

JAN 21 2016

A BILL FOR AN ACT

RELATING TO ELECTIONS.

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

1 SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended
2 by adding two new sections to be appropriately designated and to
3 read as follows:

4 "§11-A Federal, state, and county elections by mail. (a)
5 Counties with a population of less than 100,000, beginning with
6 the 2018 primary election, shall implement elections by mail.

7 (b) Counties with a population of less than 500,000,
8 beginning with the 2020 primary election, shall implement
9 elections by mail.

10 (c) Beginning with the 2022 primary election, all
11 elections shall be conducted by mail in accordance with this
12 title.

13 (d) Any federal, state, or county election, before the
14 2022 primary election, not already mandated by this section to
15 be conducted by mail, may be conducted by mail, in whole or in
16 part, as determined by the chief election officer for state or
17 federal elections or the county clerk for elections involving



1 solely county contests. To the extent an election is only
2 conducted in part by mail, any proclamation will clearly detail
3 which precincts will continue to have polling places and which
4 ones will be conducted by mail.

5 (e) All voters in an election by mail precinct or county
6 shall be considered permanent absentee voters under section
7 15-4.

8 (f) The term "election by mail" means that all voters in a
9 precinct, county, or the State, as applicable, are deemed
10 permanent absentee voters, under section 15-4, and that election
11 day polling places will no longer be operated. Absentee polling
12 places under section 15-7 will continue to operate. At least
13 one absentee polling place in each county will be open on
14 election day and may be established at other sites as may be
15 designated by the county clerk. Voting in any other manner
16 authorized by law for absentee voters will be permitted for
17 voters in an "election by mail" precinct or county.

18 (g) All active registered voters in an election by mail
19 precinct or county will be mailed a ballot. Inactive voters
20 will have the ability to update their registration to become an
21 active registered voter, in order to be mailed a ballot. Active



1 registered voters with a questionable address notation in their
2 record will be mailed a ballot but will be required to complete
3 a voter registration form or a form prescribed by the chief
4 election officer affirming that the voter claims the address
5 listed on the register as the voter's legal residence, in
6 conjunction with the return of the ballot. All active
7 registered voters who have received a ballot by mail will be
8 permitted to vote at an absentee walk site, in lieu of voting
9 the ballot by mail, so long as the mail ballot has not already
10 been cast. In such a situation, the uncast mail ballot shall be
11 canceled by the county clerk.

12 (h) Unless the context clearly indicates otherwise, the
13 provisions of chapter 15 regarding absentee voting shall be
14 equally applicable to an election by mail. This includes, but
15 is not limited to the following:

- 16 (1) Request for ballot;
17 (2) Delivery of ballots;
18 (3) Return envelope, ballot envelope; instructions;
19 (4) Postage;
20 (5) Absentee polling place;
21 (6) Return and receipt of ballots; and



1 (7) Counting of ballots.

2 §11-B Election expenses and responsibilities for elections
3 by mail. (a) Election expenses in an election by mail shall be
4 shared and set forth as follows:

5 (1) Expenses related to mail elections involving both
6 state and county offices, or federal and county
7 offices, unrelated to voter registration shall be
8 divided in half between the State and the counties.
9 Each county shall pay a proration of expenses as a
10 proportion of the registered voters at the time of the
11 general election. The counties shall separately be
12 responsible for expenses associated with voter
13 registration.

14 (2) All expenses for county mail elections, which do not
15 involve state or federal offices, shall be borne by
16 the county and paid out of appropriations as may be
17 made by the council.

18 (3) All expenses for state or federal mail elections,
19 which do not involve county offices, shall be borne by
20 the State and paid out of appropriations as may be
21 made by the legislature. Expenses attributable to



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1 registration of voters by the county clerk, for those
2 state or federal elections, which do not involve
3 county offices, shall be borne by the State and paid
4 out of appropriations as may be made by the
5 legislature.

6 (b) Election responsibilities in elections by mail shall
7 be shared and set forth as follows:

8 (1) In mail elections involving both state and county
9 offices, or federal and county offices, the counties
10 shall be responsible for voter registration, absentee
11 voting, and the mailing and receipt of ballots, while
12 the State shall be responsible for the printing and
13 counting of ballots. The State and counties may
14 mutually agree to the delegation of these
15 responsibilities to each other. Any responsibilities
16 not enumerated above may be assigned to the counties
17 or the State by the chief election officer.

18 (2) The respective county shall be responsible for mail
19 elections involving only county offices.

20 (3) For mail elections involving only state or federal
21 offices, the counties shall be responsible for voter



1 registration and absentee voting, while the State
2 shall be responsible for the printing, mailing and
3 receipt, and counting of ballots. Any
4 responsibilities not enumerated above shall be
5 assigned to the counties or the State by the chief
6 election officer.

7 (c) To the extent an election is conducted by mail for
8 certain precincts and utilizes election day polling places for
9 other precincts, the chief election officer shall determine
10 state and county responsibilities and expenses, consistent with
11 this section and section 11-184."

12 SECTION 2. Chapter 15, Hawaii Revised Statutes, is amended
13 by adding a new section to be appropriately designated and to
14 read as follows:

15 "§15- Electronic transmission, marking, and return of
16 ballots. (a) This section shall apply only to voters covered
17 by section 15-5(b) or section 15D-9 to receive ballots
18 electronically.

19 (b) Before an election, the clerk shall determine the
20 permissible form or forms of electronic transmission that may be



1 used for the initial transmission of ballots to voters and the
2 return transmission of ballots by voters.

3 (c) The forms of electronic transmission permitted for the
4 initial transmission of ballots may differ from those permitted
5 for the return of ballots by voters.

6 (d) For the purposes of this section, "electronic
7 transmission" includes facsimile, electronic mail delivery, or
8 the utilization of an online absentee ballot delivery and return
9 system.

10 (e) The return and receipt of an absentee ballot and its
11 counting shall be conducted in accordance with sections 15-9 and
12 15-10 to the extent possible, taking into consideration if a
13 ballot has been returned electronically."

14 SECTION 3. Section 15-1, Hawaii Revised Statutes, is
15 amended by adding three new definitions to be appropriately
16 inserted and to read as follows:

17 "Absentee voting" means voting in any manner authorized
18 under chapter 15 including, but not limited to, mail, in-person
19 at an absentee polling place before the day of the election or
20 on the day of the election, or electronic transmission.



1 "Election by mail" means that all voters in a precinct,
2 county, or the State, as applicable, are deemed permanent
3 absentee voters under section 15-4, and election day polling
4 places are no longer operated.

5 "Electronic transmission" means the transmission of a blank
6 or voted ballot by facsimile, electronic mail delivery, or the
7 utilization of an online absentee ballot delivery and return
8 system, which may include the ability to mark the ballot."

9 SECTION 4. Section 15-4, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (e) to read:

12 "(e) When a registered voter requests an absentee ballot,
13 the voter also may include an additional request to receive
14 absentee ballots permanently. After receiving a request for
15 permanent absentee voter status, the clerk shall mail to the
16 voter who requested permanent absentee voter status an absentee
17 ballot for all subsequent elections conducted in that precinct.
18 The forwarding address for absentee ballots to be permanently
19 mailed shall be the in-state mailing address contained in the
20 voter's registration record. Voters who seek to have ballots
21 forwarded to another address shall apply for an absentee ballot



1 under subsection (a). Permanent absentee voters may request
2 under subsection (a) that their ballots be forwarded to another
3 address either in or outside of the State for a single election
4 or for a primary or special primary election and the election
5 immediately following the primary or special primary election.
6 A permanent absentee voter's request for a ballot to be
7 forwarded temporarily under subsection (a) shall not serve as a
8 cancellation of the voter's permanent absentee status or as a
9 change to the voter's permanent absentee mailing address. Upon
10 the completion of the election or elections covered by the
11 permanent absentee voter's request under subsection (a), the
12 voter's permanent absentee mailing address, on file with
13 election officials, shall resume as the address to which the
14 voter's ballots will be permanently mailed."

15 2. By amending subsection (h) to read:

16 "(h) A voter's permanent absentee voter status, unless the
17 voter resides in an absentee ballot only area, shall be
18 terminated if any of the following conditions apply:

19 (1) The voter requests in writing that such status be
20 terminated;



1 (2) The voter dies, loses voting rights, registers to vote
2 in another jurisdiction, or is otherwise disqualified
3 from voting;

4 (3) The voter's absentee ballot, voter notification
5 postcard, or any other election mail is returned to
6 the clerk as undeliverable for any reason; or

7 (4) The voter does not return a voter ballot by 6:00 p.m.
8 on election day in both the primary and general
9 election of an election year."

10 3. By amending subsection (i) to read:

11 "(i) If a voter's permanent absentee voter status, in a
12 non-vote by mail county or precinct, has been terminated due to
13 one or more of the conditions specified in subsection (h), the
14 voter shall be responsible for again requesting permanent
15 absentee status as specified in subsection (e). A permanent
16 absentee voter residing in an election by mail county or
17 precinct shall cease to be a permanent absentee voter if the
18 voter requests to cancel the voter's voter registration, dies,
19 loses voting rights, registers to vote in another jurisdiction,
20 or is otherwise disqualified from voting."



1 SECTION 5. Section 15-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§15-5 Delivery of ballots. (a) Immediately upon receipt
4 of a request for absentee ballot within the time limit specified
5 in section 15-4, the clerk shall examine the records to
6 ascertain whether the voter is lawfully entitled to vote as
7 requested. If the clerk ascertains that the voter is lawfully
8 entitled to vote as requested, no earlier than [~~thirty~~] forty-
9 five days before the election, or if the forty-fifth day is a
10 weekend or holiday, no earlier than the business day preceding
11 the forty-fifth day, the clerk shall mail in a forwarding
12 envelope, or deliver in person if the voter appears at the
13 office of the clerk, an official ballot and other materials
14 prescribed in section 15-6, except that an incapacitated voter
15 may send a representative to obtain the voter's ballots pursuant
16 to the rules adopted by the chief election officer; provided
17 that official ballots and other materials prescribed in section
18 15-6 shall be mailed or delivered:

19 (1) To uniform military and overseas voters pursuant to
20 section 15D-9; and



1 (2) No later than twenty-four hours after receipt of the
2 request for absentee ballot for requests received on
3 the last day specified in section 15-4.

4 (b) If [~~mailed~~] permanent absentee ballots or ballots
5 requested under section 15-4, are not received by [~~the~~] a voter
6 within five days of an election, or a voter requires a
7 replacement ballot within five days of an election, or a voter
8 would otherwise not be able to return their properly issued
9 ballot by the close of polls, then a [~~eevered~~] voter [~~under~~
10 ~~chapter 15D~~] may request that absentee ballots be forwarded by
11 [~~faecsimile-~~] electronic transmission. Upon receipt of such a
12 request and confirmation that proper application was made, the
13 clerk may transmit appropriate ballots [~~by faecsimile~~], together
14 with a form requiring the affirmations and information required
15 by section 15-6, and a form containing a waiver of the right to
16 secrecy, as provided by section 11-137. The voter may return
17 the voted ballots and executed forms by [~~faecsimile~~] electronic
18 transmission or mail; provided that they are received by the
19 issuing clerk no later than the close of polls on election day.
20 Upon receipt, the clerk shall verify compliance with the
21 requirements of section 15-9(c) [~~7~~] and prepare the ballots for



1 counting pursuant to section 15-10[-]; provided that if the
2 voter returns multiple voted absentee ballots for the same
3 election, the clerk shall prepare, for counting, only the first
4 absentee ballot returned that is not spoiled."

5 SECTION 6. Section 15-7, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending subsection (b) to read:

8 "(b) The absentee polling [~~places~~] place at the office of
9 the county clerk, or a site designated by the county clerk to
10 serve that purpose, shall be open no later than ten working days
11 before election day, and all Saturdays falling within that time
12 period, or as soon thereafter as ballots are available; provided
13 that [~~all~~] the working day immediately before the election, the
14 absentee polling [~~places shall~~] place may not be open [~~on the~~
15 ~~same date statewide, as]~~. The hours of operation of the
16 absentee polling place will be determined by the [~~chief election~~
17 ~~officer.~~] county clerk. For purposes of this section, a working
18 day shall include Saturday. Additional absentee polling places
19 may be established by the county clerk at other locations and
20 may follow a different schedule of times and dates of operation.
21 To the extent a county has been designated election by mail or



1 the voters of specific precincts have been designated as
2 permanent absentee voters, an absentee polling place at the
3 office of the county clerk, or a site designated by the county
4 clerk to serve that purpose, will be open on the day of the
5 election. The absentee polling place shall remain open until
6 6:00 p.m. on the day of the election. If, at the closing hour
7 of voting on the day of the election, any voter desiring to vote
8 is standing in line outside the entrance of the absentee polling
9 place with the desire of entering and voting, but due to the
10 absentee polling place being overcrowded has been unable to do
11 so, the voter shall be allowed to vote irrespective of the
12 closing hour of voting. No voter shall be permitted to enter or
13 join the line after the prescribed hour for closing the absentee
14 polling place."

15 2. By amending subsection (e) to read:

16 "(e) The registration clerk shall process applications for
17 any person not registered to vote who submits a signed affidavit
18 in accordance with section 11-15, which shall include a sworn
19 affirmation:

20 (1) Of the person's qualification to vote;



1 (2) Acknowledging that the person has not voted and will
2 not vote at any other polling place for that election
3 and has not cast and will not cast any absentee ballot
4 pursuant to chapter 15 for that election; and

5 (3) Acknowledging that providing false information may
6 result in a class C felony, punishable by a fine not
7 exceeding [~~\$1,000~~] \$10,000 or imprisonment not
8 exceeding five years, or both."

9 SECTION 7. Section 15-8, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§15-8 Absentee [~~ballet box.~~] polling place operations.**

12 An absentee [~~ballet box or boxes shall be provided in the~~
13 absentee] polling place shall be operated in the same manner as
14 an election day [~~for the purpose of depositing the return~~
15 envelopes and the ballot envelopes of those who vote in person
16 at the absentee] polling place[~~. The ballot box shall be~~
17 secured in accordance with rules promulgated by the chief
18 election officer.

19 ~~Tampering with the ballot box or opening it before the time~~
20 ~~prescribed in section 15-9 shall be an election offense under~~
21 ~~section 19-6-], including the handling and counting of ballots,~~



1 under chapters 11 and 16, unless the context indicates
2 otherwise. Sections 15-9 and 15-10 shall not apply to absentee
3 ballots voted at an absentee polling place."

4 SECTION 8. Section 15-9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§15-9 Return and receipt of absentee ballots. (a) The
7 return envelope shall be:

- 8 (1) Mailed and must be received by the clerk issuing the
9 absentee ballot not later than the closing of the
10 polls on any election day;
- 11 (2) Delivered other than by mail to the clerk issuing the
12 absentee ballot, or another election official
13 designated by the clerk to act on the clerk's behalf,
14 not later than the closing of polls on any election
15 day; or
- 16 (3) Delivered other than by mail to any polling place
17 within the county in which the voter is registered and
18 deposited by a precinct official in the ballot box
19 before the closing of the polls on any election day.
- 20 (b) Upon receipt of the return envelope from any person
21 voting under this chapter, the clerk may prepare the ballots for



1 counting pursuant to this section and section 15-10. As
2 provided for in section 15-6, the voter shall be provided a
3 ballot, a ballot envelope in which to seal the ballot, and a
4 return ballot in which to seal the ballot envelope. The
5 preparation of the ballot may include the opening of the return
6 envelope and the validation of the signature on the return
7 envelope, but shall not include the opening of the ballot
8 envelope within the return envelope.

9 (c) ~~[Prior to]~~ Unless stated otherwise by election
10 officials, the opening [the] of return [and ballot] envelopes
11 and [counting the ballots, the] validation of signatures shall
12 begin the day immediately after absentee ballots are transmitted
13 to voters and continue through the day of the election.
14 Official observers, designated in section 16-45, may elect to be
15 present at any time during this time frame. The return
16 envelopes shall be checked for the following:

- 17 (1) Signature on the affirmation statement;
- 18 (2) Whether the signature corresponds with the absentee
19 request or register as prescribed in the rules adopted
20 by the chief election officer; and



1 (3) Whether the person is a registered voter and has
2 complied with the requirements of sections 11-15 and
3 11-16.

4 (d) If any of the above requirements is not met or if the
5 return or ballot envelope appears to be tampered with, other
6 than by the return envelope having been opened by election
7 officials, the [~~clerk or the absentee ballot team official~~]
8 election officials shall mark across the face of the envelope
9 "invalid" and it shall be kept in the custody of the clerk and
10 disposed of as prescribed for ballots in section 11-154.

11 (e) If an absentee polling place is established at the
12 clerk's office [~~prior to~~] before or on election day, [~~the~~
13 ~~officials of the absentee polling place shall check the return~~
14 ~~or ballot envelopes for the above requirements prior to~~
15 ~~depositing them in the correct absentee ballot box.~~] this
16 section shall not apply to any ballots cast at that location."

17 SECTION 9. Section 15-10, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§15-10 Counting of absentee ballots. If the requirements
20 in section 15-9 are met, the [~~return and~~] ballot envelopes may



1 be opened and the ballot counted as prescribed by law for the
2 voting system in use.

3 ~~[In those absentee polling places using paper ballots,
4 counting of the absentee ballots may begin after noon of
5 election day.~~

6 ~~In those absentee polling places using the electronic
7 voting system, the absentee ballots shall be transported to the
8 counting center in a manner and by a schedule as provided in the
9 rules promulgated by the chief election officer. In no case,
10 however, shall the results of the absentee count become publicly
11 known before the polls have officially closed.~~

12 ~~Any person violating this section shall be guilty of an
13 election offense under section 19-6.]~~

14 The counting of absentee ballots may begin no earlier than
15 the fifteenth day before an election. The counting of absentee
16 ballots shall include the following stages:

17 (1) Removing the ballot envelope or ballot or, if the
18 voter did not utilize the ballot envelope, from the
19 return envelope;

20 (2) Opening the ballot envelope;



1 (3) Duplicating any damaged ballot so that it may be
2 counted by the vote counting equipment; and
3 (4) Scanning or otherwise allowing the ballot to be
4 counted by the vote counting equipment;
5 provided that, in the case of absentee polling places, these
6 stages shall not apply, to the extent voters directly utilize an
7 electronic voting system or voting machine.

8 To the extent a voter has voted by fax, electronic mail, or
9 any other means authorized by law, election officials may
10 duplicate the votes of the voter onto a traditional ballot to be
11 counted by the vote counting equipment. Official observers, as
12 provided for in section 16-45, shall be given reasonable notice
13 of the time and place where the ballots will be counted.
14 Official observers may elect to be present at any time during
15 this time frame.

16 No person present during the counting of ballots shall
17 disclose any information concerning how votes were cast on a
18 particular contest or question.

19 Poll watchers, as provided for in section 11-77, may
20 observe the operations of the absentee polling place."



1 SECTION 10. Section 16-43, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§16-43 **Ballot handling.** In every case where the precinct
4 ballots are handled by election officials or election employees,
5 from the time the ballots are delivered to the several precincts
6 to the time they are returned to the chief election officer or
7 clerk in county elections for disposition upon completion of the
8 tabulation, they [~~shall~~] may be [handled in the presence of not
9 less than two officials] observed by an official assigned in
10 accordance with sections 11-71 and 11-72 or section 16-45. This
11 section shall not apply to absentee ballots handled in
12 accordance with sections 15-9 and 15-10."

13 SECTION 11. Section 16-46, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§16-46 **Counting defective ballots.** Counting center
16 employees [~~in the presence of at least two official observers]~~
17 shall prepare a new ballot to replace each defective ballot.
18 The defective ballots shall be segregated and the replacement
19 ballots counted pursuant to rules promulgated by the chief
20 election officer."



1 SECTION 12. Section 16-47, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§16-47] Preparation of absentee ballots. Counting~~
4 ~~center employees in the presence of at least two official~~
5 ~~observers shall prepare absentee ballots for counting by~~
6 ~~automatic tabulating equipment in a manner that shall accurately~~
7 ~~reflect the votes cast by the absentee voters."]~~

8 SECTION 13. Act 166, Session Laws of Hawaii 2014, section
9 1, is amended by amending subsection (c) of section 11-15.2,
10 Hawaii Revised Statutes, to read as follows:

11 "(c) The registration clerk shall process applications for
12 any person not registered to vote who submits a signed affidavit
13 in accordance with section 11-15, which shall include a sworn
14 affirmation:

- 15 (1) Of the person's qualification to vote;
- 16 (2) Acknowledging that the person has not voted and will
17 not vote at any other polling place for that election
18 and has not cast and will not cast any absentee ballot
19 pursuant to chapter 15 for that election; and
- 20 (3) Acknowledging that providing false information may
21 result in a class C felony, punishable by a fine not



1 exceeding [~~\$1,000~~] \$10,000 or imprisonment not
2 exceeding five years, or both."

3 SECTION 14. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so much
5 thereof as may be necessary for fiscal year 2016-2017 for
6 purposes of this Act.

7 The sum appropriated shall be expended by the office of
8 elections.

9 SECTION 15. In codifying the new sections added by section
10 1 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

13 SECTION 16. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 17. This Act shall take effect upon approval;
16 provided that section 13 shall take effect on January 1, 2018.

17

INTRODUCED BY: *Wm. D. M.*
BY REQUEST



S.B. NO. 2116

Report Title:

Office of Elections Package; Elections by Mail; Absentee Polling Places; Appropriation

Description:

Incrementally phases in statewide elections by mail by the 2022 primary election. Assigns responsibilities between the State and counties for expenses related to mail elections for federal, state, and county offices. Requires clerks to send qualified voters their ballots forty-five days before an election. Establishes standards regarding hours of operation for absentee polling places. Specifies procedures for the counting of ballots. Makes an appropriation.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

