

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jected in accordance with the ruling on appeal. The chief election officer shall promulgate rules and regulations in accordance with chapter 91 to safeguard the secrecy of the challenged voter's ballot.

§11-26 Appeal from ruling on challenge; or failure of clerk to act. In cases where the clerk or the election inspectors ruled on a challenge or the clerk refuses to register an applicant, or refuses to change the register under section 11-22, the person ruled against may appeal from the ruling to the board of registration of his county.

The several boards of registration shall sit in the county seats of their respective counties on election day. The boards shall also sit at such other times as the clerk determines within the various representative districts in their respective counties to hear appeals, provided there are any, from the voters registered within such districts. The boards shall continue their sittings until all appeals have been heard.

Reasonable notices of the sitting of the boards shall be given by publication in newspapers of general circulation in their respective districts or counties. If the appeal is sustained, the board shall immediately certify that finding to the clerk, who shall thereupon alter the register to correspond to the findings of the board, and when necessary, the clerk shall notify the election inspectors of the change in the register.

PART III. BOARDS OF REGISTRATION

§11-41 Boards of registration, appointment, tenure. There shall be four boards of registration: one for the island of Hawaii; one for the islands of Maui, Molokai, Lanai, and Kahoolawe; one for the island of Oahu; and one for the islands of Kauai and Niihau. The boards, which shall consist of three members each, shall be appointed by the governor by and with the advice and consent of the senate; and their terms of office shall be four years.

In no case shall any board consist entirely of members of one political party.

§11-42 Compensation. The members of the board of registration shall be paid \$35 a day for each day of actual service.

§11-43 Powers. Each board of registration is given all of the powers and authority for the summoning and examining of witnesses and the maintenance of order, including the power to punish for contempt and award witness fees in accordance with section 621-7, by law given to circuit courts.

Every member of the board of registration may administer oaths in all cases in which oaths are by law authorized.

§11-44 Records of proceedings. The several boards of registration shall each keep books of record in which full and detailed minutes shall be preserved of all their proceedings. The minutes shall be kept from day to day, and shall contain:

- (1) The date and place of the meeting;

- (2) The names of the members of the board present;
- (3) The name of each person to whom an oath is administered, and, if an examination is held, the names of the witnesses and the substance of the answers of the applicant and of the witnesses;
- (4) The name of any person challenging the right of any applicant to register, the grounds of challenge, the name of the person challenged, and the decision rendered thereon; and
- (5) All other matters of detail which are likely to have a bearing upon any question concerning the action of the board or of any person appearing before it.

PART IV. APPEAL FROM BOARD OF REGISTRATION

§11-51 Appeal from board to supreme court. Any affected person, political party, or any of the county clerks, may, at any time within ten days after the decision of the board of registration, appeal to the supreme court in the manner provided by law for civil appeals to the supreme court from the circuit court, or in such manner as may be provided by law.

§11-52 Hearing; decision final. When the appeal is perfected, the supreme court shall hear the cause either in term time or in vacation as soon thereafter as may be reasonable. The determination by the court of the question shall be final.

§11-53 Decision, notice; action on. Immediately upon rendering a decision upon any appeal, the supreme court shall notify the board of registration from which the appeal was taken; and if the decision reverses the decision of the board, the board shall immediately order the register to be corrected to conform with the decision.

§11-54 Status pending appeal. In case of an appeal from a decision of any board of registration the name of the person shall be placed or remain upon the register pending the decision of the supreme court concerning the same. If the person so registered votes at any election before a decision of the court has been made and acted upon, the ballot of such voter shall be handled in accordance with section 11-25(c).

PART V. PARTIES

§11-61 “Political party” defined. (a) The term “political party” shall mean any party which was on the ballot at the last general election which has not been disqualified by this section and any political group which shall hereafter undertake to form a political party in the manner provided for in sections 11-62 to 11-64; A political party shall be an association of voters united for the purpose of promoting a common political end or carrying out a particular line of political policy and which maintains a general organization throughout the

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State, including a regularly constituted central committee and county committees in each county other than Kalawao.

(b) Any party which does not meet the following requirements shall be subject to disqualification:

- (1) A party must have had candidates running for election at the last general election for any of the offices listed in paragraphs (2) to (6) whose terms had expired. This does not include those offices which were vacant because the incumbent had died or resigned before the end of his term;
- (2) The party received at least ten per cent of all votes cast for any of the offices voted upon by all the voters in the State; or,
- (3) The party received at least ten per cent of all the votes cast in at least fifty per cent of the congressional districts; or,
- (4) The party received at least ten per cent of all the votes cast in at least fifty per cent of the senatorial districts for the office of state senator; or,
- (5) The party received at least ten per cent of all the votes cast in at least fifty per cent of the representative districts for the office of state representative; or,
- (6) The party received at least ten per cent of all the votes cast in at least fifty per cent of the school board districts for the office of board of education.

§11-62 Formation of new parties; petition. Any group of persons hereafter desiring to form a new political party in the State shall file with the chief election officer a petition as hereinafter provided. The petition for the formation of a new political party shall:

- (1) Be filed no less than 120 days prior to the next primary;
- (2) Declare as concisely as may be the intention of signers thereof to form such new political party in the State;
- (3) Contain the signatures of not less than one per cent of the total registered voters of each county of the State at the time of filing.

The petition shall be subject to hearing under chapter 91, if any objections are raised by the chief election officer or any political party. All objections shall be made within ten days after the petition has been filed. If no objections are raised within ten days, the petition shall be deemed approved. If an objection is raised, a decision shall be rendered not later than thirty days after filing of the petition or one hundred days prior to the primary, whichever shall first occur.

The chief election officer may check the names of any persons on the petition to see that they are registered voters and he may check the validity of their signatures. The petition shall be public information upon filing.

§11-63 Party rules, amendments to be filed. All existing and new parties must file their rules with the chief election officer no less than 120 days prior to the next primary. All amendments shall be filed with the chief election officer within thirty days after their adoption. The rules and amendments shall be duly certified to by an authorized officer of the party and upon filing, the rules and amendments thereto shall be a public record.

§11-64 Names of party officers to be filed. All parties shall submit to the chief election officer and the respective county clerks no less than 120 days prior to the next primary, a list of names and addresses of officers of the central committee and of the respective county committees.

§11-65 Determination of party disqualification; notice of disqualification. No less than 120 days after a general election or after this section becomes law, the chief election officer shall determine which parties were qualified to participate in the last general election, but which have become disqualified to participate in the forthcoming elections. Notice of intention to disqualify shall be served by certified or registered mail on the chairman of the state central committee or in the absence of the chairman, any officer of the central committee of the party, as shown by the records of the chief election officer. In addition, notice of intention to disqualify shall also be given by publication in a newspaper of general circulation.

If an officer of the party whose name is on file with the chief election officer desires a hearing on the notice of intention to disqualify, he shall, within ten days after service by mail or within ten days after the last day upon which the notice is published in any county, whichever is later, file an affidavit with the chief election officer setting forth facts showing that the political party is not disqualified to participate in any primary election under section 11-61. If the party does not file the affidavit within the time specified, the notice of intention to disqualify shall constitute final disqualification. A party thus disqualified shall have the right to requalify as a new party by following the procedures of section 11-62.

PART VI. ELECTION INSPECTORS, CLERKS, AND WATCHERS

§11-71 Election inspectors, clerks; precinct requirements. There shall be not less than three election inspectors for each precinct one of whom shall be the chairman; provided that in precincts where more than one voting unit has been established, there shall be two election inspectors for each unit. The chairman of inspectors shall have authority in all units of the precinct. The election inspectors of each unit shall have authority on matters affecting their unit and matters affecting the entire precinct.

To assist the election inspectors in their work, including the counting of ballots, there shall be at least one clerk for each three hundred voters in the precinct or unit, except in precincts using voting machines and in special election precincts. In those precincts using only one voting machine, no clerk shall be assigned. In all precincts, including special election precincts and those with

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more than one voting machine, the chief election officer may assign one or more additional clerks.

So far as reasonably practicable, excepting the chairman, not more than fifty per cent of the inspectors and not more than fifty per cent of the clerks in any precinct shall be of the same political party.

§11-72 Inspectors and clerks; submission of names and assignment; vacancies. All qualified political parties shall submit names for election inspectors and clerks to the chief election officer at least sixty days before the close of filing for any primary or special election. If any party shall fail to submit the required names by the above deadline, the chief election officer may fill such positions with available qualified persons. The chief election officer shall make a list of the inspectors and clerks by representative district and submit it to the governor for his approval at least ten days prior to such election.

In assigning the inspectors and clerks the following criteria shall be followed:

- (1) The inspectors and clerks shall be registered voters of the precinct in which they serve; but if qualified persons in the precinct are not readily available to serve, they may be chosen from without the precinct so long as they reside in the representative district in which the precinct is located.
- (2) The chief election officer may designate more inspectors and clerks than are needed in order to create a pool of qualified inspectors and clerks who may be assigned to fill vacancies or to perform such duties as needed in any precinct in their respective representative districts. If more qualified persons than are needed for a precinct desire to serve in that precinct, service shall be determined by drawing lots.
- (3) No parent, spouse, child, or sibling of a candidate shall be eligible to serve as an inspector or clerk in any precinct in which votes may be cast for the candidate; nor shall any candidate for any elective office be eligible to serve as an inspector or clerk in the same election in which he is a candidate. No candidate who failed of nomination in the primary election shall be eligible to serve as an inspector or clerk in the general election next following.
- (4) The chairman of the election inspectors shall be of the same party as the governor and shall be the first named inspector on the list prepared by the chief election officer. The remainder of the election inspectors and clerks shall be apportioned as follows:
 - (A) The total votes cast, except those cast for nonpartisan candidates, for all of the following offices which were on the ballot in the next preceding general election shall be divided into the total votes cast for all the candidates of each party for such offices: president and vice president, United States senator, United States representative, governor and lieutenant governor, state senator, state representative, and board of education.

- (B) In the event that a party's proportion of votes cast exceeds fifty per cent, its share shall be one-half of the election inspectors and clerks. The remaining one-half shall be divided among the remaining parties in proportion to their respective total of votes cast for the offices set forth in subdivision (A).
- (C) In the case of the above division resulting in parties having fractional positions a whole position shall go to the party with the larger number of votes cast.
- (D) Newly qualified parties may be assigned up to ten per cent of the total positions available at the discretion of the chief election officer.

In case of inability, failure, or refusal of any person so assigned to serve as an inspector or clerk the chief election officer shall, so far as reasonably practicable, appoint a person to fill the vacancy from the same party as that of the person to be replaced. In case of doubt as to the party of an inspector or clerk the chief election officer shall use first, the party membership list; then, the primary registration; then, the person's word for his party affiliation.

§11-73 Instruction of election inspectors, clerks. Not less than five days before any election the chief election officer or clerk in county elections shall conduct a school of instruction, if deemed necessary, for persons designated as election inspectors and clerks of precincts. They shall notify the inspectors and clerks of the time and place of the school of instruction.

All newly assigned inspectors and clerks shall attend the school of instruction. The chairman of the inspectors shall be required to attend a refresher course before each election. It shall be at the discretion of the chief election officer or the county clerk in county elections to require those inspectors and clerks with previous training to attend a school of instruction prior to each election.

No election official shall serve unless he has received some instruction and has been certified by the authorized instructor to that effect. This section shall not prevent the assignment of a person who has not received such instruction or such certificate but who is otherwise qualified, to fill a vacancy among election officials when a qualified certified person is not available.

§11-74 Meetings of inspectors; procedure; oaths. The chairman of the election inspectors shall preside at all meetings of the inspectors. Any decision of the inspectors shall require a majority vote of the inspectors in the unit or precinct.

In all cases under this title, where duties are to be performed by the chairman of the inspectors, the duties may be performed by one of the other inspectors, whenever the chairman is temporarily absent or is otherwise for the time being unable to perform the duties.

Each election inspector may administer any oath in this title provided to be administered by the election inspectors.

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§11-75 Duties of election inspectors. The duties of the election inspectors shall vary with the voting system in use in the precinct. The duties for the particular system shall be assigned by the chief election officer by regulations adopted for such purpose.

§11-76 Compensation. Election inspectors, other than the chairman, shall be paid \$35 for each election. The chairman of the election inspectors for each precinct shall be paid \$10 more per unit than the amount provided for the inspectors for each election; but in no case less than \$45. The clerks shall be paid \$30 for each election.

§11-77 Appointment of watchers; service. (a) Each qualified political party shall be entitled to appoint no more than one watcher in each precinct including absentee precincts in which the candidates of such party are on the ballot. The watchers shall serve without expense to the State or county. All watchers so appointed shall be registered voters.

(b) Each watcher shall be provided with identification from the chief election officer, or by the clerk in the case of county elections, stating his name and the name of the party he represents. On election day the watcher shall present his identification to the chairman of election inspectors of the precinct or precincts where he is to serve.

(c) All watchers for precincts shall be permitted to observe the conduct of the election in the precinct. The watchers may remain in the precinct as long as the precinct is in operation subject to section 19-6.

(d) The watcher shall call the attention of the chairman to any violations of the election laws that he observes. After his attention is called to the violation the chairman shall make an attempt to correct such violation. If the chairman fails to correct the violation, the watcher may appeal to the clerk of the county.

PART VII. CONDUCT OF ELECTIONS

§11-91 Proclamation. No later than ten days prior to the close of filing in elections involving state offices the chief election officer shall issue an election proclamation. In elections involving only county offices the clerk shall issue the proclamation. In elections involving both state and county offices the proclamation may be issued jointly.

The proclamation shall contain a statement of the time and places where, and the purposes for which, the election is to be held, and a designation of the offices and the terms thereof for which candidates are to be nominated or elected. It may also contain any other relevant matter including an offer of rewards for the detection and conviction of offenders against the election laws. The chief election officer or clerk shall cause the election proclamation to be published at least once in a newspaper of general circulation and at least ten days before the close of filing.

§11-92 Precincts; polling places; central polling areas; special election precincts. The chief election officer shall set apart one or more precincts in each representative district and shall provide a suitable and separate polling place in

or for each precinct. Schools, police stations, fire stations, and other publicly owned or controlled buildings shall, whenever possible and convenient, be used as polling places. The chief election officer shall make arrangements for the rental or erection of suitable shelters for this purpose whenever public buildings are not available and shall cause such polling places to be equipped with the necessary facilities for lighting, ventilation, and equipment needed for elections on any island. It shall be lawful for the chief election officer to establish a central polling area for contiguous precincts, notwithstanding district boundaries, when it is convenient and readily accessible for the voters of the precinct involved.

Before the establishment of any central polling area the chief election officer shall notify the political parties and publish a notice once in a newspaper of general circulation. The notice shall state the time and place of a hearing pursuant to chapter 91. After the hearing a regulation shall be issued establishing the central polling place.

No change shall be made in the boundaries of any precinct nor shall a central polling area be established less than ninety days before an election.

Notwithstanding the last paragraph if the chief election officer or the county clerk in county election determines that the number of candidates or issues on the ballot in a special election does not require the full number of established precincts, such precincts may be consolidated for the purposes of the special election into a small number of special election precincts. A special election precinct shall be considered the same as an established precinct for all purposes, including inspector and clerk precinct requirements provided in section 11-71. Ten days prior to the special election the chief election officer or the county clerk shall give public notice in a newspaper of general circulation in the area in which the special election is to be held of the special election precincts and their polling places. Notices of such consolidation shall also be posted on election day at the established precinct polling place giving the location of the special election precinct polling place.

§11-93 Voting units. Immediately after the close of registration of voters preceding any election, the chief election officer shall establish one or more voting units in each precinct polling place. All voting units shall be in the same precinct polling place. In a precinct having more than one voting unit the chief election officer shall designate such unit by the number of its precinct followed by a dash and a letter beginning with the letter "A". The clerk in preparing the list of registered voters shall divide the list, on an alphabetical basis, as equal as possible between or among the voting units.

§11-94 Exemptions of voters on election day. Every voter shall be privileged from arrest on election day while at his polling place and in going to and returning therefrom, except in case of breach of the peace then committed, or in case of treason or felony.

§11-95 Employees entitled to leave on election day for voting. Any voter shall on the day of the election be entitled to absent himself from any service or employment in which he is then engaged or employed for a period of two con-

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secutive hours (excluding any lunch or rest periods) between the time of opening and closing the polls. Such voter shall not because of so absenting himself be liable to any penalty, nor shall any deduction be made on account of the absence from his usual salary or wages; provided that the foregoing shall not be applicable to any employee whose hours of employment are such that he has a period of two consecutive hours (excluding any lunch or rest periods) between the time of opening and closing the polls when he is not working for his employer. If, however, any employee fails to vote after taking time off for that purpose the employer, upon verification of that fact, may make appropriate deductions from the salary or wages of the employee for the period during which the employee is hereunder entitled to absent himself from his employment. Presentation of a voter's receipt by an employee to his employer shall constitute proof of voting by the employee. Any person violating this section shall be guilty of an offense under section 19-8.

§11-96 Records; prima facie evidence. Every record made pursuant to law by a board of registration of voters, or the election inspectors, shall be a prima facie evidence of the facts therein set forth, and shall be received as such in any court or tribunal in which the same is offered in evidence.

§11-97 Records open to inspection. The register of voters and all records appertaining to the registry of voters, or to any election, in the possession of the board of registration, the election inspectors, the chief election officer or the clerk shall, at all reasonable times, be open to the inspection of any voter.

§11-98 Forms and materials used in elections. Books, blanks, records, certificates, and other forms and materials required by this title shall be of uniform character suitable for the voting system in use and shall be prescribed by the chief election officer after consultation with the clerks involved.

§11-99 Members of Congress, applicability of election laws. The nomination and election of a senator or representative to Congress shall be in conformity to the laws applicable to the election of members of the state legislature except as expressly otherwise provided or where in conflict with federal law.

PART VIII. BALLOTS

§11-111 Official and specimen ballots. Ballots issued by the chief election officer as to state elections and by the county clerk as to county elections are official ballots. The chief election officer or county clerk in the case of county elections where paper ballots or electronic ballot cards are used, shall have printed sufficient copies of each of the official ballots to be used at the various precincts so that at least one copy can be posted for each voting unit. These copies will have printed across their face in large bold letters, and with ink of a color plainly contrasting to the color of the paper used, the word "Specimen". In preparing specimens of electronic ballot cards, the chief election officer or clerk shall use material other than the actual data processing card. The copies of the specimen ballots shall be forwarded to the election inspectors with the official ballots. The inspectors shall post the specimen ballots near the entrance to the voting place where they may be easily seen by the voters prior to voting.

§11-112 Contents of ballot. A ballot shall contain the names of the candidates, the offices for which they are running, and the district in which the election is being held. The name of the candidate may be printed with the Hawaiian or English equivalent or nickname, if the candidate so requests in writing at the time his nomination papers are filed. Candidates' names, including the Hawaiian or English equivalent or nickname, shall be set on one line in as large type as the length of the majority of the names will permit. The remaining candidates' names may be set in such smaller type as the length of each name requires, based upon the available space on one line on the ballot.

The candidate shall, at the time of filing his nomination papers, state his party affiliation or his nonpartisanship. In multirace districts the ballot shall state that the voter shall not vote for more than the number of seats available or the number of candidates listed where such number is less than the seats available.

A ballot shall bear no word, motto, device, sign, or symbol other than allowed in this title.

§11-113 Presidential ballots. (a) In presidential elections, the names of the candidates for president and vice president shall be used on the ballot in lieu of the names of the presidential electors, and the votes cast for president and vice president of each political party shall be counted for the presidential electors and alternates nominated by each political party.

The chairman of the state central committee of each qualified political party shall submit the names of the presidential and vice presidential candidates to the chief election officer by August 31 of the election year in an affidavit stating that both the state and the national party are in agreement as to the candidates for president and vice president. A "national party" as used in this section shall mean a party established and admitted to the ballot in at least one state other than Hawaii or one which is determined by the chief election officer to be making a bonafide effort to become a national party. If there is no national party or the national and state parties or fractions in either the national or state party do not agree on the presidential and vice presidential candidates, the chief election officer may determine which candidates' names shall be placed on the ballot or may leave the candidates' names off the ballot completely.

(b) All candidates for president and vice president of the United States shall be qualified for inclusion on the general election ballot under either of the following procedures:

(1) In the case of candidates of political parties which have been qualified to place candidates on the primary and general election ballots, the appropriate official of such party shall file a sworn application with the office of the lieutenant governor not later than sixty days prior to the general election, which shall include:

(A) The name and address of each of the two candidates;

(B) A statement that each candidate is legally qualified to serve under the provisions of the United States Constitution;

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- (C) A statement that the candidates are the duly chosen candidates of the party, giving the time, place and manner of such selection.
- (2) In the case of candidates of parties or groups not qualified to place candidates on the primary or general election ballots, the person desiring to place such names on the general election ballot shall file with the office of the lieutenant governor a sworn application not later than sixty days prior to the general election which shall include:
 - (A) The information included under (1), (A) and (B) above, and (C) where applicable;
 - (B) A petition signed by one per cent of the registered voters of the State, which petition shall contain the names of the candidates, a statement that the persons signing intend to support such candidates, the address of each signatory and the date of his signature.

Each applicant, and the candidates names, shall be notified in writing of his eligibility or disqualification for placement on the ballot within ten days of filing or fifty days prior to the presidential election whichever is less.

If the applicant, or any other party, individual or group with a candidate on the presidential ballot, objects to the finding of eligibility or disqualification he or they may, within five days after the finding, file a request in writing with the office of the lieutenant governor for a hearing on the question. Such hearing will be called within ten days of the receipt of the request and will be conducted in accord with chapter 91. A decision will be issued within five days of the conclusion of the hearing.

§11-114 Order of offices on ballot. The order of offices on a ballot shall be arranged substantially as follows: first, president and vice president of the United States; next, United States senators; next, United States house of representatives; next, governor and lieutenant governor; next, state senators; next, state representatives; next, board of education; and next, county offices. The color, size, weight, shape, and thickness of the ballot shall be determined by the chief election officer.

§11-115 Arrangement of names on the ballot. The names of the candidates shall be placed upon the ballot for their respective offices in alphabetical order subject to section 11-118 and the limitations of the voting system in use, and except for the case of the candidates for vice president and lieutenant governor in the general election whose names shall be placed immediately below the name of the candidate for president or governor of the same political party.

In the case of paper ballots or electronic ballot cards where the names of the candidates are printed and the voter records his vote on the face of the ballot, the following format shall be used: A horizontal line shall be ruled between each candidate's name and the next name, except between the names of presidential and vice presidential candidates and candidates for governor and lieutenant governor of the same political party in the general election. In such case the horizontal line will follow the name of the candidates for vice president and lieutenant governor of the same political party, thereby grouping the candi-

dates for president and vice president and governor and lieutenant governor of the same political party within the same pair of horizontal lines. Immediately after all the names, on the right-hand side of the ballot, two vertical lines shall be ruled, so that in conjunction with the horizontal lines, a square shall be formed opposite each name and its equivalent, if any. In case of the candidates for president and vice president and governor and lieutenant governor of the same political party, only one square shall be formed opposite their set of names and this square which will be the same size as the others on the ballot shall be centered adjacent to the right-hand side of the rectangle containing the names of the two candidates. The squares shall be of sufficient size to give ample room in which to designate the choice of the voter in the manner prescribed for the voting system in use. All of the names upon a ballot shall be placed at a uniform distance from the left-hand edge and close thereto, and shall be of uniform size and print subject to section 11-112.

§11-116 Checking ballot form by candidates and parties. Facsimiles of all ballot layouts prior to printing shall be available for viewing by the candidates and the parties at the office of the chief election officer and the county clerk as soon after the close of filing as they are available. Such layout facsimiles shall show the type faces used, the spelling and placement of names, and other information on the ballot.

§11-117 Withdrawal of candidates; disqualification; death; notice. Any candidate may withdraw within twenty-four hours after the close of filing, if he is a candidate for member of Congress or for state office, by giving notice in writing to the chief election officer, or if he is a candidate for a county office, by giving notice in writing to the county clerk of the county in which the candidate was seeking nomination or election.

On receipt of the notice of withdrawal the chief election officer or the clerk shall inform the chairman of the political party of which the person withdrawing was a candidate. When a candidate dies or is disqualified after the close of filing and the ballots have been printed, the chief election officer or the clerk shall either order the candidate's name stricken from the ballot or that a notice of the disqualification or death be prominently posted at the polling place on election day.

In no case shall the filing fee be refunded after filing.

§11-118 Vacancies; new candidates; insertion of names on ballots and notice at polling places. In case of death, withdrawal, or disqualification of any party candidate after filing, the vacancy so caused may be filled by the appropriate committee of the party. The party shall be notified by the chief election officer or the clerk in the case of a county office immediately after the death, withdrawal, or disqualification. If the party fills the vacancy, and so notifies the chief election officer or clerk within three days after the vacancy occurs, but no later than thirty days before a primary or special election or twenty days before a general election the name of the replacement shall be printed in an available and appropriate place on the ballot, not necessarily in alphabetical order. If the substitute candidate is submitted later than the time limits set

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forth above it will be in the discretion of the chief election officer or the clerk whether the name of any substitute candidate is placed upon the ballot by re-printing, overprinting, the use of rubber stamps, or such other means as the chief election officer or county clerk may deem satisfactory. The election inspectors shall post a notice at the polling place of the name of the substitute candidate and the office sought. No substitution shall be made within ten days of any election unless the chief election officer or the clerk determines that the name can be placed on the ballot in some practical and effective manner. If no substitution is made the candidacy involved shall be declared vacant.

§11-119 Printing; quantity. The ballots shall be printed by order of the chief election officer or the county clerk in the case of county elections. In any state or county election the chief election officer on agreement with the county clerk may consolidate the printing contracts for similar types of ballots where such consolidation will result in lower costs.

Each precinct shall receive a sufficient number of ballots based on the number of registered voters and the expected spoilage in the election concerned. A sufficient number of absentee ballots shall be delivered to each county clerk not less than ten days prior to the date of any election. Each county clerk shall, as soon as may be practical after the election, certify to the chief election officer the actual number of ballots delivered to absentee voters.

§11-120 Distribution of ballots; record. The chief election officer or the county clerk in county elections shall forward the official ballots, specimen ballots, and other materials to the election inspectors of the various precincts. They shall be delivered and kept in a secure fashion in accordance with rules and regulations promulgated by the chief election officer. In no case shall they arrive later than the opening of the polls on election day.

A record of the number of ballots sent to each precinct shall be kept by the chief election officer or the clerk.

PART IX. VOTING PROCEDURES

§11-131 Hours of voting. The polls shall be opened by the election inspectors at 7:00 a.m. of the election day and shall be kept open continuously until 6:00 p.m. of that day. If, at the closing hour of voting, any voter desiring to vote is standing in line outside the entrance of the polls with the desire of entering and voting, but due to the polling place being overcrowded has been unable to do so, he shall be allowed to vote irrespective of the closing hour of voting. No voter shall be permitted to enter or join the line after the prescribed hour for closing the polls. If all of the registered voters of the precinct have cast their votes prior to the closing time, the polls may be closed earlier but the votes shall not be counted until after closing time unless allowed by the chief election officer.

§11-132 Admission within polling place. The election inspectors shall, prior to opening the polls, set apart an area of one thousand feet in radius around the polling place to prevent interference with the conduct of the election. No person, other than the election officials, watchers, if any, the candi-

dates, and such voters as are for the time being actually engaged in voting or going to and returning therefrom, shall be permitted within the area so set apart during the time appointed for voting, except that public sidewalks, alleys, roads, streets, and highways falling within the one thousand foot radius shall be open to persons and vehicles passing through. Any other person who remains or loiters within the area so set apart during the time appointed for voting shall be guilty of a misdemeanor. If a voter is manifestly physically disabled, the voter may be assisted by anyone through the area so set apart.

The chief election officer may allow nonvoter groups to observe the election for educational purposes. The chief election officer shall use his discretion in granting such permission and insure that such persons whose applications are granted may observe the election at designated precincts in such a manner that they will not interfere with the election process.

§11-133 Voting booths; placement of ballot boxes. The election inspectors shall provide sufficient booths within the polling place at or in which the voters may conveniently cast their ballots. The booths shall be so arranged that in casting the ballots the voters are screened from the observation of others.

The inspectors shall place ballot boxes, where used, at a point convenient for voters to cast their ballots after voting and where the boxes may be observed by the election officials.

§11-134 Ballot boxes. The chief election officer shall provide suitable ballot boxes for each polling place. The boxes shall be of material selected by the chief election officer. They shall be smooth inside and out and shall have a hinged lid fastened securely by a good lock or locks. In the center of the lid there shall be an aperture of the appropriate size for the voting system used.

§11-135 Procedure upon opening polls. At the opening of the polls for election, the chairman of the inspectors shall, in the presence of bystanders, publicly open the ballot boxes and expose them to all persons present, that it may be seen that they are empty. They shall then be closed and locked and on no account opened till the polls are closed, except in those precincts using electronic ballots where the ballot boxes may be opened at the direction of the chief election officer for the early delivery of ballots to the counting center.

At the opening of the polls the seals of the ballot containers or packages shall be publicly broken and opened by the chairman.

A card of instruction detailing the method of marking ballots and of voting shall be immediately posted at or in each voting booth provided for by section 11-133; and not less than three cards shall be immediately posted in conspicuous places outside the polling place.

§11-136 Poll book, identification, voting. Every person upon applying to vote shall sign his name in the poll book prepared for that purpose. This requirement may be waived by the chairman of the election inspectors if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by an election inspector or clerk.

After signing the poll book and receiving his ballot, the voter shall pro-

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ceed to the voting booth to vote according to the voting system in use in his precinct. The election inspectors may, and upon request shall, explain to the voter the mode of voting.

§11-137 Secrecy; removal or exhibition of ballot. No person shall look at or ask to see the contents of the ballot of any voter, except as provided in section 11-139, nor shall any person within the polling place attempt to influence a voter in regard to whom he shall vote for. When a voter is in the voting booth for the purpose of marking or casting his ballot, no other person shall, except as provided in section 11-139, be allowed to enter the booth or to be in a position from which he can observe how the voter marks or casts his ballot.

In those precincts using paper ballots or electronic ballot cards no person shall take a ballot out of the polling place except for the early pick up of electronic ballot cards for delivery to the counting center. After voting the voter shall leave the voting booth and deliver his ballot to the election inspector in charge of the ballot boxes. The inspector shall make certain that he has received the correct ballot and no other and then shall drop the ballot into the ballot box. If any person having received a ballot leaves the polling place without first delivering the ballot to the inspector as provided above, or wilfully exhibits his ballot, except as provided in section 11-139, after the ballot has been marked, such person shall forfeit his right to vote, and the chairman of the inspectors shall cause a record to be made of the proceeding.

§11-138 Time allowed voters. A voter shall be allowed to remain in the voting booth for five minutes, and having voted the voter shall at once emerge and leave the voting booth. If he refuses to leave when so requested by a majority of election inspectors after the lapse of five minutes, he shall be removed by the election officers. Once a voter has completed his voting and emerged from the booth, he shall not be permitted to re-enter.

§11-139 Assistance of illiterate or disabled voter. Any voter who, by reason of illiteracy or blindness or other physical disability, is unable to mark his ballot, shall, if he so requests, receive the assistance of two election inspectors who are not of the same political party, or of any qualified voter whom he may designate, in the marking thereof. Before rendering assistance or permitting assistance to be rendered, the inspectors shall be satisfied that the physical disability exists.

The inspectors shall enter in writing in the record book the following:

- (1) The voter's name;
- (2) The fact that the voter cannot read the names on the ballot, if that is the reason for requiring assistance, and otherwise, the specific physical disability which requires him to receive assistance; and
- (3) The name or names of the person or persons furnishing the assistance.

§11-140 Spoiled ballots. In precincts using paper ballots and electronic ballot cards, if a voter spoils a ballot or ballot card, he may obtain another upon returning the spoiled one. The ballot returned shall be canceled immedi-

ately, and the reasons for the cancellation endorsed thereon and signed by the chairman of inspectors.

PART X. VOTE DISPOSITION

§11-151 Vote Count. Ballots shall be counted in accordance with this part and the voting system used in the precinct according to law. In precincts using paper ballots or electronic ballot cards, a ballot shall be counted even though a particular race on that ballot has less names voted for than are in the race. If a ballot has more names voted for in a race than can be elected in that race, the race shall not be counted, but the rest of the ballot shall be counted.

§11-152 Method of Counting. Immediately after the close of the polls, except in precincts using voting machines, the chairman of inspectors shall open the ballot box. In those precincts using electronic ballot cards the cards shall be taken to the counting center. The inspectors at the precinct and the officials at the counting center shall proceed to count the votes as follows:

- (1) The whole number of ballots shall first be counted to see if their number corresponds with the number of ballots cast as recorded by the inspectors.
- (2) If the number of ballots corresponds with the number of persons recorded by the inspectors as having voted, the inspectors or officials shall then proceed to count the vote cast for each candidate.
- (3) If there are more ballots or less ballots than the record calls for the inspectors or officials shall proceed as directed in section 11-153.

The officials at an electronic ballot card counting center may start to count the ballot cards upon receipt prior to the closing of the polls; provided there shall be no printout by the computer or other disclosure of the number of votes cast for a candidate or on a question prior to the closing of the polls.

§11-153 More or less ballots than recorded. If there are more ballots than the poll book calls for, this shall be an overage, if less, it shall be an underage. The election officials shall make a note of this fact on a form to be provided by the chief election officer. After making this notation the election officials shall proceed to count the ballots in the manner provided by law. The form recording the overage or underage shall be sent directly to the chief election officer or the clerk in county elections separate and apart from the other election records.

As soon after the election as possible the chief election officer or the clerk shall make a list of all precincts in which an overage or underage occurred and the amount of the overage or underage. This list shall be posted in the office of the chief election officer or the clerk in county elections and the clerk's office in counties other than the city and county of Honolulu in elections involving state candidates. The list shall be a public record.

An election contest may be brought under part XI, if the overage or underage in any district could affect the outcome of an election.

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§11-154 Records, etc.; disposition. The final duty of the inspectors in the operation of the precinct shall be to gather all records and supplies delivered to them and return them to the sending official, either the chief election officer or the county clerk.

The voted ballots shall be kept secure and handled only in the presence of representatives not of the same political party in accordance with regulations promulgated for the various voting systems. After the election and the results of the election have been certified as final by the chief election officer or the county clerk in county elections the ballots shall be sealed in a container. Thereafter this container shall be unsealed and resealed only in the presence of a circuit court judge.

The ballots and other election records may be destroyed by the chief election officer or county clerk when all elected candidates have been qualified, sworn, and seated.

§11-155 Certification of results of election. On receipt of certified tabulations from the election officials concerned, the chief election officer or county clerk in county elections shall compile, certify, and release the election results. The number of persons to be elected receiving the highest number of votes in any election district shall be declared to be elected.

§11-156 Certificate of election, form. The chief election officer or county clerk shall deliver certificates of election to the persons elected as determined under section 11-155. These certificates shall be delivered only after the filing of expense statements by the person elected in accordance with part XII and after the expiration of the time for bringing an election contest. If there is an election contest the certificate shall be delivered only after a final determination in the contest has been made and the time for an appeal has expired. The certificate shall be substantially in the following form:

CERTIFICATE OF ELECTION

I,, chief election officer (county clerk) of Hawaii (county), do hereby certify thatwas on theday of19...., duly elected a (name of office)for the district for a term expiring on theday of, A.D. 19....

Witness my hand thisday of, A.D. 19....

.....

Chief Election Officer (County Clerk)

§11-157 In case of tie. In case of the failure of an election by reason of the equality of vote between two or more candidates, the tie may be decided by lot, under the supervision of the chief election officer or county clerk in the case of county elections. When an election is decided by lot, the candidates shall agree in a signed statement to the use of a lot. If the candidates agree, they shall be bound by the lot and shall not bring an election contest under part XI after the

drawing of the lot. Each candidate shall be present at the drawing of the lot together with two witnesses to be selected by him.

PART XI. ELECTION CONTESTS

§11-171 Applicability of this part. This part shall apply whenever a contested election is subject to determination by a court of competent jurisdiction in the manner provided by law.

§11-172 Contests for cause; summons. Any candidate, or qualified political party directly interested, or any thirty voters of any election district, may file a complaint in the circuit court of the circuit in which the complainant or complainants reside. The complaint shall set forth any cause or causes, such as provable fraud, overages, or underages, that could cause a difference in the election results. The complaint shall also set forth any reasons for reversing, correcting, or changing the decisions of the election inspectors or officials at a counting center for electronic ballots.

The complaint shall be filed in the office of the clerk of the circuit court within seven days following a primary election or within thirty days following the general or special election proposed to be contested and shall be accompanied by a deposit of \$25 for costs of court. The clerk shall issue to the defendants named in the complaint a summons to appear before the circuit court within five days after service in the case of a primary election or in the case of a general or special election within ten days after service thereof.

§11-173 Contests for small vote differences. In a general or special election a complaint may be filed as set forth in section 11-172 if the difference in the votes cast for the winning and losing candidates for an office eligible to be voted on by one-third of the voters of the entire State appears to be one-eighth of one per cent or less of the total ballots cast for the office, or in the case of votes cast for the candidates for any other state or county office the difference in the votes cast for the winning and losing candidates appears to be one-fourth of one percent or less of the total ballots cast for any other state and county office, then the circuit court, upon the filing of a complaint, shall order a recount of a part of the ballots cast as agreed upon by the candidates involved or upon the absence of an agreement, then all of the ballots cast for the office where the contest exists. In cases where several candidates are to be elected to a multiple office, if the difference mentioned appears between the votes received by the lowest among the winning candidates and those received by the highest among the losing candidates, the circuit court shall likewise order a recount of the questioned ballots. The lowest and highest among the winning and losing candidates may include more than one candidate, provided that they are within the difference mentioned.

Summons shall be issued as provided in section 11-172.

§11-174 Hearing, judgment. (a) In primary election contests the court shall hear the contest in a summary manner and at the hearing the court shall cause the evidence to be reduced to writing and shall within four days follow-

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ing the return give judgment fully stating all findings of fact and of law. The judgment shall decide what candidate was nominated or elected, as the case may be, in the manner presented by the petition, and a certified copy of the judgment shall forthwith be served on the chief election officer or the county clerk, as the case may be, who shall place the name of the candidate declared to be nominated on the ballot for the forthcoming general election. The judgment shall be conclusive of the right of the candidate so declared to be nominated; provided, that this subsection shall not operate to amend or repeal section 12-41.

(b) In cases involving general and special elections the complaint shall be heard by the circuit court in which the complaint was filed as soon as it reasonably may be heard. On the return day, the court, upon its motion or otherwise, may direct summons to be issued to any person who may be interested in the result of the proceedings.

At the hearing, the court shall cause the evidence to be reduced to writing and shall give judgment, stating all findings of fact and of law. The judgment may invalidate the general or special election on the grounds that a correct result cannot be ascertained because of a mistake or fraud on the part of the election inspectors; or decide that a certain candidate, or certain candidates, received a majority or plurality of votes cast and were elected. If the judgment should be that the general or special election was invalid, a certified copy thereof shall be filed with the governor, and he shall duly call a new election to be held within sixty days after the judgment is filed. If the court shall decide which candidate or candidates have been elected a copy of that judgment shall be served on the chief election officer or county clerk, who shall sign and deliver to the candidate or candidates certificates of election, and the same shall be conclusive of the right of the candidate or candidates to the offices.

§11-175 Powers of courts; costs. The circuit court may compel the attendance of witnesses, punish contempts, and do whatsoever else may be necessary fully to determine the proceedings, and enforce its decrees therein. The court may make such special rules as it may find necessary or proper. The costs shall be the same as in trials in the circuit courts at chambers.

§11-176 Appeal. In contests involving a general or special election the decision of the circuit court concerning any question properly involved in any complaint and proceeding shall be final and binding upon all parties unless an appeal is prosecuted to the supreme court within ten days after the decision of the circuit court in the manner provided by law for civil appeals to the supreme court from the circuit court, or in such other manner as may be provided by law. The supreme court, upon determination of any appeal, may enter any judgment the circuit court would be authorized to enter.

PART XII. EXPENSES

A. Election Expenses

§11-181 Capital equipment. The State shall pay for all voting system capital equipment. This shall include, but not be limited to voting machines, electronic ballot pads, and initial computer programs.

§11-182 Election expenses when no county elections. All expenses, including expenses attributable to registration of voters by the county clerk, for state elections conducted in any county which do not involve elections for county offices shall be borne by the State and paid out of such appropriations as may be made by the legislature for election purposes.

§11-183 Election expenses when no state elections. All expenses for county elections which do not involve state offices shall be borne by the county and paid out of such appropriations as may be made by the council for election purposes.

§11-184 Election expenses and supervision in combined state and county elections. Election expenses in elections involving both state and county offices shall be borne as set forth below.

(1) The State shall pay for and supervise:

- (A) Inspectors and clerks;
- (B) Instruction of inspectors and clerks;
- (C) Boards of registration;
- (D) Polling place costs other than supplies: installation rentals, ballot boxes, voting booths, custodians, telephones, and maintenance;
- (E) Other equipment such as ballot transport containers;
- (F) Temporary election clerks hired to do strictly state work; and
- (G) Extraordinary voter registration costs.

(2) The county shall pay for and supervise:

- (A) Normal voter registration, voters list maintenance, and all printing connected with voter registration, including printing of the voters list;
 - (B) Temporary election clerks hired to do strictly county work; and
 - (C) Maintenance of existing voting machines, including parts, freight, storage, programming, and personnel.
- (3) The remaining election expenses shall be divided in half between the State and the county involved. These expenses shall include but not be limited to:
- (A) Polling place supplies;
 - (B) All printing, including ballots;

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- (C) Temporary election clerks not including voting machine programmers doing work for both the State and county; and
- (D) All other costs for which the State or county are not specifically responsible relating to the operation of voting machines, electronic voting systems, and other voting systems except paper ballots to include but not be limited to real property rentals, equipment rentals, personnel, mileage, telephones, supplies, publicity, computer programming, and freight.

The responsibility for supervising the above functions shall be determined by the chief election officer where the supervision of such functions have not been assigned by the legislature.

Any future expenses not presently incurred under any voting system now in use or to be used shall be assigned to paragraphs (1), (2), or (3) above by the chief election officer upon agreement with the county clerks or by the legislature.

B. Candidates Expenses

§11-191 Definitions. When used in this part:

“Candidate” shall mean any person who files nomination papers for a public or constitutional office which is elected by the voters of this State at any election.

“Office” shall mean any public or constitutional office including but not limited to the following: U.S. senator, U.S. representative, state senator and representative, board of education official, delegates to the constitutional convention, and county officers.

“Party” shall mean any qualified political party.

“Committee” shall mean any organization, association, or person spending money for or against any candidate, party, question, or issue.

§11-192 Political literature, advertisements. All political advertisements in any media, newspaper, radio, television, and all campaign literature published or circulated prior to or on the day of the election shall state who paid for such literature or advertisement and the address of such person, party, or committee.

Any person, business, or corporation publishing, showing, broadcasting, or circulating political advertisements or campaign literature that violate this section shall be guilty of a violation of section 19-8.

§11-193 Filing of expense statement. Each party, committee, including presidential committees, and each candidate for a state or national office, excepting presidential candidates not residing within the State, shall file with the chief election officer, and each party, committee, and each candidate for a county office shall file with the clerk of the county, an itemized statement of his or their expense, by, for, or on behalf of a party, candidate for election, or question or issue at the election showing each amount expended, the purpose or object for which each expenditure was made, and the person or persons to

whom made. The itemized statement shall also contain the amount contributed and the name and address of each contributor who has contributed in excess of \$500 toward the election of the candidates or to a party or committee. The statements shall be sworn to by each candidate or an authorized person for a party or committee making the expenditures and shall be open to public inspection.

In case of any candidate, or committee supporting any candidate, who was not nominated at the primary election as a candidate for the general election, the itemized statement of expenses shall be filed within twenty days following the primary election. In the case of any candidate nominated at the primary election, or committee whose candidate was nominated at the primary election, as candidate for the general election, and in the case of parties or committees for or against any question or issue, the itemized statement of expenses for each election shall be prepared separately but filed together within twenty days following the general election.

§11-194 Contribution of corporate funds; unlawful. It shall be illegal for any corporation, incorporated under the laws of the State, or doing business therein, or any officer or agent thereof, from corporate funds, to make or authorize any contributions, directly or indirectly, to campaign funds or for political purposes, in any election held in the State. Any person or corporation violating this section shall be fined or imprisoned under section 19-5.

§11-195 Anonymous contributions; unlawful. No person shall make a payment of his own money or of another person's money to any candidate, party, or committee in connection with a nomination or election in any other name than that of the person who in truth supplies such money; nor shall any candidate, party, or committee knowingly receive such payment or enter or cause the same to be entered in his accounts in another name than that of the person by whom it was actually furnished.

This section shall not apply to amounts that aggregate less than \$500. Any anonymous contribution received by a candidate, party, or committee shall not be used or expended, but shall be returned to the donor, if his identity is known. If no donor is found, the contribution shall escheat to the State in the case of candidates for a state office and parties or committees backing such candidate or for or against a state issue on the ballot and to the county in the case of candidates for a county office and parties or committees backing such candidate or for or against a county issue on the ballot. In the case where an anonymous contribution is made to a party organization and no donor is found, the contribution shall escheat to the state if it is a state organization and to the county if it is a county organization.

Any person violating this section shall be guilty of a misdemeanor.

CHAPTER 12

PRIMARY ELECTIONS

PART I. NOMINATION; DETERMINATION OF CANDIDATES

§12-1 Application of chapter. All candidates for elective office, except as provided in section 14-21, shall be nominated in accordance with this chapter and not otherwise.

§12-2 Primary held when; candidates only those nominated. The primary shall be held at the regular polling place for each precinct on the first Saturday of October in every even numbered year.

No person shall be a candidate for any general election unless he has been nominated in the primary next prior thereto.

§12-3 Nomination papers: format; limitations. The name of no candidate shall be printed upon any official ballot to be used at any primary or special election unless a nomination paper shall have been filed in his behalf and in the name by which he is commonly known. The nomination papers shall be in a form prescribed by the chief election officer containing substantially the following information:

- (1) A statement by the registered voters of the district from which the candidate is running signing the form that they are members of the party of the candidate or nonpartisans for a nonpartisan candidate;
- (2) A statement by the registered voters that they nominate the candidate for the office on the nomination papers;
- (3) The residence address and county in which the candidate resides;
- (4) The name of the candidate and the office for which he is running, which name and office is to be placed on the nomination papers by the chief election officer or the county clerk in the case of county elections prior to releasing the form to the candidate;
- (5) Space for the names of the registered voters signing the form and their district or districts and precinct or precincts;
- (6) A certification by the candidate that he will qualify under the law for the office he is seeking by the date of the next election, and that he is a registered voter and a resident in the district from which he is running;
- (7) A certification by a party candidate that he is a member of the party, that he believes in the principles and policies of that party, that if elected he will carry out the provisions and pledges of the political platform of the party and will abide by the party's rules and regulations;
- (8) The name the candidate wishes inserted on the ballot and the post office address of the candidate.

No signatures shall be counted, unless they are upon papers having the format set forth above, written or printed thereon, and if there are separate sheets to be attached to the papers, the sheets shall have the name of the person and the office for which he is running placed thereon by the chief election officer or the clerk. These nomination papers and separate sheets shall be provided by the chief election officer or the clerk in the case of county offices.

Nomination papers shall not be filed in behalf of any person for more than one party or for more than one office; nor shall any person file nomination papers both as a party candidate and as a nonpartisan candidate.

The office for which the candidate is running may not be changed from that indicated on the nomination papers and separate sheets. If the candidate wishes to run for an office different from that for which the nomination papers state, he may request appropriate nomination papers from the chief election officer or clerk and have them signed by the required number of voters.

§12-4 Nomination papers: qualifications of signers. No person shall sign the nomination papers of more than one candidate, partisan or nonpartisan, for the same office, unless there is more than one office in a class in which case no person shall sign papers for more than the actual number of offices in a class. Nomination papers shall be construed in this regard according to priority of filing, and the name of any person appearing thereon shall be counted only so long as this provision is not violated, and not thereafter.

No name on nomination papers shall be counted, unless the signer is a registered voter, qualified to vote for the candidate at the next election. To determine if the signers belong to the party they state on the papers, the chief election officer or clerk may use lists prepared in accordance with section 11-24.

§12-5 Nomination papers: number of signers. Nomination papers for candidates for members of Congress, governor, lieutenant governor, and the board of education shall be signed by not less than twenty-five registered voters of the State or of the Congressional district or school board district from which the candidates are running in the case of candidates for the United States House of Representatives or for the board of education.

Nomination papers for candidates for either branch of the legislature and for county office shall be signed by not less than fifteen registered voters of the district or county or subdivision thereof for which the person nominated is a candidate.

§12-6 Nomination papers: time for filing; fees. Nomination papers shall be filed as follows:

- (1) For members of Congress, state, and county offices, with the chief election officer or county clerk in case of county offices by 4:30 p.m. of the forty-fifth day prior to the day for holding the primary or special election (but if such day is a Saturday, Sunday, or holiday then by 4:30 p.m. of the first working day immediately preceding); provided that any state candidate from the counties of Hawaii, Maui, and Kauai may file his declaration of candidacy with his respective

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county clerk. The clerk shall transmit to the office of the chief election officer the state candidate's declaration of candidacy without delay.

- (2) There shall be deposited with each nomination a fee on account of the expenses attending the holding of the primary or special election which shall be paid into the treasury of the State, or the county, as the case may be, as a realization:
 - (A) For governor, lieutenant governor, United States senators, and United States representatives - \$75;
 - (B) For mayor - \$50; and
 - (C) For all other offices - \$25.
- (3) Upon the receipt by the chief election officer or the county clerk of the nomination papers of a candidate, the day, hour, and minute when it was received shall be endorsed thereon.

§12-7 Filing of oath. The name of no candidate for any office shall be printed upon any official ballot, in any election, unless the candidate shall have taken and subscribed to the following written oath or affirmation, and filed the oath with his nomination papers.

The written oath or affirmation shall be in the following form:

"I,, do solemnly swear and declare, on oath that if elected to office I will support and defend the Constitution and laws of the United States of America, and the Constitution and laws of the State of Hawaii, and will bear true faith and allegiance to the same; that if elected I will faithfully discharge my duties as(name of office)..... to the best of my ability; that I take this obligation freely, without any mental reservation or purpose of evasion; So help me God."

Upon being satisfied as to the sincerity of any person claiming that he is unwilling to take the above prescribed oath only because he is unwilling to be sworn, he may be permitted, in lieu of the oath, to make his solemn affirmation which shall be in the same form as the oath except that the words "sincerely and truly affirm" shall be substituted for the word "swear" and the phrases "on oath" and "So help me God" shall be omitted. Such affirmation shall be of the same force and effect as the prescribed oath.

The oath or affirmation shall be subscribed before the officer administering the same, who shall endorse thereon the fact that the oath was subscribed and sworn to or the affirmation was made together with the date thereof and affix the seal of his office or of the court of which he is a judge or clerk.

It shall be the duty of every notary public or other public officer by law authorized to administer oaths to administer the oath or affirmation prescribed by this section and to furnish the required endorsement and authentication.

§12-8 Nomination papers: challenge. All nomination papers filed in conformity with section 12-3 shall be deemed valid unless objection is made thereto by the chief election officer or the county clerk in the case of county of-

fices or by a registered voter in writing. Such objection is to be made within 48 hours after the close of filing or the next succeeding working day. In case objection is made, notice thereof shall be given including notification by registered or certified mail to the candidate objected thereto. All objections shall be decided by the chief election officer or county clerk within 48 hours after they are made. All objections which are upheld shall be placed in writing by the deciding official if so requested by the candidate affected.

§12-9 List of candidates. As soon as possible but not later than five days after the close of filing the chief election officer shall transmit to each county clerk and the county clerk shall transmit to the chief election officer certified lists containing the names of all persons, the office for which each is a candidate, and their party designation, or designation of nonpartisanship, as the case may be, for whom nomination papers have been duly filed in his office and who are entitled to be voted for at the primary or special election.

PART II. BALLOTS

§12-21 Official party ballots. There shall be only one primary ballot for each party; provided that ballots of no two parties shall be of the same color or tint. Before being finally printed sample ballots or proofs thereof shall be approved by the chief election officer or county clerk in county elections as to uniformity of size, weight, shape, and thickness and differentiation of color or tint for the respective party ballots.

At the top of the primary ballot shall be printed in large capital letters, words designating the ballot; if a Democratic ballot, the designating words shall be "DEMOCRATIC PRIMARY BALLOT"; if a Republican ballot, the designating words shall be "REPUBLICAN PRIMARY BALLOT", and in the like manner for each other party.

§12-22 Official nonpartisan ballots. There shall be only one primary ballot containing the names of all nonpartisan candidates to be voted for and the offices for which they are candidates. At the top of the ballot shall be printed in large capital letters the words "NONPARTISAN PRIMARY BALLOT". The ballot shall, in all other respects, conform to the requirements relative to official party ballots.

§12-23 Board of education ballots. There shall be a ballot containing only the names of all board of education candidates to be voted for. At the top of the ballot shall be printed in large capital letters the words "SCHOOL BOARD BALLOT". The ballot shall, in all other respects, conform to the requirements relative to official party ballots.

PART III. BALLOT SELECTION

§12-31 Selection of party ballot. No person shall be entitled to vote at a primary election who shall refuse to state his party preference or nonpartisanship to the election inspectors, unless he wishes to vote only for the board of education. If the person desiring to vote is not challenged, one of the inspectors shall give him one and only one official primary ballot of the party designated,

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or the official nonpartisan primary ballot, or the official board of education ballot, if so designated.

In any primary election in the year 1970 and thereafter, no person shall be entitled to select a primary ballot of a type other than that which he had selected at the next preceding primary election in which he voted, unless, prior to three months preceding the primary election in which such ballot is to be selected, he has registered with the county clerk to change his party to another party or to a nonpartisan designation. If a person did not vote in any preceding primary election or if, a person's party is disqualified under section 11-61 or he voted in a board of education race only, or he is a newly registered voter, he shall be entitled to select any one primary ballot.

In all primary elections the inspectors shall note the voter's party selection where the voters list indicates no previous party selection. This information shall be forwarded to the county clerk.

PART IV. ELECTION RESULT

§12-41. Result of election. The person or persons receiving the greatest number of votes at the primary as a candidate of a party for an office shall be the candidate of the party at the following general election but not more candidates for a party than there are offices to be elected; provided that any candidate for the board of education or for any county office who is the sole candidate for that office at the primary election, or who is only opposed by a candidate or candidates running on his own ticket and is not opposed by any candidate running on any other ticket, nonpartisan or otherwise, and is nominated at the primary shall, after the primary be deemed and declared to be duly and legally elected to the office for which he is a candidate at the primary regardless of the number of votes received by him. Any nonpartisan candidate receiving at least ten per cent of the total votes cast for the office for which he is a candidate at the primary, or a vote equal to the lowest vote received by the partisan candidate who was nominated in the primary, shall also be a candidate at the following election; provided, that when more nonpartisan candidates qualify for nomination than there are offices to be voted for at the general election, there shall be certified as candidates for the following election those receiving the highest number of votes, but not more candidates than are to be elected.

CHAPTER 13

BOARD OF EDUCATION

§13-1 Board members; number; districts, composition of. The board of education shall consist of eleven members. Eight members shall be elected by the registered voters of the respective school board districts and three members shall be elected at-large in the city and county of Honolulu. The school board districts, the at-large district, and the number of members to be elected from each shall be as follows:

First school board district (Hawaii): the island of Hawaii comprising the first, second, third, fourth, and fifth representative districts, two members;

Second school board district (Maui): the islands of Maui, Molokai (including the county of Kalawao), Lanai, and Kahoolawe comprising the sixth and seventh representative districts, one member;

Third school board district (Honolulu): that portion of the island of Oahu comprising the eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, and eighteenth representative districts, one member;

Fourth school board district (Central Oahu): that portion of the island of Oahu comprising the nineteenth and twenty-second representative districts, one member;

Fifth school board district (Leeward Oahu): that portion of the island of Oahu comprising the twentieth and twenty-first representative districts, one member;

Sixth school board district (Windward Oahu): that portion of the island of Oahu comprising the twenty-third and twenty-fourth representative districts, one member;

At-large district (Oahu): the city and county of Honolulu, three members; and

Seventh school board district (Kauai): the islands of Kauai and Niihau comprising the twenty-fifth representative district, one member.

§13-2 Qualifications. No person shall be eligible for election or appointment to the board of education unless he is a voter of the school board district or the at-large district from which he is to be elected or appointed. No member of the board shall hold any other public office under the state or county governments. The term "public office", for the purposes of this section, shall not include notaries public, reserve police officers of emergency organizations for civilian defense or disaster relief.

§13-3 Election of members; primary election. Except as otherwise provided by this chapter, the candidates for the board of education shall be nominated and elected in the manner prescribed by this title.

Members running for the board of education shall have their names placed on the ballot as follows:

- (1) The names of all board candidates arranged alphabetically and grouped by party and nonpartisanship shall be placed on each party and nonpartisan ballot;
- (2) Separate ballots for board candidates shall be printed in accordance with section 12-23 for those voters who do not wish to state either their party preference or nonpartisanship at the primary election.

Each voter in the primary shall be entitled to vote for the number of seats available for such school board districts, and, as the case may be, for such at-large district. Each voter shall only vote for the candidates of one party or nonpartisan. If a ballot is marked contrary to this paragraph, the race shall not be counted.

§13-4 Board members; general election. The names of the candidates in each party and the nonpartisan candidates on the primary ballot receiving the greatest number of votes, not to exceed the number of members to which such board district and, as the case may be, such at-large district are entitled shall appear on the ballot for the general election with other candidates for office subject to section 12-41 in the following manner:

- (1) The name of the candidate with the highest number of votes in the primary election shall be listed at the top of the race on the general election ballot;
- (2) Other candidates shall be listed in descending order according to the number of votes they received in the primary election.

§13-5 Board members; term, vacancies. The term of office of members of the board shall be four years beginning on the day of the general election of the year in which they are elected and ending on the day of the second general election after their election. Members of the board may be re-elected without restriction as to the number of terms.

Any vacancy that may occur through any cause other than the expiration of the term of office shall be filled by the governor in accordance with section 17-3. The appointee shall be a nonpartisan if the person he succeeds was a nonpartisan.

CHAPTER 14

PRESIDENTIAL ELECTIONS

PART I. PRESIDENTIAL SHORT BALLOT

§14-1 Definition of state. As used in this part "state" includes the District of Columbia.

§14-2 Eligibility of new residents to vote. Each citizen of the United States who, immediately prior to his removal to this State, was a citizen of another state and who has been a resident of this State for less than one year prior to a presidential election is entitled to vote for presidential and vice presidential electors, as provided for in section 11-113, at that election, but for no other offices, if:

- (1) He otherwise possesses the substantive qualifications to vote in this State, except the requirements of residence and registration; and
- (2) He complies with this chapter.

§14-3 Application for presidential ballot by new resident. A person desiring to qualify under this chapter in order to vote for presidential and vice presidential electors is not required to register but on or before the last date for registration for a general election, as provided for in section 11-24, shall make an application in the form of an affidavit executed in duplicate in the presence of the clerk of the county.

The affidavit shall contain a statement by the person containing substantially the following information:

- (1) He is a citizen of the United States;
- (2) His last residence of registration before becoming a resident of this State;
- (3) The date the person became a resident of this State;
- (4) The address at which the person now lives;
- (5) That the person shall be at least twenty years of age prior to the day of the next presidential election.

The affidavit shall also contain a statement that the person has not and will not vote otherwise than by this ballot at the presidential election for which the application is being made.

§14-4 Mailing duplicate application. The county clerk shall immediately mail to the appropriate official of the state in which the applicant last resided the duplicate of the application.

§14-5 Filing and indexing information from other states. The county clerk shall file each duplicate application or other official information received by him from another state indicating that a former resident of this State has made application to vote at a presidential election in another state and shall maintain an alphabetical index thereof, for a period of one year after the election.

§14-6 Printing and delivery of ballot. The chief election officer shall print a special ballot containing the names of the candidates for president and vice president of the United States and shall distribute them to the clerk of each county not less than thirty days prior to the next presidential election. These ballots shall be used only by voters qualified to vote under this chapter.

If satisfied that the application is proper and that the applicant is qualified to vote under this chapter the county clerk or official of the absentee precinct shall deliver to the applicant a special ballot for presidential and vice presidential electors, as provided for above, not sooner than thirty days nor later than the day prior to the next presidential election.

§14-7 Voting by new residents. (a) The applicant, upon receiving the ballot for presidential and vice presidential electors shall mark the ballot in the presence of the county clerk or in the absentee precinct in a manner that the official cannot know how the ballot is marked. The voter shall then deposit and seal it in an envelope furnished by the clerk or official of the absentee precinct.

(b) There shall be imprinted on the outside of the envelope a statement substantially as follows:

CERTIFICATION OF NEW RESIDENT VOTER

I have qualified as a new resident voter in this State to vote for presidential and vice presidential electors. I have

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not applied nor do I intend to apply for an absentee voter's ballot from the state from which I have removed. I have not voted and will not vote otherwise than by this ballot.

Dated:

(Signature of Voter)

Witness:

(County Clerk or Inspector)

The voter shall sign the certification upon the envelope as set forth above, and shall then deliver the sealed envelope to the county clerk or an official of the absentee precinct who shall keep the envelope in his office or the absentee precinct until election day when the ballot shall be counted as provided by law for other absentee ballots.

§14-8 List of applicants open for public inspection. The county clerk shall keep open to public inspection a list of all persons who have applied under this chapter to vote as new residents with their names, addresses, and application dates.

§14-9 Delivery and deposit of voted ballots. (a) The county clerk shall prepare and deliver the ballots for new residents to the appropriate election officials in the manner prescribed by law for absentee ballots. The ballots shall be processed in accordance therewith.

(b) The appropriate election officials shall record the new resident voter's name with a notation designating him as a new resident voting for presidential and vice presidential electors only.

§14-10 Challenge of new resident's vote. The vote of any new resident may be challenged for cause. Challenges shall be handled in the manner provided for by law.

PART II. PRESIDENTIAL ELECTORS

§14-21 Nomination of presidential electors and alternates; certification; notification of nominees. In each year when electors of president and vice president of the United States are to be chosen, each of the political parties shall hold a state party convention pursuant to the constitution, bylaws, and rules of the party; and nominate as candidates for its party as many electors, and a first and second alternate for each elector, of president and vice president of the United States as the State is then entitled. The electors and alternates shall be registered voters of the State. The names and addresses of the nominees shall be certified by the chairman and secretary of the convention of the respective parties and submitted to the chief election officer no later than August 31 of the same year. The chief election officer upon receipt thereof, shall immediately notify each of the nominees for elector and alternate elector of his nomination.

§14-22 Contested nominations of presidential electors and alternates. If more than one certificate of choice and selection of presidential electors and alternate electors of the same political party is filed with the chief election officer, he, as chairman of the contested presidential electors' committee hereby constituted, shall notify the state comptroller and attorney general, who are the remaining members of the committee, of the date, time, and place of the hearing to be held for the purpose of making a determination of which set of electors and alternate electors were lawfully chosen and selected by the political party. Notice of the hearing shall be given to the chairman of the state central committee of each political party, contestants for the positions of electors and alternate electors by written notice, and to all other interested parties by publication at least once in a newspaper of general circulation. A determination shall be made by the committee by majority vote no later than October 30 of the same year and the determination shall be final. Notice of the results shall be given to the nominees duly determined to have been chosen. The committee shall have all the powers enumerated in section 11-43.

§14-23 Time for election, number to be chosen. In each presidential election year there shall be elected at large, at the general election, by the voters of the State, as many electors and alternates of president and vice president of the United States as the State is then entitled to elect, in the manner provided under section 11-113. The electors and the alternates must be residents of the State. The election shall be conducted and the results thereof determined in conformity with the laws governing general elections except as otherwise provided.

§14-24 Certificate of election, notice of meeting. On the last Monday in the month of the election, or as soon as the returns have been received from all counties in the State, if received before that time, the chief election officer shall certify to the governor the names of the presidential electors and alternates of the same political party as the candidates for president and vice president receiving the highest number of votes as elected as presidential electors and alternates. Thereupon the governor shall in accordance with the laws of the United States, communicate by registered mail under the seal of the State of Hawaii to the administrator of general services of the United States, the certificates of persons elected as presidential electors, setting forth the names of the electors and the total number of votes cast for each elector. The chief election officer shall thereupon, together with a notice of the time and place of the meeting of the electors, cause to issue and transmit to each elector and alternate a certificate of election signed by the governor in substantially the following form:

**CERTIFICATE OF ELECTION OF
PRESIDENTIAL ELECTORS**

I,, Governor of the State of Hawaii, do hereby certify that ..
....., a member of theparty, was on the
day of, 19...., duly elected a Presidential Elector for the State of Ha-
waii for the presidential election of 19....

CERTIFICATE OF ELECTION OF
ALTERNATE PRESIDENTIAL ELECTOR

I,Governor of the State of Hawaii, do hereby certify that ..
....., a member of theparty, was on theday of
....., 19...., duly electedAlternate Presidential Elector for Presi-
dential Electorfor the State of Hawaii for the presidential elec-
tion of 19....

§14-25 Duties of the governor. On or before the day of the meeting of the electors the governor shall deliver to the electors a list of the names of electors, and he shall perform any other duties relating to the presidential electors which are required of him by laws of the United States.

§14-26 Assembly of electors at state capital; time. The electors chosen shall assemble at the state capital on the first Monday after the second Wednesday in December next following their election, at two o'clock in the afternoon.

§14-27 Filling vacancies of presidential electors. In case of the death or absence of any elector chosen, or if the number of electors is deficient for any other reason, the vacancy or vacancies shall be filled by the alternates in the order of their numerical designation for their respective electors causing the vacancy or vacancies, and in the event that vacancy or vacancies still exist, then the electors present shall select from the members of the same political party as many persons as will supply the deficiency. Certificates for the alternates or substitutes as presidential electors shall be issued by the governor.

§14-28 Convening and voting for president and vice president; party vote. The electors, when convened, if both candidates are alive, shall vote by ballot for that person for president and that person for vice president of the United States, who are, respectively, the candidates of the political party which they represent, one of whom, at least, is not an inhabitant of this State.

§14-29 Naming persons voted for in ballots, separate ballots. The electors shall name in their ballots the person voted for as president, and in separate ballots the person voted for as vice president.

§14-30 Lists of persons voted for and number of votes, certification, transmission to president of the senate. The electors shall separately list the persons voted for as president and as vice president, respectively, and the number of votes for each, which lists they shall sign, certify, seal, and transmit by mail, one copy to the seat of the government of the United States, directed to the president of the senate of the United States, and make such other disposition of the lists as required by law.

§14-31 Compensation and mileage of electors, amounts. Each presidential elector shall receive \$50 for his services, plus the reasonable cost of transportation from his voting residence in the State to the state capital and return. Their accounts shall be certified to by the chief election officer and audited by the state comptroller, and shall be payable out of the general fund.

CHAPTER 15

ABSENTEE VOTING

§15-1 Who may vote by absentee ballot. Any voter who will be unable to appear at his polling place during the hours of voting at any election because of absence from the island, county, or district in which he is registered may cause his vote to be cast by absentee ballot subject to this chapter.

§15-2 Request for absentee ballot. Any person entitled to vote under this chapter, except in cases covered by section 15-12, may request an absentee ballot in person or in writing from the county clerk not more than sixty days prior to the election. If the person is within the State he shall make his request not less than five days prior thereto. If the person is without the State he shall make his request not less than ten days prior thereto.

The request shall include any information which will facilitate the location of his voting precinct, the establishment of his right to a ballot, and the address to which he wishes his ballot forwarded. The request, when made for any primary election, may include an additional request for an absentee ballot to be voted at any election immediately following the primary, provided the person so indicates in his request and gives reason therefor to the satisfaction of the county clerk.

§15-3 Delivery of ballots. Immediately upon receipt of a request within the time limit specified in section 15-2, the county clerk shall examine the records to ascertain whether or not the voter is lawfully entitled to vote as requested. As soon as official ballots are printed and available, the clerk shall mail in a forwarding envelope, via airmail if necessary, or deliver in person, if the voter appears at the office of the clerk, an official ballot and other materials prescribed in section 15-4.

§15-4 Reply envelope; instructions. The county clerk shall enclose the ballot in an unsealed reply envelope to be furnished by him and which shall be in the form prescribed by the chief election officer. In addition, the county clerk shall prepare printed instructions regarding the manner of marking and returning the absentee ballot including instructions that the reply envelope must contain a legible postmark which includes a date to insure being counted as a late absentee vote in general elections. The clerk shall furnish a copy of the printed instructions and information setting forth the precinct and district in which the voter is entitled to vote. The reply envelope shall bear upon the face thereof the name, official title, and post office address of the county clerk and, in the lower left corner, the words "Postmaster please place a legible postmark including a date on this envelope" and "Absentee Ballot Enclosed". The back of the reply envelope shall contain a statement to be subscribed to by the voter which affirms the fact that he is the person voting.

§15-5 Return of ballot; voting by absentee voter at polls prohibited. The reply envelope shall be:

- (1) Mailed to reach the county clerk issuing the absentee ballot not later

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than 4:30 p.m. on the day before a primary election nor later than 12 o'clock noon on the sixth day following a general election; or

- (2) Delivered other than by mail to the county clerk issuing the absentee ballot not later than 4:30 p.m. on the day before a primary or general election.

In returning the envelope the voter may place a certificate of mailing in the envelope to establish the time of mailing.

No person having voted an absentee ballot pursuant to this section shall be entitled to cast a ballot at the polls on election day.

§15-6 Absentee ballot container. Each absentee ballot shall be placed in an absentee ballot container or containers. The container shall be securely sealed except for an opening sufficient to permit deposit of the reply envelopes and shall be sufficiently marked with the name and official title of the county clerk and the words "This container holds absentee ballots and must be opened only pursuant to law". The opening of the container shall be securely sealed at the close of each business day by the clerk or the election inspectors of the absentee precinct. The container itself shall be secured in the office of the clerk.

No person shall open the absentee ballot container before the day provided for in section 15-8 or 15-9. Any person opening the absentee ballot container or tampering with the container before the prescribed time shall be guilty of an election offense under section 19-6.

§15-7 Absentee voter precinct. An absentee precinct shall be established at the office of the respective county clerks or a place designated by the clerk in the county seat. The absentee precinct shall be established under the precinct requirements of chapter 11; provided section 11-72 shall be applied to the absentee precinct instead of to the representative district. The chief election officer shall determine if the absentee precinct should meet before election day to handle the absentee voters who are voting in person and if there should be more than one such precinct in the county. The chief election officer shall also determine the number of inspectors and clerks needed to man the precinct.

All absentee ballots received in the mail or delivered to the county clerk shall be counted in the absentee precinct. In counties using electronic ballot cards an absentee precinct shall be established at the counting center on election day to count the absentee ballots. In no case shall the reply envelope be opened prior to election day.

The chief election officer or the county clerk in county elections may appoint deputy county clerks to handle absentee voting in remote areas where there is no county clerk's office. Deputy county clerks shall also be appointed in those areas where past experience has indicated that it would be a hardship on the voters to require them to appear at the clerk's office.

§15-8 Receipt and disposition of absentee ballots. Upon receipt of the envelope marked "Absentee Ballot Enclosed" from any person voting under this chapter, the county clerk or the inspectors of the absentee precinct shall time stamp the reply envelope and deposit it in the correct absentee ballot con-

tainer. On election day the container shall be opened by the inspectors of the absentee precinct. Prior to opening the envelopes and counting the ballots, the envelopes shall be checked for the following:

- (1) Sufficiency of statement;
- (2) If the signature corresponds with the absentee request or register;
- (3) If the voter is a registered voter and has complied with the requirements of section 11-15 or 11-16;
- (4) If the envelope appears to be tampered with.

If an absentee precinct is established at the county clerk's office prior to election day the election inspectors of the precinct shall check the envelopes for the above requirements prior to depositing them in the container. All envelopes that have been marked as questionable prior to election day shall be rechecked on election day.

If any of the above requirements is not met, the inspector shall mark across the face of the envelope "Questionable" giving the reasons therefor and the envelope shall be placed unopened in a separate container and disposed of as prescribed for ballots in section 11-154. If the above requirements are met, the envelope may be opened and the ballot counted as prescribed by law for the voting system in use.

In those absentee precincts using paper ballots, counting of absentee votes may begin after noon of election day. In those absentee precincts using electronic ballot cards the absentee ballot container shall be taken unopened to the counting center, opened, the envelopes rechecked, and the ballots counted on election day. In no case, however, shall the results of the absentee count become publicly known before the polls have officially closed. In absentee precincts using voting machines the machine shall not be read until the polls have officially closed.

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

§15-9 Receipt and disposition of late absentee ballots. In a general election, if the mailed reply envelope is received after 4:30 p.m. on the day before the election, or at any time thereafter up to 12 o'clock noon on the sixth day following the election, the envelope shall be placed unopened in a late absentee ballot container. The container shall be securely sealed in accordance with section 15-6. The container shall be kept securely in the county clerk's office until noon on the sixth day following the general election.

On the sixth day after the election the election inspectors for the absentee precinct shall meet and publicly open the container in the clerk's office or in the case of electronic ballot cards take the container to the counting center to be opened.

The inspectors shall examine the reply envelopes in accordance with paragraphs (1) to (4) of section 15-8. In addition, if the postmark is illegible or dated later than that required by section 15-5, or it is found that the voter has already voted, the envelope shall be marked "Questionable" giving the reason therefor and set aside unopened with the other questionable envelopes to be

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disposed of as provided for ballots in section 11-154. The inspectors shall determine valid dates in a manner prescribed by the chief election officer which shall take into account time zones and the International Date Line. After examination of the envelopes the ballots shall be counted.

Any reply envelopes received by the county clerk after noon of the sixth day shall be kept unopened and disposed of pursuant to section 11-154.

§15-10 Death of voter prior to opening of polls. Whenever, prior to the casting of absentee ballots, it is made to appear by due proof to the county clerk or election inspectors that any voter who has marked and forwarded an absentee ballot has died prior to the opening of the polls on the date of election, the ballot of the voter shall be disposed of in the manner provided in section 15-8 for questionable ballots. The casting of any such ballot shall not invalidate the election.

§15-11 Ballots; where voting machines are used. In all precincts in which voting machines are used sections 15-1 to 15-10 shall apply; provided, that the number and type of absentee ballots to be printed shall be determined at the discretion of the officer charged with printing and furnishing them. The officer may use reasonable facsimiles of the sample ballot used in voting machine precincts.

§15-12 Voters unable to appear at the polls on election day for medical, physical, or religious reasons. Any voter covered by this section shall be entitled and enabled to vote in such manner as may be prescribed by rules and regulations promulgated by the chief election officer; provided that any voter who by reason of physical disability is unable to mark his ballot shall be authorized to receive assistance in marking thereof.

- (1) Any voter competent to vote at any election shall be allowed to vote under this section if he falls in the following categories:
 - (A) Confined in any hospital;
 - (B) Confined in any public institution for the care of indigents or aged persons; or
 - (C) Confined in any leprosy institution or settlement located on the same island in which the person is registered to vote, or if the person is registered to vote in the county of Kalawao, and due to physical ailments or infirmities is unable to attend the polls.
- (2) Any voter who is confined to his home by reason of illness or physical disability which will prevent him from attending the polls or who by reason of any religious belief, ruling, doctrine or standard will be prevented from attending the polls.

CHAPTER 16

VOTING SYSTEMS

PART I. GENERAL PROVISIONS

§16-1 Voting systems authorized. The chief election officer may adopt, experiment with, or abandon any voting system authorized under this chapter or to be authorized by the legislature. These systems shall include, but not be limited to voting machines, paper ballots, and electronic voting systems. All voting systems approved by the chief election officer under this chapter are authorized for use in all elections for voting, registering, and counting votes cast at the election.

Voting systems of different kinds may, at the discretion of the chief election officer, be adopted for different precincts within the same district. The chief election officer may provide for the experimental use at any election, in one or more precincts, of a voting system without a formal adoption thereof and its use at the election shall be as valid for all purposes as if it had been permanently adopted; provided that if a voting machine is used experimentally under this paragraph it need not meet the requirements of section 16-12.

§16-2 Voting system requirements. All voting systems adopted under this chapter by the chief election officer or the legislature shall satisfy the following requirements:

- (1) It shall secure to the voter secrecy in the act of voting;
- (2) It shall provide for voting for all candidates of as many political parties as may make nominations, nonpartisans, and for or against as many questions as are submitted;
- (3) It shall correctly register or record and accurately count all votes cast for any and all persons, and for or against any and all questions.

PART II. VOTING MACHINES

§16-11 Definitions. A “voting machine” system shall be a means of electrically, mechanically, or electronically recording and counting votes upon being cast.

“Protective counter” shall mean a separate counter built into the voting machine which cannot be reset, which records the total movement of the operating lever.

§16-12 Voting machines; requirements. No voting machines shall be installed for use in any election in the State unless it shall satisfy the following requirements:

- (1) It shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for, but no more;
- (2) It shall prevent the voter from voting for the same persons more than once for the same office;

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- (3) It shall permit the voter to vote for or against any question he may have the right to vote on, but no other;
- (4) It shall be so equipped that the election officials can lock out all rows except those of the voters' party or nonpartisans, or the board of education as provided in section 13-3, by a single adjustment on the outside of the machine;
- (5) It shall be provided with a protective counter or protective device whereby any operation of the machine before or after the election will be detected;
- (6) It shall be provided with a counter which shall show at all times during an election how many persons have voted;
- (7) It shall be provided with a mechanical model, illustrating the manner of voting on the machine, suitable for the instruction of voters.

PART III. PAPER BALLOTS

§16-21 Definition. A paper ballot system shall be a means of recording votes which are counted manually.

§16-22 Marking. The method of marking a paper ballot shall be prescribed by the chief election officer by rules and regulations promulgated in accordance with chapter 91. He shall prescribe a uniform method of marking the ballots in all precincts in a county and for absentee voting by paper ballot.

§16-23 Folding ballot; voting. Before delivering a ballot to a voter, the election inspector shall fold it in the manner prescribed by the clerk of the several counties, so as to conceal the contents thereof. Upon receiving the folded ballot the voter shall proceed into one of the voting booths provided for the purpose, and shall mark his ballot in the manner prescribed by section 16-22.

He shall then refold the ballot in the same folds as it was in when handed to him by the chairman of inspectors, and shall, without delay and without showing or in any way displaying the contents of the ballot to anyone except as provided in section 11-139, leave the booth and deliver the folded ballot to the election inspector in charge of the ballot boxes. The inspector shall not open or unfold the ballot, but shall examine the ends of the ballot sufficiently to be satisfied that there is but one ballot enfolded, whereupon the ballot shall be immediately dropped into the proper box by the inspector.

No ballot enclosed in an envelope or wrapper of any kind shall be received or counted.

§16-24 Count, public. Insofar as the limits of the room in which the voting takes place reasonably allow, no person shall be prevented from attending the counting of the ballots on election day, unless it is necessary to preserve the peace.

§16-25 Order and method of counting. Each ballot shall be counted and finished as to all the candidates thereon before counting a second and subsequent ballots. Except as provided in section 11-71, the ballots shall be counted by teams in the following manner only: by one inspector or clerk announcing the vote in a loud clear voice, one inspector or clerk tallying the vote, one inspector or clerk watching the inspector announcing the vote and one inspector or clerk watching the inspector tallying the vote. The election officer doing the announcing or tallying and the election officer watching him shall not be of the same political party.

§16-26 Questionable ballots. A ballot shall be questionable if:

- (1) A ballot contains any mark or symbol whereby it can be identified, or any mark or symbol contrary to the provisions of law; or
- (2) Two or more ballots are found in the ballot box so folded together as to make it clearly evident that more than one ballot was put in by one person, the ballots shall be set aside as provided below.

Each ballot which is held to be questionable shall be endorsed on the back by the chairman of inspectors with his name or initials, and the word "questionable". All questionable ballots shall be set aside uncounted and disposed of as provided for ballots in section 11-154.

§16-27 Number of blank and questionable ballots; record of. In addition to the count of the valid ballots, the election inspectors shall, as to each separate official ballot, also determine and record the number of totally blank ballots and the number of questionable ballots.

§16-28 Declaration of results. When the election inspectors have ascertained the number of votes given for each candidate they shall make public declaration of the whole number of votes cast, the names of the persons voted for, and the number of votes for each person.

§16-29 Tally sheets. The tally sheets used in counting the ballots cast shall be marked and handled in a secure fashion prescribed in rules and regulations promulgated by the chief election officer in accordance with chapter 91.

PART IV. ELECTRONIC VOTING

§16-41 Definition. An electronic voting system shall be a means of recording votes which are counted by automatic tabulating equipment.

§16-42 Electronic voting requirements. When used at primary elections, the automatic tabulating equipment of the electronic voting system shall count only votes for the candidates of one party, or nonpartisans, or the board of education as provided in section 13-3. In all elections the equipment shall reject all votes for an office when the number of votes therefor exceeds the number which the voter is entitled to cast.

§16-43 Ballot or ballot card handling. In every case where the ballots or ballot cards are handled by election officials, from the time the ballots or ballot cards are delivered to the several precincts to the time they are returned to the

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chief election officer or county clerk in county elections for disposition upon completion of the tabulation, they shall be handled in the presence of not less than two election officials. These officials shall be assigned in accordance with sections 11-71 and 11-72.

§16-44 Counting centers. The chief election officer or county clerk in county elections shall designate official observers to be present at the counting center or centers during the counting of electronic ballot cards. These official observers shall be chosen as follows:

- (1) No less than one official observer designated by each political party;
- (2) No less than one official observer designated by the majority of all nonpartisan candidates, if any;
- (3) No less than one official observer designated by the various news media;
- (4) Interested persons not connected with any party or candidate may be designated as official observers. The chief election officer in state elections, the county clerk in county elections, and the chief election officer and county clerk in combined elections shall designate such interested persons; and
- (5) Such additional official observers as space and facilities permit.

The chief election officer or county clerk shall give all official observers reasonable notice of the time of and place where counting of the ballots shall be held. No person shall be permitted in the counting center without the written authorization of the chief election officer or county clerk.

CHAPTER 17

VACANCIES

§17-1 United States Senator. When a vacancy occurs in the office of United States Senator the vacancy shall be filled for the unexpired term at the following state general election, provided that the vacancy occurs not less than sixty days prior to the date of the primary for nominating candidates to be voted for at the election; otherwise at the state general election next following. The chief election officer shall issue a proclamation designating the election for filling vacancy. Pending the election the governor shall make a temporary appointment to fill the vacancy and the person so appointed shall serve until the election and qualification of the person duly elected to fill the vacancy and shall be a registered member of the same political party as the senator causing the vacancy. All candidates for the unexpired term shall be nominated and elected in accordance with this title.

§17-2 United States Representative. When a vacancy occurs in the representation of this State in the United States House of Representatives, the chief election officer shall issue a proclamation for an election to fill the vacancy unless the unexpired term is for less than six months. The proclamation shall be

issued not less than sixty days before the election to fill the vacancy and shall contain the date, time, and places where the special election is to be held, the time within which nomination papers shall be filed, the time for transmitting to county clerks the notice designating the offices for which candidates are to be elected, the time for transmitting to county clerks lists of candidates to be voted for at the special election and such other matters as provided for in section 11-91 and which are not inconsistent with this section. The special election shall be conducted and the results ascertained so far as practicable, in accordance with this title.

§17-3 State senator. Whenever any vacancy in the membership of the state senate occurs, the term of which ends at the next succeeding general election, the governor shall make an appointment to fill the vacancy for the unexpired term and the appointee shall be of the same political party as the person he succeeds.

In the case of a vacancy, the term of which does not end at the next succeeding general election:

- (1) If it occurs ten days or more prior to the close of filing for the next succeeding primary election, the vacancy shall be filled for the unexpired term at the next succeeding general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall be nominated and elected in accordance with this title. Pending the election the governor shall make a temporary appointment to fill the vacancy and the person so appointed shall serve until the election of the person duly elected to fill the vacancy. The appointee shall be of the same political party as the person he succeeds.
- (2) If it occurs less than ten days prior to the close of filing for the next succeeding primary but ten or more days prior to the next succeeding general election, the vacancy shall be filled for the unexpired term at the next succeeding general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired senate term shall be nominated by the county committees of the parties and elected in accordance with this title. Pending the election the governor shall make a temporary appointment to fill the vacancy and the person so appointed shall serve until the election of the person duly elected to fill such vacancy. The appointee shall be of the same political party as the person he succeeds.
- (3) If it occurs less than ten days prior to the next succeeding general election, the governor shall make an appointment to fill the vacancy for the unexpired term and the appointee shall be of the same political party as the person he succeeds.

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§17-4 State representatives. Whenever any vacancy in the membership of the state house of representatives occurs, the governor shall make an appointment to fill the vacancy for the unexpired term and the appointee shall be of the same political party as the person he succeeds.

CHAPTER 18

DISTRICTING

§18-1 Congressional districts: reapportionment. The congressional districts and the number of members to be elected from each shall be as follows:

First congressional district: the eleventh through the seventeenth representative districts and precincts 7 and 13 of the tenth representative district, one representative to the Congress of the United States.

Second congressional district: The first through the ninth representative districts, the eighteenth representative district and precincts 1 through 6, 8 through 12, and 14 through 19 of the tenth representative district, one representative to the Congress of the United States.

CHAPTER 19

ELECTION OFFENSE

§19-1 Classes of offenses. Except as otherwise provided, offenses against the election laws contained in this title are divided into two classes: "election frauds" and "misdemeanors".

§19-2 Perjury. Any person who, knowing that he is not entitled to register or to vote, registers or votes, shall be guilty of perjury; and any person taking any oath in this title prescribed or authorized to be administered and wilfully making oath to any false statement of fact, or wilfully making a false answer to any question put to him thereunder, shall be guilty of perjury.

§19-3 Election frauds. The following persons shall be deemed guilty of an election fraud:

- (1) Every person who, directly or indirectly, personally or through another, gives, procures, or lends, or agrees or offers to give, procure, or lend, or who endeavors to procure, any money or office or place of employment or valuable consideration to or for any elector, or to or for any person for an elector, or to or for any person in order to induce any elector to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, or who does any such act on account of any person having voted or refrained from voting for any particular person at any election.
- (2) Every person who advances or pays, or causes to be paid, any money to, or to the use of, any other person, with the intent that the money, or any part thereof, shall be expended in bribery at any election, or for any purpose connected with or incidental to any election; or who knowingly pays or causes to be paid any money to any person in the

discharge or repayment of any money wholly or partly expended in bribery at any election, or for any purpose connected with or incidental to any election.

- (3) Every elector who, before, during or after any election, directly or indirectly, personally or through another, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place, or employment for himself or any other person for voting or agreeing to vote, or for refraining to vote or agreeing to refrain from voting, or for voting or refraining to vote for any particular person or party.
- (4) Every person who, directly or indirectly, personally or through another, makes use of, or threatens to make use of, any force, violence, or restraint; or inflicts or threatens to inflict any injury, damage, or loss in any manner, or in any way practices intimidation upon or against any person in order to induce or compel the person to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, at any election, or on account of the person having voted or refrained from voting, or voted or refrained from voting for any particular person or party; or who by abduction, distress, or any device or contrivance impedes, prevents, or otherwise interferes with the free exercise of the elective franchise.
- (5) Every person who, at any election, votes or attempts to vote in the name of any other person, living or dead, or in some fictitious name, or who, having once voted, votes or attempts to vote again, or knowingly gives or attempts to give more than one ballot for the same office at one time of voting.
- (6) Every person who, before or during an election, knowingly publishes a false statement of the withdrawal of any candidate at the election.
- (7) Every person who induces or procures any person to withdraw from being a candidate at an election in consideration of any payment or gift or valuable consideration; or of any threat; and every candidate who withdraws from being a candidate in pursuance of such inducement or procurement.
- (8) Every public officer by law required to do or perform any act or thing with reference to any of the provisions in any law concerning elections contained, who wilfully fails, neglects, or refuses to do or perform the same, or who wilfully performs it in such a way as to hinder the objects thereof, or who is guilty of any wilful violation of any of the provisions thereof.
- (9) Any person wilfully tampering or attempting to tamper with, disarrange, deface, or impair in any manner whatsoever, or destroy any voting machine while the same is in use at any election, or who, after the machine is locked in order to preserve the registration or record of any election made by the same, tampers or attempts to tamper with any voting machine.

§19-4 Penalties; disqualification for, removal from office; reports of convictions to chief election officer. Every person found guilty of an election fraud shall be fined not less than \$100 nor more than \$1,000, or imprisoned at hard labor not more than two years, or both. Besides the punishment, the person shall be disqualified from voting and from being elected to, holding or occupying any office, elective or appointive. If the person so convicted holds any office, either elective or appointive, at the time of the conviction, the office shall at once and without mention in the sentence or other proceeding be vacated by the conviction. The judge or magistrate before whom the conviction is had shall immediately transmit to the chief election officer and to the respective county clerks the name of the person, the offense of which he has been convicted and the sentence of the court.

§19-5 Contributions by corporations; unlawful. Any corporation violating section 11-194 by contribution of corporate funds shall upon conviction be fined in a sum ten times the amount of the contribution made, but in no case to be less than \$1,000. Any corporation officer violating section 11-194 by contribution of corporate funds shall upon conviction be fined in a sum ten times the amount of the contribution made, but in no case less than \$1,000, or imprisoned for not more than four years, or both.

§19-6 Misdemeanors. The following persons shall be guilty of a misdemeanor:

- (1) Any person who offers any bribe or makes any promise of gain, or with knowledge of the same permits any person to offer any bribe or make any promise of gain for his benefit, to any voter to induce him to sign a nomination paper, and any person who accepts any bribe or promise of gain of any kind as consideration for signing the same, whether the bribe or promise of gain be offered or accepted before or after the signing.
- (2) Any person who wilfully tears down or destroys or defaces any election proclamation or any poster or notice or list of voters or card of instructions or specimen ballot, issued or posted by authority of law.
- (3) Any person printing or duplicating or causing to be printed or duplicated any ballot, conforming as to the size, weight, shape, thickness, or color, to the official ballot so that it could be cast or counted as an official ballot in an election.
- (4) Every person who is disorderly or creates a disturbance whereby any meeting of the election inspectors or the board of registration of voters during an election is disturbed or interfered with; or whereby any person who intends to be lawfully present at any meeting or election is prevented from attending; or who causes any disturbance at any election; and every person assisting or aiding or abetting any disturbance.
- (5) Every person who, either in person or through another, in any manner breaks up or prevents, or endeavors to break up or prevent, the hold-

ing of any meeting of the board of registration of voters, or in any manner breaks up or prevents, or endeavors to break up or prevent, the holding of any election.

- (6) Any person, other than those designated by section 11-132, who remains or loiters within the area set aside for voting as set forth in section 11-132 during the time appointed for voting.
- (7) Any person, including candidates carrying on any campaign activities within the area described in section 11-132 on the day on which an election is being held for the purpose of influencing votes. Campaign activities shall include but not be restricted to the following:
 - (A) The distribution, circulation, posting, or staking of campaign cards, pamphlets, and other literature;
 - (B) The use of public address systems and other public communication media;
 - (C) The use of motor caravans or parades;
 - (D) The use of entertainment troupes or the free distribution of goods and services.

The "day of election" as used in this paragraph shall commence at midnight of the day before the polls are opened and shall end with the closing of the polls.

- (8) Any person who opens a reply envelope containing an absentee ballot voted under chapter 15 other than those authorized to do so under chapter 15.
- (9) Any voter who makes any false statement in any affidavit required for absentee voting under chapter 15.
- (10) Every person who, being a candidate for election, or an agent of any candidate, or a member of any committee acting for or on behalf of any candidate, or in charge of any committee or political party to which money is contributed during an election or which spends money in any election, fails to file the statement of expenses or of lack of expenses, as required by law.
- (11) Any person making any anonymous contribution to any candidate, party, or committee as defined in section 11-191, or any candidate, party, or committee receiving any such contribution or entering any contribution falsely in his accounts.
- (12) Any unauthorized person found in possession of any voting machine or keys thereof.
- (13) Every person who wilfully violates or fails to obey any of the provisions of law, punishment for which is not otherwise in this chapter specially provided for.

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§19-7 Penalty. Any person convicted of a misdemeanor under this chapter shall be fined not more than \$500 or imprisoned not more than six months, or both.

§19-8 Other offenses; penalties. Any violation of this section shall result in a fine of not less than \$50 nor more than \$300:

- (1) Any person, business, or corporation violating section 11-192 by publishing, showing, broadcasting, or circulating political advertisements or literature without stating the name and address of the person, committee, or party who paid for such advertisement or literature.
- (2) Any person, business, or corporation who refuses an employee the privileges conferred by section 11-95, or subjects an employee to a penalty or deduction of wages because of the exercise of the privileges, or who directly or indirectly violates section 11-95.

§19-9 Other prosecutions. Any person in any way violating any of the provisions of this chapter may also be prosecuted for the violation of any other law, rule, or regulation existing at the time of violation.

SECTION 3. Chapters 11, 12, 13, 14, 15, 16, 17, 18, 63, Part III of Chapter 70, Sections 46-21, 296-3, 296-4, and the first paragraph of Section 296-5 of the Hawaii Revised Statutes, and Section 2 of Act 42, 1968 Session Laws are repealed.

SECTION 4. All acts passed during this regular session 1970, whether enacted before or after the passage of this Act shall be amended to conform to this Act, unless such acts specifically provide to the contrary.

SECTION 5. If any provision of this Act, or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. This Act shall take effect upon its approval; provided that the provisions in Section 2 of the Act requiring the filing of itemized statements of contributions in "Sec. 11-193" and the escheat of anonymous contributions in "Sec. 11-195" shall take effect on January 1, 1971.

(Approved May 28, 1970.)