H.B. NO. 3122

A BILL FOR AN ACT

RELATING TO ELECTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Valid and legitimate election results are critical to our democracy. This Act will ensure the public's trust in the integrity of our elections.

This Act requires that preliminary election results be released at the polling places and provides for mandatory election recounts when the difference in results is one-half of one per cent or less between the winning and losing candidates. This mandatory recount will occur within seven days of the election.

To allow sufficient time for a primary election recount, this Act will adjust the timing of elections. Currently, the State of Hawaii has one of the shortest time periods between a primary election and general election. There are forty-five days between the two elections. If a contest for cause is filed under current law, the period is essentially shortened by fifteen days to thirty days, given that a contest for cause must be filed within six days of the primary election, a response must be filed within five days of service of the contest on the

county clerk or chief election officer, and a decision rendered within five days of filing by the supreme court. After the contest for cause is decided, the general election ballot must be prepared before absentee ballots can be mailed out. The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires the State to provide overseas citizens a fair opportunity to vote by absentee ballot.

The federal government estimates that a reasonable time for delivery by the United States Postal Service and the United States Department of State is ten to fourteen days, each way. The Military Postal Service Agency estimated thirty to thirty-five days for delivery and return of an absentee ballot. More recently, the United States Election Assistance Commission has recommended that states mail absentee ballots at least forty-five days prior to the deadline for the receipt of ballots. Under current law, there is essentially a minimum of thirty days between the resolution of an election contest regarding the primary election and the general election. The use of a recount would shorten that time period to a minimum of twenty-three days. To ensure sufficient time to accomplish all preparation requirements in the event of a primary election recount, this Act moves the primary election from the second to the last

Saturday of September to the second Saturday in August in every even-numbered year.

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

"**§11- Posting of election results at polling place.** (a) The precinct chairperson shall cause the preliminary election results to be posted at the polling place after the last voter in line at the closing hour of voting has voted.

(b) The posting of results shall occur before the polling place's voted ballots are retrieved for delivery to the central counting center.

(c) The posting shall include a statement that the results are not final and are subject to verification and reconciliation by election officials."

SECTION 3. Chapter 11, Hawaii Revised Statutes, is amended by adding to part X a new section to be appropriately designated and to read as follows:

"**§11- Automatic recount for small vote differences.** (a) If the difference in the votes cast for the winning and losing candidates for any state or county office appears to be one-half of one per cent or less of the total ballots cast for

the office, then the chief election officer, or the county clerk in the case of a county election, shall order a recount of all the ballots cast for the office where the small vote difference exists.

(b) In the case where several candidates are to be elected to an office with more than one seat, and the percentage difference contained in subsection (a) appears between the votes received by the lowest among the winning candidates and those received by the highest among the losing candidates, the chief election officer or county clerk in the case of a county election shall order a recount of the ballots for that office.

(c) The ballots shall be recounted by a machine count no later than seven days after the election. This section shall not preclude a contest for cause."

SECTION 4. Section 11-173.5, Hawaii Revised Statutes, is amended to read as follows:

"**§11-173.5 Contests for cause in primary, special primary elections, and county elections held concurrently with a regularly scheduled primary or special primary election.** (a) In primary and special primary election contests[,] and county election contests held concurrently with a regularly scheduled primary or special primary election, including those requiring a

1 runoff or automatic recount for a small vote difference, the
2 complaint shall be filed in the office of the clerk of the
3 supreme court not later than 4:30 p.m. on the sixth day after a
4 primary or special primary election[,] or county election
5 contests held concurrently with a regularly scheduled primary or
6 special primary election, including those requiring a runoff or
7 automatic recount for a small vote difference, and shall be
8 accompanied by a deposit for costs of court as established by
9 rules of the supreme court. The clerk shall issue to the
10 defendants named in the complaint a summons to appear before the
11 supreme court not later than 4:30 p.m. on the fifth day after
12 service thereof.
13 (b) In primary and special primary election contests[,]
14 and county election contests held concurrently with a regularly
15 scheduled primary or special primary election, including those
16 requiring a runoff or automatic recount for a small vote
17 difference, the court shall hear the contest in a summary manner
18 and at the hearing the court shall cause the evidence to be
19 reduced to writing and shall not later than 4:30 p.m. on the
20 fourth day after the return give judgment fully stating all
21 findings of fact and of law. The judgment shall decide what
22 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, special general, or runoff 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."

SECTION 5. Section 11-174.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In general, special general, special, or runoff elections, <u>including those requiring an automatic recount for a small vote difference,</u> the complaint shall be filed in the office of the clerk of the supreme court not later than 4:30 p.m. on the twentieth day following the general, special general, special, [~~or~~] runoff election<u>, or automatic recount for small vote differences</u> and shall be accompanied by a deposit for costs of court as established by rules of the supreme court. The clerk shall issue to the defendants named in the complaint a summons to appear before the supreme court not later than 4:30 p.m. on the tenth day after service thereof."

SECTION 6. Section 12-2, Hawaii Revised Statutes, is amended to read as follows:

"**§12-2 Primary held when; candidates only those nominated.** The primary shall be held at the polling place for each precinct on the second [~~to the last~~] Saturday [~~of September~~] in August in every even numbered year[~~; provided that in no case shall any primary election precede a general election by less than forty-five days~~].

No person shall be a candidate for any general or special general election unless the person has been nominated in the immediately preceding primary or special primary."

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2008.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

Report Title:
Elections

Description:
Requires precinct chairperson to post preliminary election results at the poll site; provides for an automatic recount when there is only a ½ of one per cent difference between winning and losing candidates; moves primary date to the 2nd Saturday in August in every even numbered year to allow time for run-off elections.

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JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO ELECTIONS.

PURPOSE: To enhance the integrity and validity of elections.

MEANS: Add two sections to chapter 11 and amend sections 11-173.5, 11-174.5(a), and 12-2, Hawaii Revised Statutes.

JUSTIFICATION: The success of our democratic process requires fair, open, and verifiable elections. There is currently no provision mandating automatic recounts of elections in Hawaii. Automatic recounts allow for the verification of close elections and ensure that the winner of an election is legitimate. This bill requires a mandatory recount in close elections.

Further, long delays between the closing of the polls and the disclosure of the vote count risks undue doubt in the minds of voters. Preliminary postings of results at polling places improves transparency of the election process. This bill mandates preliminary posting of election results.

The State of Hawaii has one of the shortest time periods between a primary election and general election. To allow for sufficient time for a primary election recount and to comply with the federal Uniformed and Overseas Citizens Absentee Voting Act, this bill moves the primary election to an earlier date.

Impact on the public: This bill increases public trust in the State of Hawaii's election process.

Impact on the department and other agencies: This bill requires the Office of Elections

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to develop procedures for runoff elections and the posting of election results at precinct sites.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Office of Elections.

EFFECTIVE DATE: July 1, 2008.