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 forty-three states and the District of Colombia permit a losing candidate, voter, group of voters, or other concerned parties to petition for a recount. In addition, twenty states and the District of Colombia require an automatic recount if the margin of victory between the top two candidates is within certain parameters. The legislature further finds that Hawaii is one of the few states that does not allow anyone to petition for a recount. Existing law requires a contest of the results be done through the court system pursuant to article II, section 10 of the Hawaii State Constitution and part XI of chapter 11, Hawaii Revised Statutes. A recount can only be done if a losing candidate files a complaint with the Hawaii supreme court alleging overages, underages, provable fraud, or any other reason for a difference in the election results, and the court grants a recount.
The purpose of this Act is to strengthen public confidence in elections by automatically requiring a recount when the margin of victory between the apparently qualified candidate and the apparently losing candidate and the margin of victory between a vote in the affirmative and a vote in the negative for ballot measures is equal to or less than one-half of one per cent. This Act will not disrupt the vast majority of elections, as it is rare for an election in Hawaii to result in a one-half of one per cent margin. Had the provisions of this Act been in place beginning in 2010, over the previous five elections, only one state race and five county races would have required a recount due to a narrow margin of victory.

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

"§11-A Mandatory recount of votes; election contests. (a) The chief election officer, or the clerk in the case of county elections, shall conduct a recount of all votes cast for any office at any election if the official canvass of all of the returns for that office reveals that the difference in the number of votes cast for a candidate apparently qualified for
the general election ballot or elected to office and the number
of votes cast for the closest apparently defeated opponent is
equal to or less than one-half of one per cent of the total
number of votes cast for the contest.

(b) No cost of a mandatory recount under this section may
be charged to any candidate.

(c) All mandatory recounts of votes under this section
shall be completed and the results publicly announced no later
than the ninth day following the election.

(d) The chief election officer shall adopt rules pursuant
to chapter 91 for the mandatory recount of votes under this
section; provided that the rules shall:

(1) Authorize candidates affected by the recount, or their
designated representatives, to attend and witness the
recount; and

(2) Require the notification of the parties described in
paragraph (1) of the time and place of the recount no
later than one day prior to the date of the recount.

(e) This section shall apply to votes counted pursuant to
section 11-151.
\section*{Mandatory recount of votes; ballot measures.} \hfill (a)

The chief election officer, or the clerk in the case of county ballot measures, shall conduct a recount of all votes cast for any ballot measure concerning proposed state constitutional amendments, proposed county charter amendments, or proposed initiative or referendum issues if the official canvass of all of the returns for a ballot measure concerning proposed state constitutional amendments, proposed county charter amendments, or proposed initiative or referendum issues reveals that the difference in the number of votes cast for a vote in the affirmative for the ballot measure and the number of votes cast for a vote in the negative for the ballot measure is equal to or less than one-half of one per cent of the total number of votes cast for the ballot measure.

(b) All mandatory recounts of votes under this section shall be completed and the results publicly announced no later than the ninth day following the election.

(c) The chief election officer shall adopt rules pursuant to chapter 91 for the mandatory recount of votes under this section.
(d) This section shall apply to votes counted pursuant to section 11-151."

SECTION 3. Section 11-155, Hawaii Revised Statutes, is amended to read as follows:

"§11-155 Certification of results of election. On receipt of certified tabulations from the election officials concerned, the chief election officer or county clerk in county elections shall compile, certify, and release the election results after the expiration of the time for bringing an election contest.

The certification shall be based on a comparison and reconciliation of the following:

(1) The results of the canvass of ballots conducted pursuant to chapter 16;

(2) The audit of pollbooks (and related record books) and resultant overage and underage report;

(3) The audit results of the manual audit team;

(4) The results of the absentee ballot reconciliation report compiled by the clerks; [and]

(5) The results of any mandatory recount of votes conducted pursuant to sections 11-A and 11-B; and
(6) All logs, tally sheets, and other documents generated during the election and in the canvass of the election results.

A certificate of election or a certificate of results declaring the results of the election as of election day shall be issued pursuant to section 11-156; provided that in the event of an overage or underage, a list of all precincts in which an overage or underage occurred shall be attached to the certificate. The number of candidates to be elected receiving the highest number of votes in any election district shall be declared to be elected. Unless otherwise provided, the term of office shall begin or end as of the close of polls on election day. The position on the question receiving the appropriate majority of the votes cast shall be reflected in a certificate of results issued pursuant to section 11-156."

SECTION 4. Section 11-173.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In primary and special primary election contests, and county election contests held concurrently with a regularly scheduled primary or special primary election, the complaint shall be filed in the office of the clerk of the supreme court
not later than 4:30 p.m. on the sixth day after a primary or
special primary election, or county election contests held
concurrently with a regularly scheduled primary or special
primary election, and shall be accompanied by a deposit for
costs of court as established by rules of the supreme court];
provided that a complaint pertaining to votes subject to a
mandatory recount pursuant to section 11-A shall be filed no
later than 4:30 p.m. on the thirteenth calendar day following
the election or the third calendar day following a recount,
whichever occurs first. 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 fifth day after service
[thereof] of summons."

SECTION 5. In codifying the new sections added by section
2 of this Act, the revisor of statutes shall substitute
appropriate section numbers for the letters used in designating
the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.
SECTION 7. This Act shall take effect on July 1, 2019.
Report Title:
Elections; Mandatory Recount of Votes; Margin of Victory; Ballot Measures

Description:
Requires an automatic recount of election votes when the margin of victory for election contests and ballot measures is equal to or less than one-half of one per cent of the votes cast.

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