

ACT 182

H.B. NO. 1401

A Bill for an Act Relating to Elections.

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

SECTION 1. The legislature finds that an increasing number of Hawaii voters are submitting their votes by mail. The 2014 Hawaii primary election was the first election in which more ballots were submitted before primary election day than on that day. Fifty-six per cent of Hawaii voters chose to vote early during the 2014 primary, and approximately eighty-three per cent of those voters did so through a mail-in absentee ballot. In 2016, the number of votes cast before election day exceeded the number of votes cast at polling places on election day, except in one county.

The legislature further finds that Hawaii's conversion to elections by mail would significantly reduce the logistical issues related to conducting elections at polling places.

Accordingly, the purpose of this Act is to:

- (1) Conduct a pilot program to require that the 2020 primary election and 2020 general election in any county with a population of less than one hundred thousand be conducted by mail;
- (2) For purposes of the pilot program, establish a voter service center that would remain open from the tenth business day preceding an election through the day of the election to receive personal delivery of mail-in ballots, accommodate voters with special needs, offer same day registration and voting, and provide other election services;
- (3) Allow for additional places of deposit for personal delivery of mail-in ballots under the pilot program;
- (4) Appropriate funds for the implementation and administration of the election by mail pilot program; and
- (5) Require the office of elections to submit a report to the legislature prior to the convening of each regular session from 2019 through 2021, regarding the implementation of the election by mail pilot program pursuant to this Act.

SECTION 2. Definitions. (a) As used in this Act:

"Ballot" shall have the same meaning as in section 11-1, Hawaii Revised Statutes, and shall include a ballot used in an election by mail pursuant to this Act, including a ballot approved for electronic transmission.

"Business day" means any day excluding Saturdays, Sundays, and state or federal holidays.

“County” means a county with a population of less than one hundred thousand.

“Electronic transmission” means the transmission of a blank or voted ballot by facsimile or electronic mail delivery, or the use of an online absentee ballot delivery and return system, which may include the ability to mark the ballot.

“Place of deposit” means a site within the county that has been designated pursuant to section 11 of this Act for the purpose of receiving return identification envelopes in an election conducted by mail pursuant to this Act.

“Voter service center” means a location within the county that has been established pursuant to section 11 of this Act to serve all of the following purposes:

- (1) Receive return envelopes for the county’s absentee ballots pursuant to chapter 15, Hawaii Revised Statutes;
- (2) Receive return identification envelopes in an election by mail conducted pursuant to this Act;
- (3) Provide voting machine services for persons with disabilities pursuant to the Help America Vote Act of 2002, P.L. 107-252, as amended, and any other federal or state law relating to persons with disabilities;
- (4) Provide any other voting services as provided by law; and
- (5) Any other purposes the chief election officer or county clerk may deem necessary if a natural disaster or other exigent circumstance occurs before an election.

“Voting system” shall have the same meaning as in section 11-1, Hawaii Revised Statutes, and shall include electronic transmission, elections by mail, and absentee voting pursuant to chapter 15, Hawaii Revised Statutes.

(b) As used in this Act, the terms “chief election officer”, “clerk”, “election”, “election officials”, “office”, “political party” or “party”, “precinct”, “primary”, and “voter” shall have the same meanings as in section 11-1, Hawaii Revised Statutes.

SECTION 3. Elections conducted by mail; pilot program. Notwithstanding any other law to the contrary, the county shall conduct the 2020 primary election and 2020 general election by mail in accordance with this Act.

This Act shall apply only to the counties and elections specified in this section.

SECTION 4. Procedures for conducting elections by mail. (a) Ballot packages for elections by mail shall include:

- (1) An official ballot;
- (2) A return identification envelope with postage prepaid;
- (3) A secrecy envelope; and
- (4) Instructions.

(b) To the extent practicable, the county clerk shall mail a ballot package by non-forwardable mail to each registered voter in the county so as to enable voters to receive the ballot package approximately eighteen days before the election. The county clerk shall continue mailing ballot packages to voters who update their voter registration address no later than fourteen days before the date of the election. In determining the initial mailing date of the ballot packages, the county clerk shall consider the mailing place of origin and the most recent postal service delivery standards. The county clerk shall not mail a ballot package to any voter in the county register who is identified as having an outdated or non-deliverable mailing address. Nothing in this Act shall be construed to change the

responsibilities of the county clerk or chief election officer under chapter 15D, Hawaii Revised Statutes, with respect to military and overseas voters.

(c) The county clerk shall determine and provide for places of deposit pursuant to this Act.

SECTION 5. Public notice of mailing. Public notice of the date or dates on which the initial ballot packages are to be mailed shall be given by the county clerk before the ballot packages are made available to voters.

SECTION 6. Ballot instructions; ballot return. (a) After a voter receives a ballot package, the voter shall comply with the instructions included in the ballot package in order to cast a valid vote. The instructions shall include directions for:

- (1) Marking the ballot;
- (2) Inserting the marked ballot in the secrecy envelope;
- (3) Inserting the secrecy envelope with the marked ballot in the return identification envelope; and
- (4) Signing the return identification envelope before mailing or delivering the return identification envelope containing the secrecy envelope with the marked ballot.

(b) The instructions shall include information on election fraud and voter fraud, as provided in sections 19-3(5) and 19-3.5, Hawaii Revised Statutes, and notice that violation of either section may subject the voter, upon conviction, to imprisonment, a fine, or both.

(c) To cast a valid ballot, the voter shall return the return identification envelope containing the secrecy envelope with the marked ballot:

- (1) By mail so that the return identification envelope is received at the office of the county clerk no later than 6:00 p.m. on the date of the election;
- (2) By personal delivery at any place of deposit no later than 6:00 p.m. on the day preceding the date of the election; or
- (3) By personal delivery to the voter service center no later than 6:00 p.m. on the date of the election.

(d) Once a voter has returned a return identification envelope containing the secrecy envelope with the marked ballot, that voter's ballot shall be deemed cast and may not be recast in the election.

SECTION 7. Replacement ballots. (a) A voter may obtain a replacement ballot if the ballot was destroyed, spoiled, or lost by contacting the county clerk. The chief election officer may prescribe a replacement ballot application form that shall include information that allows the county clerk to verify the registration of the voter and ensure that another ballot has not been returned by the voter.

(b) Upon receipt of a completed replacement ballot application form, the county clerk shall:

- (1) Verify the registration of the voter and ensure that another ballot has not been returned by the voter;
- (2) Record that the voter has requested a replacement ballot;
- (3) Mark the return identification envelope as containing a replacement ballot; and
- (4) Issue the replacement ballot package by mail or make the ballot package available for pick-up by the voter.

(c) Voters who obtain a replacement ballot shall return the return identification envelope containing the secrecy envelope with the marked replacement ballot:

- (1) By mail so that the return identification envelope is received at the office of the county clerk no later than 6:00 p.m. on the date of the election;
- (2) By personal delivery to any place of deposit no later than 6:00 p.m. on the day preceding the date of the election; or
- (3) By personal delivery to the voter service center no later than 6:00 p.m. on the date of the election.

SECTION 8. Deficient return identification envelopes. If:

- (1) A return identification envelope is returned with an unsigned affirmation;
- (2) The affirmation signature does not match a reference signature image; or
- (3) A return identification envelope contains another condition that would not allow the counting of the ballot,

the county clerk shall make an attempt to notify the voter by first class mail, telephone, or electronic mail to inform the voter of the procedure to correct the deficiency. The voter shall have five business days after the date of the election to cure the deficiency. The chief election officer may adopt rules regarding requirements and procedures for correcting deficient return identification envelopes. The counting of ballots and disclosure of subsequent election results may continue during the time period permitted to cure a deficiency under this section. The county clerk's inability to contact voters under this section shall not be grounds for a contest for cause under section 11-172, Hawaii Revised Statutes.

SECTION 9. Electronic transmission under certain circumstances. (a) If a ballot package is not received by a voter within five days prior to an election or a voter otherwise requires a replacement ballot within five days prior to an election, the voter may request that a ballot be forwarded by electronic transmission; provided that a voter with special needs may request that a ballot be forwarded by electronic transmission at any time. Upon receipt of such a request and confirmation that proper application was made, the county clerk may transmit the appropriate ballot, together with a form containing the affirmations, information, and a waiver of the right to secrecy under section 11-137, Hawaii Revised Statutes.

(b) The voter may return the voted ballot and executed forms:

- (1) By electronic transmission so that the voted ballot and executed forms are received at the office of the county clerk no later than 6:00 p.m. on the date of the election;
- (2) By mail so that the voted ballot and executed forms are received at the office of the county clerk no later than 6:00 p.m. on the date of the election;
- (3) By personal delivery to any place of deposit no later than 6:00 p.m. on the day preceding the date of the election; or
- (4) By personal delivery to the voter service center no later than 6:00 p.m. on the date of the election.

(c) Upon receipt, the county clerk shall verify compliance with the requirements of this Act; provided that if the voter returns multiple voted ballots for the same election, the county clerk shall prepare only the first ballot returned that is not spoiled.

SECTION 10. Counting of mail-in ballots. Ballot processing for tabulation may begin no sooner than the tenth day before the election. In the presence of official observers, counting center employees may open the return identification envelopes and count the ballots; provided that any tabulation of the number of votes cast for a candidate or question appearing on the ballot, including a counting center printout or other disclosure, shall be kept confidential and shall not be disclosed to the public until after 6:00 p.m. on the date of the election. All handling and counting of ballots shall be conducted in accordance with procedures established by the chief election officer.

SECTION 11. Voter service center; places of deposit. (a) A voter service center shall be established at the office of the county clerk.

(b) The voter service center shall be open from the tenth business day preceding the day of the election during regular business hours until 6:00 p.m. on the date of the election; provided that:

- (1) On the day of the election, the voter service center shall be open from 7:00 a.m.;
- (2) If, at the closing hour of voting, any voter desiring to vote is standing in line with the desire of entering and voting, but due to the voter service center being overcrowded has been unable to do so, the voter shall be allowed to vote irrespective of the closing hour of voting; and
- (3) No voter shall be permitted to enter or join the line after the prescribed hours of voting.

(c) Each voter service center shall provide the services specified in section 2 of this Act under the definition of "voter service center".

(d) The county clerk may designate and provide for places of deposit to be open five business days before the election until 6:00 p.m. the day preceding the election; provided that the locations and apparatus for receiving voted ballots can be securely maintained during the period of use for each election, and as may be permitted by the operational hours.

(e) The chief election officer shall issue a proclamation listing the voter service center and places of deposit as may have been determined by the county clerk as of the proclamation date. The county clerk shall make arrangements for the rental or erection of suitable shelter for the establishment of a voter service center whenever public buildings are not available and shall cause the voter service center to be equipped with the necessary facilities for lighting, ventilation, and equipment needed for elections. This proclamation may be issued jointly with the proclamation required in section 11-91, Hawaii Revised Statutes.

(f) Notwithstanding the foregoing, the county clerk is not required to establish a voter service center for areas affected by natural disasters, as provided in section 15-2.5, Hawaii Revised Statutes.

(g) Notwithstanding the closing of the general county register pursuant to section 11-24, Hawaii Revised Statutes, a person who is eligible to vote but not registered to vote may register by appearing in person at the voter service center before or on election day. The county clerk shall designate a registration clerk, who may be an election official, at the voter service center, who shall process applications for any person not registered to vote in accordance with section 11-15.2(c), (d), (e), (f), and (g), Hawaii Revised Statutes.

(h) The county clerk shall designate a registration clerk, who may be an election official, at the voter service center, who shall take applications for change of name pursuant to section 11-21, Hawaii Revised Statutes.

(i) Each qualified political party shall be entitled to appoint no more than one watcher who may be present at any time at the voter service center; provided that:

- (1) Each party shall submit its list of watchers no later than 4:30 p.m. on the twentieth day before any election to the county clerk;
- (2) All watchers shall serve without expense to the county or the State; and
- (3) All watchers so appointed shall be registered voters.

Each watcher shall be provided with identification from the county clerk stating the watcher's name and the name of the political party the watcher represents.

The watcher shall call the attention of the county clerk to any violations of the election laws that the watcher observes. After the county clerk's attention is called to the violation, the county clerk shall make an attempt to correct the violation. If the county clerk fails to correct the violation, the watcher may appeal to the chief election officer.

(j) No person shall take a ballot out of the voter service center unless authorized by the chief election officer or a designee of the chief election officer.

(k) A person with disabilities may be provided assistance at the voter service center pursuant to any state or federal law relating to persons with disabilities.

(l) For the purposes of section 11-25, Hawaii Revised Statutes, the term "polling place" shall include the voter service center established pursuant to this Act.

(m) For the purposes of section 11-132, Hawaii Revised Statutes, the term "polling place" shall include the voter service center or a place of deposit established pursuant to this Act.

SECTION 12. Absentee ballots. (a) Any person who is registered to vote who is unable to receive a ballot at the person's voter registration address of record may request an absentee ballot pursuant to section 15-4, Hawaii Revised Statutes; provided that a return envelope containing an absentee ballot shall be:

- (1) Mailed and received by the county clerk issuing the absentee ballot no later than 6:00 p.m. on election day; or
- (2) Delivered other than by mail to the county clerk issuing the absentee ballot or to the voter service center no later than 6:00 p.m. on election day.

(b) An absentee ballot received by the county clerk shall be processed and counted pursuant to chapter 15, Hawaii Revised Statutes.

SECTION 13. Election expenses and responsibilities for elections by mail. (a) Election expenses in an election by mail shall be as follows:

- (1) All expenses related to elections by mail involving both state and county offices, or involving both federal and county offices, unrelated to voter registration, shall be divided in half between the State and the county. To the extent that a particular expense is shared statewide, each county shall pay a proration of expenses as a proportion of the registered voters at the time of the general election. The county shall separately be responsible for expenses associated with voter registration;
- (2) All expenses for county elections by mail, which do not involve state or federal offices, shall be borne by the county and paid out of appropriations as may be made by the county council; and

- (3) All expenses for state or federal elections by mail, which do not involve county offices, shall be borne by the State and paid out of appropriations as may be made by the legislature. Expenses attributable to registration of voters by the county clerk for state or federal elections that do not involve county offices shall be borne by the State and paid out of appropriations as may be made by the legislature.
- (b) Election responsibilities for elections by mail shall be as follows:
 - (1) For elections by mail involving both state and county offices, or involving both federal and county offices:
 - (A) The county shall be responsible for voter registration, absentee voting, the voter service center, places of deposit, and the mailing and receipt of ballots;
 - (B) The State shall be responsible for the printing and counting of ballots;
 - (C) The State and county may otherwise agree to the delegation of these responsibilities to each other; and
 - (D) Any responsibilities not specified in this paragraph may be assigned to the county or the State by the chief election officer;
 - (2) For elections by mail involving only county offices, the respective county shall be solely responsible; and
 - (3) For elections by mail involving only state or federal offices:
 - (A) The county shall be responsible for voter registration, absentee voting, the voter service center, and places of deposit;
 - (B) The State shall be responsible for the printing, mailing, receipt, and counting of ballots; and
 - (C) Any responsibilities not specified in this paragraph may be assigned to the county or the State by the chief election officer.

SECTION 14. Misdemeanors. Any person who opens a return envelope containing a ballot voted by mail other than those persons authorized to do so pursuant to this Act shall be guilty of a misdemeanor.

SECTION 15. Removal of names from register. For the purpose of section 11-17(a), Hawaii Revised Statutes, a person has voted if the voter has returned the ballot to the chief election officer or county clerk by the United States Postal Service, by personal delivery of the ballot to a place of deposit or the voter service center, or by electronic transmission under certain circumstances pursuant to this Act.

SECTION 16. Applicability of title 2, Hawaii Revised Statutes. An election by mail conducted pursuant to this Act shall be administered in accordance with title 2, Hawaii Revised Statutes; provided that if any provision of that title conflicts with a provision of this Act, this Act shall prevail.

SECTION 17. Rules. The chief election officer may adopt rules pursuant to chapter 91 to implement this Act.

SECTION 18. There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,450 or so much thereof as may be necessary for fiscal year 2018-2019 for the purpose of preparing for, implementing, and administering elections by mail in a county with a population of less than one hundred thousand, including voter education and public awareness programs; provided that the office of elections may distribute a portion of the sum to a

county in the form of a grant to cover startup, transition, and other necessary costs that may be foreseeably incurred by the county.

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

SECTION 19. No later than twenty days prior to the convening of the regular sessions of 2019 and 2020, the office of elections shall submit a preliminary report to the legislature that includes:

- (1) The office of elections' progress in implementing this Act;
- (2) A summary of the office of elections' discussions with the county clerk to determine areas of joint implementation of this Act;
- (3) An estimate of any costs the county clerk or the office of elections may incur to implement this Act;
- (4) Any developments in assistive technology that may be implemented by the State, the counties, or nonprofit associations to ensure that persons with disabilities are not, on the whole, disadvantaged by implementation of this Act, including the costs associated with applicable technology;
- (5) Any difficulties encountered;
- (6) Specific steps taken and recommendations necessary to prevent fraud and ensure the integrity of the election process; and
- (7) Any other findings and recommendations, including any proposed legislation, necessary to clarify and implement this Act.

SECTION 20. No later than January 15, 2021, the office of elections shall submit a final report to the legislature that includes:

- (1) Critical evaluation and assessment of the office of elections' and county clerk's performance in implementing this Act;
- (2) A summary of the office of elections' discussions with the county clerk to determine areas of joint implementation of this Act;
- (3) An estimate of the costs required by the county clerks or the office of elections to implement elections by mail statewide;
- (4) Any developments in assistive technology that may be implemented by the State, the counties, or nonprofit associations to ensure that persons with disabilities are not, on the whole, disadvantaged by implementation of elections by mail statewide, including the costs associated with applicable technology;
- (5) Any difficulties encountered;
- (6) Specific steps taken and recommendations necessary to prevent fraud and ensure the integrity of the election process;
- (7) Findings on whether the pilot project has increased voter participation; and
- (8) Any other findings and recommendations, including any proposed legislation, necessary to implement elections by mail statewide.

SECTION 21. 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 that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 22. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 23. This Act shall take effect on July 1, 2018 and shall be repealed on June 30, 2021.

(Approved July 10, 2018.)