

ACT 189

H.B. NO. 171

A Bill for an Act Relating to Elections.

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

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended to read as follows:

(1) By amending Section 11-13 to read:

“Sec. 11-13 Rules for determining residency. For the purpose of this title, there can be only one residence for an individual, but in determining residency, a person may treat himself separate from his spouse. The following rules shall determine residency for election purposes only:

- (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.

- (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;
- (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.

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."

- (2) By amending Section 11-14 to read:

"Sec. 11-14 General county register; restrictions in use. (a) The clerk of each county shall register all the voters in his county in the general county register. The register shall contain the name, address, and primary ballot selection data essential for election purposes. Additional information required by section 11-15 may be included in the register at the discretion of the clerk. 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.

(b) In all primary and special primary elections held in 1970 and subsequently the clerk shall include in the general county register information to show the primary or special primary ballot selected by each of the voters at the next preceding primary or special primary election, or the registered change of primary or special primary ballot selection by any voter. Newly registered voters, those who have failed to select a partisan or nonpartisan primary or special primary ballot since the 1968 primary which shall include those who voted in a separate ballot for the board of education only, those who voted for a disqualified party, and those who reregistered after having their names removed from the register shall have no such information recorded.

(c) The affidavits filed under section 11-15 and the general county register may be copied, and the clerk may release voter lists and tabulating cards or computer tapes containing data furnished in the affidavit, pursuant to ordinances promulgated by the respective county councils.

(d) Voter registration information which is collected and maintained by the clerk of each county may be transmitted to a central file for the purpose of correlating registration data to prevent or detect duplicate voter registrations and for the compilation of election reports."

- (3) By amending Section 11-24 to read:

"Sec. 11-24 Closing register; list of voters. At 4:30 p.m. on the thirtieth day prior to each primary, special primary or special election (but if such day is a Saturday, Sunday, or holiday then at 4:30 on the first working day immediately

thereafter), the general county register shall be closed to registration for persons seeking to vote at such a primary, special primary or special election and remain closed to such registration until after the election, subject to change only as provided in sections 11-22, 11-25, 11-26, and this section.

Notwithstanding the closing of the register for registration to vote at the primary or special primary election, the register shall remain open for the registration of persons seeking to vote at the general or special election, until 4:30 p.m. on the thirtieth day prior to the general or special general election (but if such day is on Saturday, Sunday, or holiday then at 4:30 p.m. on the first working day immediately thereafter), at the end of which period the general county register shall be closed to registration and remain closed until after the general or special general election next following, subject to change only as provided in sections 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 and special 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 precinct officials shall post the list at the precinct polling place."

(4) By amending Section 11-65 to read:

"Sec. 11-65 Determination of party disqualification; notice of disqualification. Not later than 4:30 p.m. on the one hundred twentieth day after a general election, 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, not later than 4:30 p.m. on the tenth day after service by mail or not later than 4:30 p.m. on the tenth day 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 the reasons why the party should not be disqualified. The chief election officer shall call a hearing not later than twenty days following receipt of the affidavit. He shall notify by certified or registered mail the officer of the party who filed the affidavit of the date, time and place of the hearing. In addition, notice of the hearing shall be published in a newspaper of general circulation not later than five days prior to the day of the hearing. The chief election officer shall render his decision not later than 4:30 p.m. on the seventh day following the hearing. 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."

(5) By amending Section 11-72 to read:

"Sec. 11-72 Precinct officials; submission of names and assignment; vacancies. All qualified political parties shall submit names for precinct officials to the chief election officer not later than 4:30 p.m. on the sixtieth day prior to the close of filing for any primary, special primary or special election. All precinct officials shall be able to read and write the English language. 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.

In assigning the precinct officials the following criteria shall be followed:

- (1) The precinct officials shall be registered voters of the precinct in which they serve; but if qualified persons in the precinct or representative district are not readily available to serve, they may be chosen from without the precinct or representative district.
- (2) The chief election officer may designate more precinct officials than are needed in order to create a pool of qualified precinct officials who may be assigned to fill vacancies or to perform such duties as needed in any precinct.
- (3) No parent, spouse, child, or sibling of a candidate shall be eligible to serve as a precinct official 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 a precinct official in the same election in which he is a candidate. No candidate who failed of nomination in the primary or special primary election shall be eligible to serve as a precinct official in the general election next following.
- (4) The chairman of the precinct officials shall be of the same party as the governor and shall be the first named precinct official on the list prepared by the chief election officer. The remainder of the precinct officials 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 precinct officials. 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 a precinct official 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 a precinct official the chief election officer shall use first, the party membership list; then, the primary registration; then, the person's word for his party affiliation."

(6) By amending Section 11-77 to read:

"Sec. 11-77 Appointment of watchers; service. (a) Each qualified political party shall be entitled to appoint no more than one watcher in each precinct and absentee polling place in which the candidates of such party are on the ballot. Each party shall submit its list of watchers not later than 4:30 p.m. on the tenth day prior to any election. All watchers shall serve without expense to the State or county. All watchers so appointed shall be registered voters. No person shall serve as a watcher who could not qualify to serve as a precinct official under section 11-72(3).

(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 precinct officials 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.

(e) The watchers shall be permitted to observe the operations of the absentee polling place. Any violation of the election laws shall be reported to the clerk."

(7) By amending Section 11-112 to read:

"Sec. 11-112 Contents of ballot. A ballot shall contain the names of the candidates, their party affiliation or nonpartisanship, the offices for which they are running, and the district in which the election is being held. The chief election officer, at his discretion, may have a background design imprinted onto the ballot. When the electronic voting system is used, the ballot may have pre-punched codes and printed information which identify the voting districts and precincts to facilitate the electronic data processing of these ballots. 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 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."

(8) By amending Section 11-113 to read:

"Sec. 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.

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 bona fide effort to become a national party. If there is no national party or the national and state parties or factions 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 chief election officer not later than 4:30 p.m. on the sixtieth day 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;
 - (C) A statement that the candidates are the duly chosen candidates of both the state and the national 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 chief election officer not later than 4:30 p.m. on the sixtieth day prior to the general election:
 - (A) A sworn application which shall include the information required under (1), (A) and (B) above, and (C) where applicable;
 - (B) A petition which shall be upon the form prescribed and provided by the chief election officer containing the signatures of currently registered voters which constitute not less than one per cent of the votes cast in the State at the last general election. The petition shall contain the names of the candidates, a statement that the persons signing intend to support such candidates, the address of each signatory, the date of his signature and other information as determined by the chief election officer.

Each applicant, and the candidates named, shall be notified in writing of his eligibility or disqualification for placement on the ballot not later than 4:30 p.m. on the tenth day after filing or not later than 4:30 p.m. on the fiftieth day 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, not later than 4:30 p.m. on the fifth day after the finding, file a

request in writing with the chief election officer for a hearing on the question. Such hearing will be called not later than 4:30 p.m. on the tenth day after the receipt of the request and will be conducted in accord with chapter 91. A decision will be issued not later than 4:30 p.m. on the fifth day after the conclusion of the hearing."

(9) By amending Section 11-115 to read:

"Sec. 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 except as provided in 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 elections using the paper ballot or electronic voting systems 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 candidates 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 side of the ballot, two vertical lines shall be ruled, so that in conjunction with the horizontal lines, a box 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 box shall be formed opposite their set of names. The boxes 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 edge and close thereto, and shall be of uniform size and print subject to section 11-119."

(10) By amending Section 11-152 to read:

"Sec. 11-152 Method of counting. (a) In an election using the paper ballot voting system, immediately after the close of the polls, the chairman of the precinct officials shall open the ballot box. The precinct officials at the precinct 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 precinct officials;
- (2) If the number of ballots corresponds with the number of persons recorded by the precinct officials as having voted, the precinct 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 precinct official shall proceed as directed in section 11-153.
- (b) In those precincts using the electronic voting system, the ballots shall

be taken to the counting center according to the procedure and schedule promulgated by the chief election officer to promote the security of the ballots. In the presence of official observers, counting center employees may start to count the ballots prior to the closing of the polls provided there shall be no printout by the computer or other disclosures of the number of votes cast for a candidate or on a question prior to the closing of the polls."

SECTION 2. Chapter 12, Hawaii Revised Statutes, is amended to read as follows:

(1) By amending Section 12-6 to read:

"Sec. 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 clerk in case of county offices not later than 4:30 p.m. on the sixtieth calendar day prior to the primary, special primary, or special election (but if such day is a Saturday, Sunday or holiday then not later than 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 clerk. The clerk shall transmit to the office of the chief election officer the State candidate's declaration of candidacy without delay. However, if a special primary or special election is to be held by a county and the county charter requires that the council shall issue a proclamation calling for the election to be held within a specified period of time, and if that requirement would not allow the filing of nomination papers with the appropriate office by the sixtieth calendar day prior to the day for holding such primary or special election, the council shall establish the deadline for the filing of nomination papers in the proclamation calling for the election.
- (2) There shall be deposited with each nomination a fee on account of the expenses attending the holding of the primary, special primary, or special election which shall be paid into the treasury of the State, or 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 clerk of the nomination paper of a candidate, the day, hour, and minute when it was received shall be endorsed thereon.
- (4) The chief election officer or the clerk shall waive the filing fee in the case of a person who declares himself, by affidavit, to be indigent and who has filed a petition signed by at least one-half of one per cent of the total voters registered at the time of filing in the respective district or districts which correspond to the specific office for which the indigent person is a candidate. This petition shall be submitted on the form prescribed and provided by the chief election officer together

with the nomination paper required by this chapter.

(2) By amending Section 12-8 to read:

"Sec. 12-8 Nomination papers: challenge; evidentiary hearings and decisions. (a) 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 clerk in the case of county offices or by a registered voter in writing. Such objection is to be made not later than 4:30 p.m. on the second day after the close of filing except that if such day falls on a Saturday, Sunday, or holiday then the next succeeding working day. In case objection is made, notice thereof shall be given including the placement of the notice in the mail by registered or certified mail to the candidate objected thereto.

(b) The chief election officer or the clerk in the case of county offices shall have the necessary powers and authority to conduct evidentiary hearings and may administer oaths. The hearings shall be held not later than four working days after the objection is made. Nothing in this subsection shall be construed to extend to the candidate a right to an administrative contested case hearing as defined in Hawaii Revised Statutes, section 91-1(5).

(c) All objections shall be decided by the chief election officer or clerk in the case of county offices not later than 4:30 p.m. on the second day after they are made or the second day after the hearing is held. All objections which are upheld shall be placed in writing by the deciding official if so requested by the candidate affected."

SECTION 3. Section 14-23, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 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 registered voters 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."

SECTION 4. Section 16-23, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 16-23 Paper ballot; voting. Upon receiving the ballot the voter shall proceed into one of the voting booths provided for the purpose, and shall mark his ballot in the manner prescribed in section 16-22.

He shall then leave the booth and deliver the ballot to the precinct official in charge of the ballot boxes. The precinct official shall be sufficiently satisfied that there is but one ballot enclosed, whereupon the ballot shall be immediately dropped into the proper box by the precinct official.

SECTION 5. Chapter 12, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 12- Residency requirements for candidates. No person shall be a candidate for any primary election unless at the time of the filing of his

nomination papers, he is and shall have been a resident of the district from which he seeks election for a period of at least three months.”

SECTION 6. If any provision of this Act, or the 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 7. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 8. This Act shall take effect upon its approval.

(Approved June 8, 1977.)

*Edited accordingly.