



STATE OF HAWAII
OFFICE OF ELECTIONS
802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
elections.hawaii.gov

SCOTT T. NAGO
CHIEF ELECTION OFFICER

TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE HOUSE COMMITTEE ON JUDICIARY
ON HOUSE BILL NO. 2128
RELATING TO ELECTIONS

February 3, 2020

Chair Lee and members of the House Committee on Judiciary, thank you for the opportunity to testify in support of House Bill No. 2128. The purpose of this bill is to make address various inconsistencies in our election laws so as to clarify and improve the administration of elections by mail.

While this bill makes a variety of housekeeping changes, we are taking this opportunity to highlight three matters that are addressed by this bill.

Precincts vs. Districts

The concept of a precinct is integral to the administration of elections and was previously defined as the “smallest political subdivision established by law.” HRS § 11-1 (prior to Act 136, SLH 2019). In practice, this involved election administrators accounting for the intersecting boundaries associated with different offices or jurisdictions to establish the precincts that would be used for administrative and reporting purposes.

Each of these precincts would have a unique ballot type containing the contests and questions that voters in these areas were eligible to vote upon. These precincts typically were assigned a polling place at which voters could go to vote on election day. As a result of this, it is understandable how some may equate precinct with polling place.

The term “district” is ambiguous as it could be referring to a general district associated with an office, such as congressional districts, state senatorial district, state representative district, county council district, and so on. Additionally,

depending on the context, it could be referring to a district of one or more of these previously mentioned districts, resulting in what was previously called a “precinct.”

Polling Places vs. Voter Service Centers

As a housekeeping matter there are various references to polling places and polls that should be changed to voter service centers (i.e. HRS §§ 11-26, 11-117, 15-11, and 15D-10). On a related note, there is a reference to a poll book that should be changed to record books or a similar term (i.e. HRS § 11-155). Finally, there are references to precinct officials that should be changed to voter service center officials (i.e. HRS §§ 11-26, 11-138, 11-172, 11-174.5, 16-23, 16-26, and 16-28). The present bill addresses these matters.

Continue Mailing Ballot Packages to Voters Who Update Their Voter Registration Address No Later Than 7 Days Before the Date of the Election

As currently written, HRS § 11-102 provide that “[t]he clerk shall continue mailing ballot packages to voters who update their voter registration address no later than fourteen days before the data of an election.” A conservative reading of this provision might lead some to interpret that voters who update their information later than the fourteenth day would have their ballot mailed to their prior address or that more generally the update to the voter's registration would not be processed until after the election.

However, as provided for in HRS § 11-101, elections by mail are still to be administered in accordance with Title 2. The provisions of Title 2 provide various explicit circumstances in which updates to voter registration records are received less than fourteen days prior to an election and an associated ballot is mailed to the voter.

For example, HRS § 15-4(a) provides that a request for an absentee ballot may be made up to the seventh day prior to the election. The absentee form itself indicates that the clerk can update a voter’s record, including their address, on the basis of the absentee request, pursuant to their authority under HRS §11-20 to update an applicant's voter registration record. This seventh day requirement is based on federal law related to presidential elections. 52 USC § 10502(d) (Voting Rights Act of 1965).

Taking it further, replacement ballots in an election by mail are provided for in HRS §11-105 and there is no deadline stated as to when the request can be made. The statute provides that upon receipt the clerk is to check the system and issue the replacement ballot package by mail or available for pick up. Similarly, HRS § 15-5 regarding absentee ballots notes that within five days of an election a voter may request a replacement ballot if they have not received their

ballots or they otherwise require one (e.g. they may have spoiled their initial ballot).

Additionally, HRS §15D-9 relating to military and overseas voters requires a ballot to be mailed within two business days or as soon as allowable after the application arrives.

Against this backdrop, this bill replaces the fourteen day requirement with seven days and explicitly authorizes the county clerks to continue to mail ballots, if the clerk believes there is sufficient time for the voter to receive and return their ballot, or as required by any other statute.

Thank you for the opportunity to testify in support of House Bill No. 2128.

Statement Before The
HOUSE COMMITTEE ON JUDICIARY
Monday, February 3, 2020
2:05 PM
State Capitol, Conference Room 325

in consideration of
HB 2128
RELATING TO ELECTIONS.

Chair LEE, Vice Chair SAN BUENAVENTURA, and Members of the House Judiciary Committee

Common Cause Hawaii supports HB 2128, with amendments, which make several housekeeping amendments to Hawaii's elections laws to clarify and improve the administration of elections by mail.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through voting modernization efforts. Act 136, Session Laws of Hawaii 2019, enacting statewide vote by mail starting in 2020, is an excellent way to improve civic engagement and voter turnout in Hawaii, but there are still avenues to strengthen this law.

One, Common Cause Hawaii supports the provision of HB 2128, which will provide a ballot summary and a voter verifiable paper audit trail (VVPAT). Every voting machine in Hawaii should generate a backup paper record of each vote. Even if voter databases and other equipment are not connected to the internet, national experts have opined said that it will still be hard to protect computer systems from cyber threats.

Two, Common Cause Hawaii suggests amending Section 17 of HB 2128 (referring to Section 11—107, Hawaii Revised Statutes (HRS)) to delete any references that ballots may be forwarded and also returned by electronic transmission, except pursuant to federal laws. The cybersecurity experts are particularly concerned that any internet connection could be vulnerable to hacking or other cyberattacks. It is not prudent, in these fraught times, to have emailed ballots and be able to return them via email. Further, with emailed ballots, it is unclear how ballot summaries and VVPATs would detect any hacking, because ballot summaries and VVPATs would ordinarily be conducted after receipt of the emailed ballots, when the hacks have already occurred.

Three, Common Cause Hawaii suggests amendments to Section 19 of HB 2128 (referring to Section 11-109, HRS). Starting in 2020, all Hawaii elections will be by mail; there will no longer be polling places for voters to cast their ballots. Instead, there will be a limited number of Voter Service Centers (VSCs) for people to perform in-person polling functions. VSCs will receive personal delivery of mail-in ballots, accommodate voters with special needs, offer same day registration and voting, and provide other election services.

Currently, all counties, except Kauai, will have more than one (1) VSC and they are open ten (10) business days prior to election days and their hours are from Monday through Saturday, 8:00 a.m. to 4:30 p.m., and on election days from 7:00 am – 7:00 pm.

Unfortunately, HB 2128 states that “[i]n each county, **a voter service center** shall be open” Page 23, lines 9-10 (emphasis added). This means a county shall only need to open one (1) VSC. This needs to be revised in HB 2128. One VSC per county is simply not enough.

Further, counties should **not** be able to open only one (1) VSC and then have the unilateral ability to decide to open (or not open) “additional centers having varying days or hours of operations” Page 23, lines 13-14. While Common Cause Hawaii truly appreciates the difficulty in administrating VSCs with uniform hours of operations statewide, HB 2128 provides too much latitude to the county clerks and opens the door to having only one (1) VSC in each county “be open from the tenth business day preceding the day of the election during regular business hours until the time provided in section 11—131 on the date of the election and at the same times statewide.” Page 23, lines 10-13. Any other VSC open in a county, under HB 2128 as presently written, may only be open for a very limited amount of time during inconvenient days and hours, rendering it a meaningless service to voters.

Additionally, county clerks should not have the unilateral ability to decide to open (or not open) places of deposit. Page 24, lines 15-17.

Common Cause Hawaii requests that HB 2128 provides that each county clerk must afford a minimum number of VSCs and places of deposit in a county based upon a good faith determination of the following factors, in addition to other pertinent considerations not referenced below:

Transportation

- Proximity to public transit
- Access to free parking
- Traffic patterns
- Proximity to communities with low rates of vehicle ownership
- Time and distance a voter must travel to reach a location

Geography

- Proximity to population centers
- Proximity to geographically isolated populations

Underrepresented Voters

- Proximity to language minority communities
- Proximity to low-income communities
- Proximity to voters with disabilities
- The need for alternate voting methods for voters with disabilities
- Proximity to communities with historically low vote by mail usage
- Proximity to communities of eligible voters that are not registered

Common Cause Hawaii recommends that clerks seek a hardship waiver from a third party, neutral body before varying a VSC’s and a place of deposit’s hours from being open during statewide times.

In summary, Common Cause Hawaii supports HB 2128 efforts to create ballot summaries and VVPATs. Common Cause Hawaii suggests amendments to HB 2128 relating to the establishment of VSCs and places of deposit and permitting electronic ballots.

Thank you for the opportunity to testify in support of HB 2128 with suggested amendments. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii





LATE

Board of Directors:

HOUSE COMMITTEE ON JUDICIARY

Monday, February 3, 2020 2:05 PM, Conference Room 325

Gary L. Hooser
President

**Hawaii Alliance for Progressive Action SUPPORTS HB 2128
with amendments**

Andrea N. Brower
Ikaika M. Hussey
Co-Vice Presidents

Chair Lee, Vice Chair San Buenaventura, and Members of the House Judiciary Committee,

Kim Coco Iwamoto
Treasurer

The Hawaii Alliance for Progressive Action (HAPA) supports HB 2128, with amendments, which make several housekeeping amendments to Hawaii's elections laws to clarify and improve the administration of elections by mail.

Bart E. Dame
Secretary

Paul Achitoff

Act 136, Session Laws of Hawaii 2019, enacting statewide vote by mail starting in 2020 is an excellent way to improve civic engagement and voter turnout in Hawaii, but there are still avenues to strengthen this law.

Laura Harrelson

Kaleikoa Ka'eo

Michael Miranda

Walter Ritte Jr.

Pua Rossi-Fukino

Karen Shishido

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Leslie Malulani Shizue Miki

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HAPA requests that HB 2128 provides that each county clerk must afford a minimum number of VSCs and places of deposit in a county based upon a good faith determination of the following factors, in addition to other pertinent considerations not referenced below:

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Additionally, clerks must seek a hardship waiver from a third party, neutral body before varying a VSC's and a place of deposit's hours from being open during statewide times.

In summary, HAPA supports HB 2128 efforts to create ballot summaries and VVPATs.

HAPA suggests amendments to HB 2128 relating to the establishment of VSCs and places of deposit and permitting electronic ballots.

Mahalo for your consideration. HAPA is a member of the Common Good Coalition.

Sincerely,



Anne Frederick
Executive Director

The Hawai'i Alliance for Progressive Action (HAPA) is a public non-profit organization under Section 501(c)(3) of the Internal Revenue Code. HAPA's mission is to catalyze community empowerment and systemic change towards valuing 'aina (environment) and people ahead of corporate profit.

HB-2128

Submitted on: 2/1/2020 2:41:26 PM

Testimony for JUD on 2/3/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

HB-2128

Submitted on: 2/1/2020 11:02:18 PM

Testimony for JUD on 2/3/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair LEE, Vice Chair SAN SUENAVENTURA, and Members of the House Judiciary Committee,

I am writing in support of HB 2128 with Amendments.

I think that this bill will help to raise the overall required knowledge base of candidates running for county elections. A civics practice test is one way to ensure a basic standard of knowledge.

HB 2575 is an innovative idea to ensure that candidates for public office have an understanding and appreciation of civics and how government works. However, to require people to have to take a test and post their pass / fail marks seems punitive and creates a barrier for those who wish to run for public office.

While it is clear that the intent of HB 2575 is not to stigmatize but to educate, it may not actually accomplish its end goal since test scores do not predict the value of service provided by elected officials. Perhaps there are other collaborative ways to teach candidates running for office how government works (e.g. required observation hours during session, mentoring by elected officials for so many months, etc.).

Mahalo,

Caroline Kunitake

HB-2128

Submitted on: 2/2/2020 4:25:12 AM

Testimony for JUD on 2/3/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Best	Individual	Support	No

Comments:

I agree with testimony of Common Cause Hawaii

HB-2128

Submitted on: 2/2/2020 1:31:51 PM

Testimony for JUD on 2/3/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Dursin	Individual	Support	No

Comments:

I am in partial support of HB2128. Its provisions requiring ballot summaries and voter verifiable paper audit trails are extremely important to the security of elections and to voter confidence.

However, allowing only one voter service center per county and/or allowing additional centers to be open at different or fewer hours than others (at the discretion of county clerks,) is not acceptable. Voters will be discouraged from voting or seeking help at service centers, even from delivering their ballots. This is not conducive to increased voter access, one of the vote-by-mail goals.

Finally, there should be no wording suggesting electronic distribution and return of ballots. It simply is not safe.

So, I would ask that you support ballot summaries and voter verifiable paper audit trails. Please eliminate any mention of electronic transmission of ballots, and amend the sections dealing with voter service centers.

Thank you for taking my comments.