ACT 198 H.B. NO. 240

A Bill for an Act Relating to a Procedure to Break Ties in Election Results.

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

SECTION 1. The legislature finds that the current elections law does not provide for certain means of resolving an election that results in a tie vote. At the primary election on September 17, 1988, two Democratic party candidates each received 1,795 votes for the 39th district seat to the house of representatives. Section 11-157, Hawaii Revised Statutes, provides for the resolution of such a tie by the drawing of lots under the supervision of the chief election officer; provided that the affected candidates agree, in writing, to the use of a lot. The law, however, is silent as to a procedure when the affected candidates fail to agree to the use of a lot.

In the case of the 39th district race tie, the candidates did not agree on the use of a lot. The state Democratic party petitioned the Hawaii supreme court for guidance; however, the supreme court would not decide on the matter noting that "[I]n the absence of necessary statutory law to determine the winner under the facts of the present case, a policy decision or 'political question' is raised which this court cannot properly determine." The lieutenant governor, lacking statutory authority to call a special election turned the matter over to the governor who subsequently declared that he would appoint a person to fill the vacancy which resulted from the tie vote and the absence of any other party nominee for the office.

The absence of a statutory procedure to resolve the 39th district race tie caused unnecessary confusion. The legislature believes that to avoid similar dilemmas in the future, the statutes should provide clear direction for the determination of a winner in case of a tie.

This Act provides a certain and expeditious means for resolving a tie in the number of votes cast for two or more candidates in an election, without relying upon a run-off election with its inherent expense and delay. The legislature specifically notes that its purpose is to provide a more effective means of resolving ties. The legislature is aware of the holding in Travis v. King, 552 F.Supp. 554 (D. Haw. 1982), disfavoring reliance upon registered voter counts to apportion election districts. However, the purpose of this Act is to resolve ties, not to apportion districts. Registered voter counts are used because they are readily available and otherwise reliable to serve as an objective means of ensuring the desired resolution. Similarly, computation to the nearest hundred thousandths are used to maximize the likelihood of resolution.

SECTION 2. Section 11-157, Hawaii Revised Statutes, is amended to read as follows:

"**§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] shall 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 the candidate.] in accordance with the following procedure:

(1)   In the case of an election involving a seat for the senate, house of representatives, board of education, or county council where only voters within a specified district are allowed to cast a vote, the winner, shall be declared as follows:

    (A)   For each precinct in the affected district, an election rate point shall be calculated by dividing the total number of registered voters in that precinct by the total number of registered voters in the district. For the purpose of this subparagraph, the absentee votes cast for the affected district shall be treated as a precinct. The election rate point shall be calculated by dividing the total absentee votes cast for the affected district by the total number of registered voters in that district. All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth.

    (B)   The candidate with the highest number of votes in a precinct shall be allocated the election rate point calculated under subparagraph (A) for that precinct. In the event that two or more persons are tied in receiving the highest number of votes for that precinct, the election rate point shall be equally apportioned among those candidates involved in that precinct tie.

    (C)   After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as provided under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the highest election rate point total shall be declared the winner.

    (D)   If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the greatest number of precincts shall be declared the winner.

(2)   In the case of an election involving a federal office or an elective office where the voters in the entire State or in an entire county are allowed to cast a vote, the winner shall be declared as follows:

    (A)   For each representative district in the State or county, as the case may be, an election rate point shall be calculated by dividing the total number of registered voters in that representative district by the total number of registered voters in the State, county, or federal office district, as the case may be; provided that for purposes of this subparagraph:

        (i)   The absentee votes cast for a statewide, countywide, or federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total absentee votes cast for the statewide, countywide, or federal office by the total number of registered voters in the State, county, or federal office district, as the case may be.

        (ii)   The overseas votes cast for any election in the State for a federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total number of overseas votes cast for the affected federal office by the total number of registered voters in the affected federal office district. The term "overseas votes" means those votes cast by absentee

ballots for a presidential election as provided in section 15-3.

All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth.

(B)   The candidate with the highest number of votes in a representative district shall be allocated the election rate point calculated under subparagraph (A) for that district. In the event that two or more persons are tied in receiving the highest number of votes for that district, the election rate point shall be equally apportioned among those candidates involved in that district tie.

(C)   After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as prescribed under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the election rate point total shall be declared the winner.

(D)   If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the greatest number of representative districts shall be declared the winner."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 19, 1990.)