

# Implementing Elections by Mail

November 20, 2020

This report has been prepared by the Office of Elections pursuant to Act 136 Session Laws of Hawaii (SLH) 2019 which enacts voting by mail uniformly across all counties for all elections commencing in 2020.

For additional information or questions, please contact the Office of Elections by emailing [elections@hawaii.gov](mailto:elections@hawaii.gov) or by calling (808) 453-VOTE (8683) or toll-free 1-800-442-VOTE (8683).



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The mission of the Office of Elections is to provide secure, accessible, and convenient election services to all citizens statewide. Our goals and objectives are to 1) conduct honest and efficient elections; 2) encourage participation in the electoral process; 3) protect voter rights; and 4) promote elections. We conduct candidate filing; print, count, and tabulate ballots; and provide voter education.

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## 2020 ELECTIONS CALENDAR

Wednesday, June 24	Mail Primary Election ballots to overseas voters (52 USC §20302 & HRS §15D-9)
Thursday, July 9	Final day to register to vote for the Primary Election online or by mail with the Clerk's Office (HRS §11-24). Voters are eligible for same day voter registration for the Primary Election at voter service centers (HRS §11-15.2)
Tuesday, July 21	Mail ballot packages delivered to voters (Act 136 SLH 2019)
Monday, July 27	Open voter service centers and same day voter registration for the Primary Election (Act 136 SLH 2019 & HRS §11-15.2)
Saturday, August 1	Deadline to request an absentee mail ballot for the Primary Election from the Clerk's Office (HRS §15-4)
Monday, August 3	Open places of deposit for the Primary Election (Act 136 SLH 2019)
Wednesday, August 5	Last day to file presidential petitions with the Office of Elections (HRS §11-113(c)(2))
Saturday, August 8	PRIMARY ELECTION (HRS §12-2). Voter service centers and places of deposit for the Primary Election close at 7:00 pm. Mailed ballots must be received by the Clerk's Office by 7:00 pm. (Act 136 SLH 2019)
Friday, September 18	Mail General Election ballots to overseas voters (52 USC §20302 & HRS §15D-9)
Monday, October 5	Final day to register to vote for the General Election online or by mail with the Clerk's Office (HRS §11-24). Voters are eligible for same day voter registration for the General Election at voter service centers (HRS §11-15.2)
Friday, October 16	Mail ballot packages delivered to voters (Act 136 SLH 2019)

- Tuesday, October 20 Open voter service centers and same day voter registration for the General Election (Act 136 SLH 2019 & HRS §11-15.2)
- Tuesday, October 27 Open places of deposit for the General Election (Act 136 SLH 2019)
- Deadline to request an absentee mail ballot for the General Election from the Clerk's Office (HRS §15-4)
- Tuesday, November 3 GENERAL ELECTION (State Constitution, Article II, Section 8). Voter service centers and places of deposit for the General Election close at 7:00 pm. Mailed ballots must be received by the Clerk's Office by 7:00 pm. (Act 136 SLH 2019)

## **ABOUT THIS REPORT**

On June 25, 2019, Act 136, Session Laws of Hawaii (SLH) 2019 was signed into law by Governor David Ige. This law transitioned the state to elections by mail from the prior polling place model. While elections by mail builds off of the prior foundation of absentee mail, absentee walk locations, special elections by mail, and the other election administration processes, this new model involves a significant change in the administration of elections. As such, Section 59 of this Act requires the submission of a report to the Legislature addressing the following:

- (1) The office's progress in implementing this Act;
- (2) A summary of the office's discussions with the county clerks to determine areas of joint implementation of this Act;
- (3) A summary of the expenditures required to implement this Act and a comparison of those expenditures with the expenditures required to conduct elections or election-related activities before the enactment of this Act;
- (4) Any additional resources the county clerks or the office may require to implement this Act;
- (5) 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 such technology;
- (6) Any difficulties encountered in the implementation of this Act;
- (7) Specific steps taken and recommendations necessary to prevent fraud and ensure the integrity of the election process; and
- (8) Any other findings and recommendations, including any proposed legislation necessary to clarify and make consistent chapters 11, 12, 15,

15D, 16, and 19, Hawaii Revised Statutes, in light of the transition to statewide elections by mail.

## **INTRODUCTION**

While elections by mail involves a host of factors, it is important to ground oneself in an understanding of what came before elections by mail and how the new model builds off of that foundation to address the reporting requirements of Section 59 of the Act. As such, this section goes over the migration to elections by mail, the subsequent elections by mail law, and how the elections by mail model operates in comparison to the prior polling place model.

While state law has always provided for a statutory division of responsibilities between the Office of Elections and the offices of the county clerks, the successful implementation of our joint elections has always required significant communication and coordination between our respective offices. This is reflected, in part, by detailed procedures and administrative rules regarding various aspects of the administration of election laws.

Historically, under the prior polling place model, the Office of Elections was responsible for the operation of polling places and the counting of ballots, while the counties were responsible for voter registration, absentee walk locations, and absentee mail. HRS §§ 11-11, 15-4, and 11-184. Additionally, the neighbor island counties, due to the Office of Elections being based on Oahu, were delegated authority, pursuant to HRS § 11-2, to operate the polling places and counting center associated with each of their counties. This model was primarily based on direct interactions between voters and election officials in both the voter registration context and the act of voting (e.g., voter registration occurred in person before the county clerk and voting occurred at a polling place operated by election officials).

With time, the model slowly adjusted to allow these types of activities to be done remotely instead of in person. For example, our laws allowed voter registration by mail as opposed to in person. No excuse absentee voting was authorized for any voter who wished to submit a written request. In time, non-regularly scheduled special elections to



address vacancies in office were authorized to be conducted by mail, as opposed to by polling place. The migration continued with voters no longer needing to request to receive their ballot by mail every election cycle when the law permitted one to simply request to be able to vote permanently by mail. In time, even during regularly scheduled elections, voting by mail became the default means of voting when the law authorized elections by mail for small precincts that otherwise could not reasonably support a polling place. Eventually, when we got to the point that over half of our voters were voting prior to the election, the path to elections by mail had been thoroughly paved.

### **ACT 136, SESSION LAWS OF HAWAII 2019**

Act 136, SLH 2019, as previously noted, builds off of this past and created a new part of Chapter 11, HRS, entitled "Elections By Mail," composed of 10 statutes. This new part only addresses general aspects of the administration of elections and needs to be read in conjunction with other parts of Chapter 11, HRS and other chapters in Title 2 Elections, such as Chapter 12 through 19, HRS. With that in mind, the Act made housekeeping changes to Title 2 to make it consistent with elections by mail. While this portion of the report will broadly highlight the changes that have been made by this Act, we will reserve until the recommendations portion of the report our proposed changes to likewise make Title 2 consistent with the transition to elections by mail.<sup>1</sup>

#### HRS §11-101 ELECTIONS ELIGIBLE TO BE CONDUCTED BY MAIL

This new statutory section provides that elections by mail will start with the 2020 Primary Election. Consistent with this, the 2020 election cycle was conducted by mail.

#### HRS § 11-102 PROCEDURES FOR CONDUCTING ELECTIONS BY MAIL

##### *Subsection (a) – Ballot Package Contents*

This subsection refers to a ballot, postage prepaid return envelope, secrecy envelope or sleeve, and instructions as constituting the contents of the ballot package. It appears to require substantively the same contents as HRS § 15-6 for absentee mail ballot packages, which would continue to address temporary absences from one's residence.

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<sup>1</sup> Act 136, SLH 2019 established a new part to Chapter 11, HRS consisting of HRS §§ 11-A through 11-J. The Revisor of Statutes, consistent with Section 60 of the Act, has substituted section numbers for the letters used in designating these new sections. As such, for ease of reference, this report will refer to HRS §§ 11-101 to 11-110 instead of the original letters designating these sections.

The instructions and need for a signature section (i.e., affirmation statement) on the envelope are elaborated on subsequently in HRS §11-103.

*Subsection (b) – Voters & Timing*

(b) To the extent practicable, the 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 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 clerk shall consider the mailing place of origin and the most recent postal service delivery standards. **The 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 part shall be construed to change the responsibilities of the clerk or chief election officer under chapter 15D with respect to uniform military and overseas voters.

Emphases added.

***Voters Receiving a Ballot by Mail***

The requirement that mailed ballots be based on an absentee request under HRS § 15-4 is no longer applicable. However, voters are not prevented from using HRS § 15-4 to request a seasonal ballot if they are away from their residence, such as due to a vacation or work. As such, all voters will be mailed a ballot to their mailing address on file, unless they separately request under HRS § 15-4 that their ballot be mailed temporarily to a different address or if they have an outdated or non-deliverable mailing address.

### ***Voters Receive Ballots Approximately 18 Days Prior to the Election***

While this provision is self-explanatory, it explicitly does not apply to military and overseas voters, who under the Uniformed and Overseas Citizens Absentee Voter Act (UOCAVA) and its state counterpart, the Uniform Military and Overseas Voters Act (UMOVA), are to be transmitted their ballots by the 45th day prior to the election. 52 USC § 20302 & HRS § 15D-9. Additionally, as it relates to voters who requested an absentee ballot, arguably they could be mailed their ballot, in accordance with HRS §15-5(a), up to 30 days prior to the election. However, for consistency purposes and to harmonize it with elections by mail, those ballots are mailed at the same time as other non-UOCAVA ballots, so they can be received by the 18th day prior to the election.

Finally, there are voters with special needs, under HRS §11-107, who can request that a ballot be forwarded to them by electronic transmission at any time. While arguably open to interpretation, this may be interpreted as relating to the timing of the request, as opposed to administratively when the ballot would be transmitted, which for uniformity purposes would be done so. As previously noted, all non-UOCAVA voters receive their ballot by the 18th day prior to the election.

### ***Continue Mailing Ballot Packages to Voters Who Update Their Voter Registration Address No Later Than 14 Days Before the Date of the Election***

While HRS § 11-102(b) makes reference to continuing to send ballots to voters who update their address no later than 14 days prior to the election, this is not the equivalent of a prohibition against mailing ballots after that date. Additionally, elections are still to be administered in accordance with Title 2.

For example, HRS § 15-4(a) provides that a request for an absentee ballot or permanent absentee ballot can be made up to the 7th day prior to the election. The absentee form itself indicates that the clerk can update a voter's record, including address, on the basis of the absentee request. HRS §11-20. This 7th day prior requirement is based on federal law related to presidential elections. 52 USC § 10502(d) (Voting Rights Act of 1965). As such, it would be difficult to argue that the clerk should not process requests for mailed ballots up to the 7th day prior to the election.

Taking it further, replacement ballots are provided for in HRS §11-5 and there is no deadline stated, in addition to the statute providing that upon receipt the clerk is to check the system and issue the replacement ballot package by mail or to be available for pick up. Additionally, HRS §15D-9 relating to military and overseas voters requires a ballot to be mailed within 2 business days, or as soon as allowable after the application arrives. Further, HRS § 15-5(a), in regard to absentee ballots, says that ballots are to be mailed or delivered “[n]o later than twenty-four hours after receipt of the request for absentee ballot received on the last day specified in section 15-4.” Finally, HRS §§ 11-11 and 11-14 provides for the county clerk to ensure that the voter rolls are up to date and there is no restriction on the time frame.

Ultimately, with all the above in mind, the administrative rule promulgated to implement this statute says “the clerk may continue to mail ballots to those who have updated their voter registration address after the fourteenth day, if the clerk believes there is sufficient time for the voter to return the ballot by the applicable deadline.” HAR § 3-177-601(c). There are separate rules to address military and overseas voters, absentee voters, and replacement ballots. HAR §§ 3-177-602 through 3-177-606.

*Subsection (c) – Establishment of Voter Service Centers and Places of Deposit*

(c) The clerks shall determine and provide for voter service centers and places of deposit pursuant to this part and section 11-92.1.

This subsection ties into Section 13 of the Act which amends HRS §11-92.1 to require the issuance of a proclamation by the Chief Election Officer listing all voter service centers and places of deposit established by the county clerks. The date of the proclamation is not clearly established. However, Section 13 permits it to be issued with the HRS § 11-91 proclamation that is issued no later than the 10th day prior to the close of candidate filing.

HRS § 11-103 PUBLIC NOTICE OF MAILING

This new section establishes that a notice of mailing of initial ballots by the county is to be given prior to making the ballots available to the public.

## HRS § 11-104 BALLOT INSTRUCTIONS: BALLOT RETURN

### *Subsection (a) – Instruction – Directions*

This subsection is largely consistent with HRS § 15-6 in terms of there being instructions and needing to sign the return envelope. However, it does not technically refer to the affirmation mentioned in HRS § 15-6 regarding the voter affirming that they are the person voting. Having said that, the clerk can harmonize the reference to a signature in §11-104 and the affirmation in HRS §15-6 by administratively having the affirmation on all return identification envelopes for voters to sign.

### *Subsection (b) – Instructions – Election Fraud & Voter Fraud*

This subsection requires information on HRS §§ 19-3(5) and 19-3.5, along with notice of the consequences of a violation. HRS § 15-6 in comparison requires “materials summarizing the provisions in sections 19-3, 19-3.5, 19-4, and 19-6.” Given that this includes HRS §§ 19-3 and 19-3.5, the more inclusive language of HRS § 15-6 is used for purposes of the instructions for all ballots that are mailed to voters.

### *Subsection (c) – Returning Ballots*

In regard to the return of the ballot, HRS § 11-104(c) refers to the return identification envelope by (1) mail and received at the office of the clerk; (2) personal delivery at a place of deposit; and (3) personal delivery at a voter service center. In comparison, Section 30 amends HRS § 15-9, relating to seasonal absentee requests, to say (1) mailed and received by the clerk; or (2) delivered other than by mail to the clerk or to a voter service center.

### *Subsection (d) – Returned Ballots Considered Cast*

Finally, while HRS § 11-104(d) is written to say a ballot is deemed cast upon being returned, it needs to be read in conjunction with HRS § 11-106 regarding deficient ballots (i.e., if a ballot arguably can't be counted due to a deficiency then it is not “returned” and the voter can only “cast” their ballot by complying with the HRS § 11-106 process which would complete the return process).

### HRS § 11-105 REPLACEMENT BALLOTS

HRS § 11-105 elaborates on the current replacement process under HRS § 15-5(b). However, it now provides for a “replacement ballot application.” Additionally, HRS § 11-105(c) repeats the same manner in which the ballot may be returned that is mentioned in HRS § 11-104(c). Having said that, HRS § 11-105 only applies to requesting that a replacement ballot be mailed or made available for pick up. The Act separately addresses the issuance of a replacement ballot by electronic transmission in HRS § 11-107.

### HRS § 11-106 DEFICIENT RETURN IDENTIFICATION ENVELOPES

HRS § 11-106 is largely the same as HRS § 15-9, except that instead of deeming a ballot “invalid” if the signature does not match, there is a process to permit the voter to fix whatever issue (i.e., no signature, mismatched signature, or other issue) causes the ballot to be deficient so it can be corrected. The deadline is 5 business days after the election (i.e., the Friday after the Primary Election and the Tuesday after the General Election).

### HRS § 11-107 ELECTRONIC TRANSMISSION UNDER CERTAIN CIRCUMSTANCES

HRS § 11-107 is essentially the same as HRS § 15-5(b) except that it also includes voters with special needs being able to request a replacement ballot at any time, as opposed to being restricted to a 5-day window. The language regarding the return of the ballot is the same as that in HRS § 11-104. In regard to defining “special needs” it is addressed in HAR § 3-177-606. The rule’s focus is on individuals with disabilities impacting a major life activity. However, the rule also acknowledges it includes any voter who can establish that they would otherwise not be able to receive and return their ballot if it was transmitted to them within the 5-day period immediately preceding an election, such as due to a scheduled trip away from their residence within that time period.

### HRS § 11-108 COUNTING OF MAIL-IN BALLOTS; VALIDITY; BALLOTS INCLUDED IN RECOUNTS; CERTIFICATION OF FINAL TABULATION

*Subsection (a) – Starting Date; Procedures*

HRS § 11-108(a) provides for ballot processing for tabulation to start no earlier than the 10th day prior to the election. This results in a Wednesday for the Primary Election and a Saturday for the General Election. Ballot processing refers to procedures ranging from opening to tabulation and does not include signature verification (i.e., signature verification can begin on an earlier date). Official observers must be present for the ballot processing process and any results printouts must be kept confidential until the last voter in line votes at a voter service center on election day.

*Subsection (b) – Completion of Initial Tabulation*

HRS § 11-108(b) provides for the initial tabulation to be completed by 6:00 a.m. on the day following the election.

*Subsection (c) – Validity of Ballots*

HRS § 11-108(c) provides that only ballots that have been validated can be counted as part of the initial tabulation. Otherwise, election officials are to segregate the ballots that have not been validated. The clerk is expected to make reasonable efforts to determine the validity of ballots within 7 days of an election.

*Subsection (d) - Initial Recount*

HRS § 11-108(d) provides that any initial recount can only include ballots that were verified for the initial tabulation.

*Subsection (e) – Certification of Results*

HRS § 11-108(e) provides that any certification will include all ballots verified as valid by the clerk within 7 days of the election.

HRS § 11-109 VOTER SERVICE CENTERS; PLACES OF DEPOSIT

*Subsection (a) – Established at the Office of the Clerk and Additional Locations*

HRS § 11-109(a) provides that there needs to be a voter service center at the “office of the clerk” and the clerk may establish additional locations.

*Subsection (b) – Timeframe*

HRS § 11-109(b) provides that the voter service centers are open from the 10th business day prior to the election during regular business hours at the same times statewide.

*Subsection (c) – Voter Service Center Services*

HRS § 11-109(c) requires the voter service centers to provide the services stated in HRS § 11-1 under the definition of voter services. Those services are generally the same as what was authorized for absentee polling places under HRS § 15-7, which has been repealed by the Act.

*Subsection (d) – Places of Deposit*

As it relates to places of deposit, HRS § 11-109(d) provides that the clerk may designate locations to be open 5 business days before the election until 7:00 p.m. on the day of the election. The county clerk can consider security and operational hours of any proposed location.

**HRS § 11-110 ELECTION EXPENSES AND RESPONSIBILITIES FOR ELECTIONS BY MAIL**

HRS § 11-110 basically splits expenses between the State and counties for combined state and county elections, except for voter registration which remains a county expense. As for responsibilities, the State handles the printing and counting of ballots, while the counties are responsible for voter registration, absentee voting, voter service centers, places of deposit, and the mailing and receipt of ballots. The State and counties may agree to delegate these responsibilities to each other.

**ADMINISTERING HAWAII'S ELECTIONS**

The prior model recognized three systems of voting: (1) absentee walk locations; (2) election day polling places; and (3) absentee mail. While there is now an emphasis in our laws concerning voting by mail and the associated issues that arise from it being the default manner of voting, the other components of voters being able to choose instead to



vote in person prior to election day or on election day still remain. Given this, the administration of the elections by mail model builds off of the prior model.

### VOTER REGISTRATION

The Office of Elections and county clerks continue to have separate responsibilities in regard to voter registration under federal and state law that require ongoing coordination.

Essentially, federal law focuses on the concept of the federal government being able to look directly to a state's chief election officer to maintain a statewide voter registration system under the Help America Vote Act of 2002 (HAVA) and to likewise be responsible for voter registration list maintenance and the encouragement of voter registration at driver license offices and other government agencies under the National Voter Registration Act of 1993 (NVRA). In contrast, state law, similar to most other jurisdictions, provides that the county clerk is primarily responsible for voter registration. HRS §§ 11-11 to 11-26.

The end result is that the Office of Elections, from a computer and information technology perspective, maintains the actual statewide voter registration system. This includes changes, updates, and additions to the current functionalities of the voter registration system utilized by state and county election officials, as well as upkeeping relative services like Online Voter Registration (OLVR) and the Mail Ballot Status Portal. It likewise encourages voter registration on a statewide basis, promulgates statewide rules regarding the administration of voter registration, and serves as the point person for any discussions with the federal government. The counties continue on a day to day basis to implement all state laws that entrust ensuring the integrity of the voter registration rolls to them (e.g., the processing of voter registration applications, resolution of voter registration disputes, and list maintenance procedures to ensure the continued integrity of the rolls).

### PRECINCTING

An important cornerstone to the administration of elections continues to be the establishment of precincts, which takes into consideration the overlapping boundaries of various congressional, state senatorial, state representative, and county council districts.

Voters are administratively assigned to each of these precincts based on where they reside and this information is maintained in the statewide voter registration system. It impacts which ballot they are eligible to vote on and under the prior election model it would be connected to the polling place that a voter would be assigned to.

### CANDIDATE FILING

As it relates to candidate filing, candidates continue to be required to obtain signatures of registered voters who are qualified to vote for the office based on their voting precinct. Candidate filing occurs at the main office of the Office of Elections and county clerks, in addition to established satellite locations. The prior election model and the elections by mail model are not impacted by the candidate filing process, other than the critical need to timely complete the candidate filing process and to address any possible litigation, given that there are short timeframes to print and mail out ballots to comply with state and federal laws.

### BALLOT PRODUCTION AND MAILING

The Office of Elections continues to be statutorily responsible for printing and counting ballots. Likewise, the county clerks continue to be responsible for the mailing and receipt of ballots. However, the printing and ballot package mailing contracts have been consolidated with the voting system contracts, as these operations are interconnected, and the chief election officer is the sole signatory to this state contract. It is important to note that the printing of ballots has always been a component of our voting system contracts, since we migrated to the current mark sense ballot from the prior punch card model in 1998. This is due to the ballot type database and associated barcodes that everything from the production of the ballots to the counting of the ballots by the voting system operates off of.

Specifically, once the contents of the ballots are known, following the close of candidate filing in a primary election, or the final submission of presidential candidates or ballot questions for the general election, a ballot type database is created. This database serves not only to reflect each of the unique ballot types (i.e., the unique combination of contests, such as U.S. Representative, State Senator, State Representative, Councilmember, and statewide or countywide offices that a voter is eligible to vote on

based on where they reside in relation to the boundaries for those offices), but also to program the voting system to recognize the exact location on each ballot type associated with a specific contest and candidate to properly read the voter's marks and count them as votes. Additionally, this database includes the unique barcodes associated with each of the hundreds of thousands of ballots that are produced. This database and the programming of the voting system prevents a ballot from being read twice or any attempt to copy or duplicate actual ballots. Also, the ballot types associated with this database are used to generate corresponding HTML ballot types for ballots that will be electronically transmitted to military and overseas voters, in addition to voters with special needs that need an accessible ballot.

A summary of the process for ballots for military and overseas voters under UOCAVA, who are statutorily required to be transmitted their ballots at least 45 days prior to an election, is as follows: (1) submission of candidate names and ballot questions to the voting system vendor; (2) receipt of ballot proofs; (3) proofing and checking each ballot type to ensure the contests and candidates are associated correctly and everything is spelled correctly; (4) approval of ballots by election officials; (5) voting system vendor provides ballot data to HTML subcontractor to use; (6) receipt of HTML ballot proofs; (7) proofing and checking of each HTML ballot type to ensure it is operating properly as it will produce a ballot summary and unique barcode that will subsequently be used to generate a machine-readable fully marked ballot reflecting the votes of the voter; (8) approval of the HTML ballots; (9) linking of each HTML ballot to corresponding email ballot package to UOCAVA voters, including unique ballot barcode, by voter registration system vendor; (10) printing of UOCAVA paper ballots; (11) delivery of UOCAVA ballots to counties by FedEx or similar means; (12) in-house preparation of ballot packages for mailing out; and (13) transmission of UOCAVA ballots by mail or email, via the statewide voter registration system, depending on preference of voter.

The process for non-UOCAVA ballots operated off of the same initial database. Given the volume of ballots that are to be mailed, under the prior model and the current model, a designated amount of each ballot type is delivered to the applicable mailing house subcontractor. Additionally, under the prior model, ballots were delivered to the counties to be used in the context of in-person voting prior to election day at absentee walk

locations and in the context of the in-house preparation of ballot packages for mailing that could not be addressed through the mailing house vendor. Finally, ballots were delivered to the counties and the Office of Elections for purposes of election day polling places.

In the elections by mail model, the notable differences with the prior model are that there are no ballots for polling places, the ballots for absentee walk locations are now voter service centers, and the number of ballots designated for the mailing house subcontractor has greatly increased.

In regard to the mailing house and the mailing of ballots, there are logistical factors that need to be considered. For example, the mailing house subcontractor, prior to its receipt of the ballots, needs to be delivered the hundreds of thousands of envelopes printed on the mainland that are to be used for preparing each ballot package.

The ballot package consists of an outer envelope, return envelope, and a secrecy envelope or sleeve. The outer envelope is used to mail the ballot to voters. It is already printed with the return address of the county clerk and the United States Postal Service (USPS) permit number envelopes that takes care of the postage. The return envelope, also with a USPS postage permit printed on it, is to be used by the voter to return their ballot. Finally, the secret ballot envelope or secrecy sleeve is provided to the voter to enclose their ballot in.

The mailing house vendor uses a database associated with the statewide voter registration system to print the addresses of the voters on one side of the return envelope (i.e., the return envelope on one side has the address of the county clerk and on the other side has the voter's address which will appear through the plastic window on the outer envelope). The return envelope also includes a unique barcode associated with the voter that will be used in conjunction with the eventual receipt of the ballot after the voter returns it. The mailing house machinery is monitored to ensure that the ballot packages are properly prepared (i.e., the correct ballot goes in the correct ballot package and the package contains one set of each material). As the statewide voter registration system is constantly being updated by the county clerks due to voters moving or otherwise updating their voter registration records, there is ongoing

communication and monitoring conducted by election officials to ensure the ballots are properly mailed out.

### RECEIPT OF MAIL BALLOTS

As previously noted, with the mailing of the ballots, each return envelope has a unique barcode associated with the voter that connects it to the voter's record in the statewide voter registration system. The scanning of the barcode allows the ballot to be received and checked into the system, subject to the signature being confirmed as matching.

However, the barcode also serves to let the operator know if there is an issue with the ballot that does not permit it to be counted. For example, the voter may have recently updated their residence to an address outside of the voting precinct associated with the ballot type they are attempting to cast (i.e., the voter needs to vote on the proper ballot type), already voted in person, voted on a previously-issued ballot after requesting a replacement ballot, or otherwise is no longer eligible to be registered to vote. If so, then the ballot will not be counted.

If, however, there is no such issue, then the signature on the affirmation statement of the return envelope will be compared with the reference signature image on file for the voter. In the event the signature does not match, then it will not be counted.

The election by mail model is essentially the same, except that it has established a process by which the county clerk informs the voter of the mismatch and gives the voter until the 5th business day after the election to correct the issue with their signature and confirm their identity. HRS § 11-106.

### VOTING EQUIPMENT

Election officials, with official observers from the public, test the voting system to ensure that it is accurately reading the ballots. These tests occur in all four counties, after the machines have undergone preventative maintenance have been programmed with the ballot database. The ballot database, as previously noted, ensures that every ballot has a unique barcode that can only be read once by the voting machine that reads paper ballots (i.e., a ballot cannot be accidentally read and counted multiple times by the voting system).

Likewise, the direct recording electronic (DRE) voting machines, which do not involve paper ballots, function off of a unique access code that is provided to each voter. The DRE produces a voter verifiable paper audit trail (VVPAT) that is verified by the voter before their votes are cast. The VVPAT is the equivalent of the source document of how the voter has voted and is subject to audit and recount, in the same way that the paper ballot is the source document of how a voter has voted.

The universe of voting machines includes all of the devices assigned to the polling places and absentee walk sites (i.e., paper ballot precinct counters and DRE voting machines), as well as the high-speed voting machines/scanners at the counting centers which process absentee mail ballots. The memory card in each machine captures an electronic cast vote record of each voted ballot, which are subsequently tabulated, and then read and accumulated when the memory cards are removed. The ballots and VVPATs are saved as source documents for any subsequent audit.

Blank memory cards are inserted into the machines at the test, and the machines are locked and secured. In the past, the voting machines were subsequently transferred to the polling places and absentee walk locations for in-person voting, and to the counting centers for the counting of absentee mail ballots. The polling places and absentee walk locations were subject to poll watchers, while the counting centers were monitored by official observers.

Again, the elections by mail model works off of this foundation and is the same, except that there are no longer polling places and in-person voting now occurs at voter service centers instead of absentee walk locations. As for mail ballots, they continue to be counted at the counting centers by the high-speed voting machines/scanners, except now the volume is significantly greater.

#### IN-PERSON VOTING LOGISTICS

In-person voting occurred at polling places and absentee walk sites under the prior model. Additionally, voters could physically drop off their absentee mail ballot at the office of the county clerk, any polling place, or absentee walk site.

Polling place logistics involved a variety of matters, such as the following: (1) locating and securing suitable facilities to serve as polling places; (2) recruiting sufficient polling place officials for over 230 polling places; (3) coordinating the supplying of these polling places with sufficient voting machines, ballots, voting booths, precinct cans, supply boxes, and associated items; (4) providing support through a control center that the polling places may contact throughout the day as issues may arise; and (5) collecting and transferring voted ballots, vote data storage media from the voting machines, and associated items to the counting center in each county.

In comparison, absentee walk sites, depending on the election year, were established at approximately 10 locations statewide. These locations were typically at the main office of each of the county clerks and other locations across each county depending on the needs of the county. While similar to polling places, they could service any voter in the county and were open for 10 business days prior to each election. Additionally, absentee walk sites were not staffed by stipended volunteers, but instead by the county employees or staff contracted by the county. Finally, these locations all required access to the statewide voter registration system and the appropriate security to permit ballots to be stored overnight, as these locations would be open for 10 business days, as opposed to a single day for a polling place. Given these requirements, absentee walk sites were not as easy as a polling place to establish, since a polling place commitment by a school or similar location involved a minimal commitment of facilities for a non-working day (i.e., Saturday for the Primary Election or a state holiday for the General Election).

The elections by mail model is similar, except that there are no polling places and the absentee walk sites are now voter service centers. Notably, there are now places of deposit under the new model. These places of deposit are essentially secured drop boxes in which voters can deposit their ballots if they do not wish to mail their ballots or if they are concerned that their ballots will not arrive to the county clerk by the voting deadline.

Unlike dropping off ballots at already established locations, such as the office of the county clerk, or other locations in which election officials are present, places of deposit

involve new logistical considerations to ensure that voters can securely deposit their ballots at these locations for subsequent counting. As such, places of deposit are typically established at county facilities or locations, such as fire stations or parks. In terms of security, some drop boxes weigh half a ton and include fire suppressant devices. Finally, the counties have to address the logistics of arranging ballot pick up and processing of ballots from these drop boxes throughout the time period they are open.

### EXPENSES

State law used to provide for a statutory division of election expenses and responsibilities between the Office of Elections and the counties, with the Office of Elections responsible for polling places and the counting of ballots, while the counties were responsible for voter registration and absentee voting, and still others were shared. HRS §§ 11-11, 15-4, and 11-184. The result of this was a complex proration model in which the State paid for certain things, the counties for others, and still other items were shared between the State and counties.

With the shift in the emphasis of our law on the mailing and receipt of ballots, along with the operation of voter service centers and the discontinuation of polling places, the new law has the State and counties share in paying for all expenses unrelated to voter registration. HRS § 11-110(a)(1).

### **IMPLEMENTING ELECTIONS BY MAIL**

While the State and counties had been among the stakeholders that developed the elections by mail model and were fully conversant in the nuances of it, the last year has been focused on the execution of this model. This included, but was not limited to, the following: (1) amending the current contract in its last election cycle to move from a polling place model to an elections by mail model; (2) overseeing a procurement for the 2022 through 2026 election cycles to be conducted under an elections by mail model; (3) working with the voting system and mailing house vendors; (4) promulgating administrative rules to implement the elections by mail statutes; (5) establishing voter



service centers and places of deposit; (6) voter education; (7) addressing the impact of COVID-19; and (8) the actual execution of the 2020 Elections.

### **VOTING AND VOTE COUNTING SYSTEM CONTRACT**

The Act became effective on July 1, 2019. At that time, the State was in the final election cycle of its contract with its voting system vendor for ballot printing, voting machines, and ancillary professional support services to execute the elections. The amount of the contract was \$3,009,000. However, the contract was based on a polling place model. It provided for the counting of mail ballots on election day, as opposed to up to 10 days of preprocessing that the new law authorized to address the significant increase in the volume of mail ballots. Further, the contract did not include mailing house services, as it predated the language of Section 16 of the Act, which amended HRS § 11-119 to provide that election officials “shall endeavor to consolidate the printing and ballot package mailing contracts where the consolidation will result in lower costs.”

As such, the State entered into negotiations with the voting system vendor to modify the contract to incorporate these changes necessitated by the new election model. After extensive negotiations, the parties agreed to these changes in the form of a contract amendment for a price of \$2,990,000 for the 2020 election cycle that included mailing house services and other adjustments to conform to the elections by mail model.

In preparation for elections by mail beyond 2020, the State issued a request for proposals (RFP) for the 2022 to 2026 election cycles for a voting and vote counting system and ancillary services (i.e., the printing, mailing, and counting of ballots would be under one contract). The RFP was tightly aligned with the requirements of the Act and was developed in consultation with the counties. The State and counties all served on the evaluation committee and they awarded the contract to a vendor for \$2,990,000 per election cycle. The vendor will provide the latest voting system machinery and will print and mail the ballots within the state.

Election officials needed to work with their vendors to address the new requirements of elections by mail. This involved not only the voting system vendor, in terms of the logistics of the operation of the voter service centers and the counting centers, but also

its in-state ballot printing and mailing house vendors, in regard to the printing and mailing of the ballots. Additionally, election officials and these vendors needed to coordinate with the statewide voter registration system vendor, whose database was to be used in relation to the mailing and receipt of ballots, and the ability of voters to check the status of the receipt of their ballot online.

### **HAWAII ADMINISTRATIVE RULES**

Underlying the implementation of the Act was the need to promulgate a new set of administrative rules to articulate the various processes that are involved in administering the election by mail model. As these processes are intertwined with the rest of our administrative rules, we worked with the counties to revisit all of our administrative rules. The end result was the repeal of our previous rules and the promulgation of a new set of rules. The rules are available at <https://elections.hawaii.gov/wp-content/uploads/HAR-Office-of-Elections.pdf>.

### **VOTER SERVICE CENTERS AND PLACES OF DEPOSIT**

As provided for in HRS § 11-110, the counties were responsible for the establishment and operation of voter service centers and places of deposit. The counties established voter service centers at locations consistent with the ones selected for absentee walk locations in the past. Additionally, they established places of deposit at various locations. The places of deposit were increased after the Primary Election in response to their popularity, and to serve as an alternative for voters who might not be able to mail back their ballot by the 7th day prior to the General Election, as advised by USPS to ensure its receipt by election day.

Our office worked with the counties to develop an interactive map that indicated the locations of every voter service center and place of deposit, in addition to the location of every post office and USPS collection box. This information is available at <https://histategis.maps.arcgis.com/apps/MapSeries/index.html?appid=40a88743b85b4fbfb8cf6128bacfedcf>. It was updated after the Primary Election to reflect new places of deposit for the General Election.

## **COVID-19**

On March 5, 2020, Governor David Ige issued an emergency proclamation related to COVID-19. The Governor cited his authority under Chapter 127A, HRS to take various actions, which at the time included the suspension of certain laws. Subsequent orders would be issued by the Governor and county mayors ushering in stay-at-home orders, travel restrictions, social distancing, restrictions on the size of gatherings, and similar matters that would depend on the current status of COVID-19 in the community.

The impact of these orders on preparations for the 2020 Elections was lessened by these same orders recognizing exemptions under certain circumstances for those involved in a critical infrastructure area. Election officials and their vendors were understood to be engaged in critical infrastructure work in the performance of their duties as set forth in Exhibit B (Department of Homeland Security – Cybersecurity and Infrastructure Security Agency - Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19) to the Governor's various proclamations.

Specifically, the Department of Homeland Security had designated the U.S. election system as part of the nation's critical infrastructure. Consistent with this, Exhibit B designated as part of the essential critical infrastructure workforce "[e]lections personnel to include both public and private sector elections support." Further, Exhibit B recognized that "[t]he term 'workers' as used in this guidance is intended to apply to both employees and contractors performing the described functions."

As such, elections officials could, for example, seek exemptions to be able to travel between islands, and for its vendors to come from the mainland and likewise travel between islands, subject to self-quarantining when not engaged in critical infrastructure duties. This type of travel was necessary for the following purposes: (1) conducting training for counting center officials; (2) testing and certifying the voting and vote counting system; (3) operating the voting system and supporting the voter service centers and counting centers; (4) setting up the high-speed ballot sorters for the counties to facilitate their receipt of ballots; and (5) manually auditing election results.

Likewise, restrictions on the size of gatherings would not apply, such as in the context of training, testing of voting machines, and the counting of ballots, so long as social distancing and facial covering requirements were followed.

In terms of the public, election officials needed to revisit how they would operate their voter service centers to ensure appropriate safeguards were in place for the people to vote (e.g., cleaning of equipment after each use, social distancing, and the wearing of facial coverings). Additionally, election officials needed to reconsider their voter education program as previous community events had been canceled and what community outreach could be done without relying on direct in-person interactions, as would have occurred in the past.

#### Coronavirus Aid, Relief, and Economic Security Act (CARES) Funds

While these issues were being discussed by election officials both here and across the country, legislation was drafted and subsequently signed into law providing funding to address these types of issues. Specifically, on March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. For purposes of elections, the CARES Act included \$400 million in new Help America Vote Act (HAVA) emergency funds, made available to states "to prevent, prepare for, and respond to coronavirus." The funds were distributed by the U.S. Election Assistance Commission (EAC), consistent with prior HAVA grants. The State's share of these new HAVA funds was \$3,295,842.

In addition to the standard requirements for HAVA funds, which generally relate to facilitating the administration of federal elections, voting systems, and voter registration systems, these specific funds need to also be tied to preventing, preparing for, and responding to the coronavirus.

As with all grants, there are various requirements, such as a 20% match, which has been a common part of the last couple of grants. However, this grant is notable in that it requires that the grant money be obligated by December 31, 2020 or returned to the U.S. Treasury and that reports be issued within 20 days of both the Primary Election and the General Election. The match requirement was \$659,168.40. The State, due to savings gained from moving to elections by mail from the polling place model, had

sufficient funds to cover the matching requirement (e.g., funds that would have otherwise been expended on precinct officials and the operation of polling places).

We worked with the counties to determine their needs and how they wanted to use the funds. Ultimately, we submitted our grant application to the EAC citing our planned use of the funds for the following: (1) a public communications campaign to facilitate voting (e.g., media campaign, election mailings, associated staffing); (2) facility expansion (e.g., larger and/or additional facilities for voter service centers, counting centers, places of deposit, and other activities associated with elections, including temporary and/or fixed structures with corresponding increased equipment, furniture, and staffing to address additional workload, social distancing, and cleaning); and (3) cleaning, disinfecting, and associated health and safety measures (e.g., cleaning supplies, air filtration system, safety and security shields, machinery, personal protective equipment, and staff).

In regard to voter education, we used a marketing agency to maximize newspaper, radio, television, and digital advertisements across different demographics throughout the state. As for facilities, given social distancing requirements, we relocated the counting centers on Oahu and Hawaii to the Hawaii Convention Center and the Prince Kuhio Plaza, respectively, to ensure sufficient room for the processing, opening, and counting of voted ballots. Finally, in relation to personal protective equipment and cleaning supplies for the voter service centers and counting centers, we procured various items, such as air purifiers, disinfectant spray, disinfecting wipes, face masks, face shields, hand sanitizer, isopropyl alcohol, nitrile gloves, plexi-glass barriers, and temporal scanners.

## **VOTER EDUCATION**

As described later in this report, our initial program was focused on raising awareness of the upcoming 2020 Elections in conjunction with voter registration list maintenance mailings. These were promoted through our social media, including Twitter, Facebook, and Instagram, in addition to press releases and communication with news outlets.

As we entered the spring, the voter education program was meant to ramp up, with a movement away from list maintenance focused mailings to more traditional radio,

newspaper, television, and social media advertisements, as interest in the upcoming elections typically grows during this time period. However, this was the same time that the pandemic and subsequent closures came into play, thus impacting our ability to attend in-person events. Additionally, as we were answering voter inquiries, we found that we needed to find a different way to reach the elderly population as they would be most affected by the pandemic.

With this in mind, we expanded our voter education program to include advertising in the newspapers, sponsorships of events and shows, and various community outreach channels. This was in addition to our scheduled television, radio, and digital advertisements, as well as social media.

For example, our advertisements featured trusted elders encouraging voters to pick up a 2020 Hawaii Primary Election Guide or 2020 Hawaii General Election Guide, as applicable, which had been printed in newspapers statewide and was available at several local establishments that were open during the pandemic.

We partnered with a podcast and television show, “It’s a Hawaii Thing,” on Spectrum OC16, Kupuna Power through the Hawaii News Now Network, and Spotlight Hawaii on the Star Advertiser. The viewership of these shows targeted our elderly population while reaching all Hawaii voters.

In terms of in-person community outreach, we partnered with Hawaii Meals on Wheels to have them distribute our election materials in conjunction with their food distribution activities. They were a part of the large-scale events and distribution channels that were still permissible and provided a critical service to our community.

## **2020 PRIMARY ELECTION**

On May 15, 2020, the proclamation, naming the time, place, and manner of the upcoming elections, as well as the voter service centers and places of deposit, was issued jointly by the Chief Election Officer and the county clerks.

The close of candidate filing occurred on June 2, 2020. A total of 336 candidates filed their nomination paper to be a candidate in one of the 100 contests spread across the 250 district/precinct ballot types used for the 2020 Primary Election.

Ballot production for the subsequent mailing of UOCAVA ballots on June 24, 2020 was uneventful. A total of 961 ballots were transmitted by email and 274 were sent by mail.

The next milestone was the mailing of ballots to non-UOCAVA voters so they would be received by July 21, 2020, 18 days prior to the Primary Election. This deadline required significant coordination with USPS.

For example, in order to not overwhelm the post office with nearly 700,000 ballots, the ballots went out in a staggered manner, with the rural zip codes going out first and then subsequently the urban zip codes. Additionally, election officials followed the guidelines of USPS regarding the lead time necessary for different classes of mail to be delivered. Specifically, they recommended approximately a week for mail sent by nonprofit rate, which is the rate utilized by the City and County of Honolulu. Despite these guidelines, for the Primary Election, USPS delivered the ballots shortly after they were mailed, which resulted in some voters receiving their ballots the week prior to July 21, 2020.

The logic and accuracy testing of the voting equipment to be deployed to the voter service centers and the testing of the voting equipment for the counting center in July 2020 were uneventful. During this testing we discussed with the official observers, who serve as the "eyes and ears" of the public, the adjustments that would be made in the operation of the counting centers to address COVID-19 and the preprocessing of ballots that would begin on the 10th day prior to the Primary Election.

Voter service centers across the state opened on time and experienced very little volume over the 10-business-day period they were open. At the same time, the counties received a significant number of ballots through the mail and by hand at their offices and places of deposit. After these ballots were received and checked into the statewide voter registration system by the county clerks, the receipt of which was posted on our ballot status portal for the voters to be assured their ballot had been received, the ballots were

then preprocessed by election officials at the counting centers, beginning on the 10th day prior to the Primary Election.

On election day itself, August 8, 2020, there were no long lines at voter service centers. Counting occurred throughout the day and reports were issued after the close of voting at 7:00 p.m. throughout the evening. The final report of the day was issued the following morning at 11:38 a.m.

Based on the results, three contests required automatic recounts, pursuant to Act 235, SLH 2019. These recounts were in State Representative, District 13 – Democrat; State Representative, District 30 – Republican; and Councilmember, County of Kauai contests. The recounts were conducted on August 10, 2020 and the outcome of the contests did not change.

During that same week, voters who were identified by county election officials with deficient return identification envelopes due to a missing signature or a signature not matching had the opportunity to correct the deficiency with their county clerk and have their ballot validated. These ballots, along with provisional ballots, were counted the following week, as part of the post-election auditing of results.

The final results of the 2020 Primary Election were issued on August 20, 2020. The results reflected a turnout of 407,190 (i.e., 401,716 mail turnout and 5,474 in-person turnout), which constituted a 51.2% turnout of registered voters (i.e., 795,248).

The results of the Primary Election were contested in 6 cases before the Hawaii State Supreme Court. However, none of the cases alleged issues with the counting of ballots or the conducting of the Primary Election. Instead, they were primarily focused on the eligibility of candidates due to a variety of reasons, including allegations that a candidate did not reside in the applicable district.

## **2020 GENERAL ELECTION**

The contents of the General Election ballots were largely determined by the results of the Primary Election, except for the eventual submission of county charter amendment questions and presidential candidates by the political parties or by petition. However, this



year we also had to address a vacancy for Senate District 16 caused by the death of the Honorable State Senator Breene Harimoto.

Specifically, HRS § 17-3(b)(3) provided that the filing deadline to fill the vacancy would have been September 24, 2020, the 40th day prior to the General Election, which would have impacted our ability to comply with the 45th day deadline for the transmitting of ballots to military and overseas voters. As such, the State sought permission from the Intermediate Court of Appeals to determine that the deadline could be advanced to September 5, 2020, the 59th day prior to the General Election, as it would still provide sufficient time for candidates to file. The Intermediate Court of Appeals ultimately permitted the deadline to be advanced to September 5, 2020.

With that matter resolved, the General Election ballots were finalized shortly after September 5, 2020. The ballots, spread across 250 district/precincts, involved 166 candidates, 73 contests, and 33 county charter amendment questions. The ballots for military and overseas voters were sent out on September 18, 2020.

In regard to the mailing of non-UOCAVA ballots, they were mailed out on October 5, 2020 by the City and County of Honolulu, in order to meet the targeted date of October 16, 2020. This was in response to guidelines issued by USPS for the General Election indicating that mailing ballots by non-profit mail was discouraged and that most domestic non-profit mail was delivered 3 to 10 days after it was received by the post office. Likewise, the neighbor island counties, who send their ballots by First-Class Mail, adjusted their mailing date in order to address the recommendation that First-Class Mail ballots be mailed out at least 7 days in advance of when they were meant to arrive. However, in the end, USPS generally delivered the ballots well in advance of their guidelines and recommendations.

As with the Primary Election, the logic and accuracy testing of the voting equipment to be deployed to the voter service centers and the testing of the voting equipment for the counting center in October 2020 were uneventful.

The volume of ballots received during the lead up to the General Election was significantly greater than the Primary Election and election officials tried to maximize

their use of the 10-day period to preprocess the ballots, subject to the availability of volunteers and official observers.

Again, voter service centers across the state opened on time and experienced manageable volume for at least the first 9 business days of the period they were open. However, the day of the General Election, November 3, 2020, reported long lines at voter service centers in each county. As provided by state law, any voter in line at a voter service center by 7:00 p.m. was permitted to vote. Additionally, we were required to keep any printout or any other disclosure of results confidential until 7:00 p.m., or when the last voter in line at a voter center had voted, whichever was later. HRS § 11-108(a).

With this in mind, *Summary Report NUMBER 1* was prepared prior to 7:00 p.m. with the available votes that had been scanned or otherwise recorded on the memory cards associated with the voting system. Specifically, the report contained the memory cards associated with the validated ballots that had been received by the four counting centers from the four county clerks and had been scanned by approximately 5:45 p.m. on November 3, 2020.

Generally speaking, all ballots that had been received on November 2, 2020 were validated and transferred to the counting centers by November 3, 2020 for counting and inclusion in *Summary Report NUMBER 1* (i.e., mail ballots either delivered through the mail or dropped off with the county clerk at a place of deposit or voter service center). The report was "Printed on: 11/03/2020 at 6:51:04 pm" prior to the scheduled closing of the voter service centers.

It was our intent after the printing of *Summary Report NUMBER 1* that *Summary Report NUMBER 2* would come out at approximately 10:00 p.m., as counting center officials would continue to open any further mail ballots transferred from the counties and receive custody of the memory cards, voter verifiable paper audit trails, ballots, and associated documentation from the voter service centers, depending on the voting machines used at those voter service centers.

However, as was well documented that night, the closing of the voter services across the state varied depending on the county. The County of Kauai closed shortly after 7:00 p.m., the County Maui by approximately 8:00 p.m., the County of Hawaii by approximately 8:30 p.m., and finally the City and County of Honolulu by approximately 11:30 p.m.

Against this backdrop, given that the results of *Summary Report NUMBER 1* were now nearly four hours old, we decided shortly before the close of the final voter service center that it would be preferable to generate a more current *Summary Report NUMBER 2* with the ballots we had been able to count since *Summary Report NUMBER 1* (i.e., the memory cards from the voting machines associated with the voter service centers and any validated mail ballots that had been transferred and counted).

As the voting system had generated *Summary Report NUMBER 1*, for historical and auditing purposes, we retained the report and had the next report in numerical order entitled *Summary Report NUMBER 2*. *Summary Report NUMBER 2*, being the most current report, was issued on our website and we had *Summary Report NUMBER 1* available to any member of the public, who may have been interested in seeing the historical reports associated with the General Election. *Summary Report NUMBER 2* was "Printed on: 11/03/2020 at 10:54:11 pm."

*Summary Report NUMBER 3* was "Printed on: 11/04/2020 at 1:13:25 am." It contained the memory cards associated with the voting at Kapolei Hale, which was the last voter service center to close, and any validated mail ballots that had been counted at the counting centers up to that point in time.

The last report that morning was *Summary Report NUMBER 4* "Printed on: 11/04/2020 at 7:27:35 am." This report contained the remaining ballots that had been validated and transferred to the counting centers that day. All ballots contained in this report had been verified by the county clerks by 6:00 a.m. that day. The recount trigger in the automatic recount law was not met for any office or ballot question. HRS § 11-158.

However, the last report on November 4, 2020 was not the final report of the General Election, as the county clerks still had ballots that they needed to validate. Specifically,

the county clerks had 7 days following the election to validate any ballots received by the deadline. HRS § 11-108. This included any provisional ballots or deficient ballots, such as those for which the signature did not match or the voter forgot to sign the return envelope. Voters whose signature did not match, or who forgot to sign their return envelope, were notified by the county clerk and had until November 10, 2020 to cure the deficiency, so their ballot could be counted. HRS § 11-106.

Given this, these additional ballots were counted by election officials in the City and County of Honolulu, County of Maui, County of Hawaii, and County of Kauai on November 12, 2020, November 13, 2020, November 17, 2020, and November 19, 2020, respectively. The "Final Summary Report" was "Printed on: 11/19/2020 at 10:21:05 am."

The results reflected a turnout of 579,784 (i.e., 551,036 mail turnout and 28,748 in-person turnout), which constituted a 69.6% turnout of registered voters (i.e., 832,466).

The results of the General Election are subject to being contested before the Hawaii State Supreme Court. The deadline for such contests is November 23, 2020.

## **JOINT OPERATIONS WITH THE CITY/COUNTY CLERKS**

The main areas where joint implementation has been required has centered around voter registration, printing and mailing ballots, and voter education. Additionally, there has been the need to work with the county clerks on developing new administrative rules.

As previously noted, there is a natural sharing of responsibilities between the county clerks and the Office of Elections in regard to voter registration. Most notably, the Office of Elections, under federal law, is responsible for maintaining the statewide voter registration system and ensuring compliance with certain list maintenance procedures. This involvement in voter registration results in the Office of Elections needing to work jointly with the county clerks to ensure various aspects of their responsibilities under the law can be met. This includes any mailing that requires voter registration information, such as ballots and voter education materials, along with the receipt of ballots, which must be marked as received in the statewide voter registration system.

Additionally, as previously noted, Section 16 of the Act has amended HRS § 11-119 to provide that the Office of Elections and the county clerks “shall endeavor to consolidate the printing and ballot package mailing contracts where the consolidation will result in lower cost.” This resulted in a need for further coordination and joint implementation by the Office of Elections and the county clerks in relation to printing and ballot package mailing, beyond the previously mentioned voter registration information that is required for any mailing.

Further, as our regularly scheduled elections are joint elections featuring federal, state, and county contests and questions, the Office of Elections and county clerks attempted to ensure that our voter education measures were consistent with one another and that we could use some of our mailings to serve both voter education and voter registration list maintenance purposes.

Finally, in order to ensure uniform and standardized operations statewide in federal, state, and county contests, the Office of Elections and county clerks worked together to draft and promulgate administrative rules that would address their statutory responsibilities under the law.

### **VOTER EDUCATION AND LIST MAINTENANCE**

As previously described, our office had a voter education program that it implemented on a statewide basis. In conjunction with this program, we established with the counties that they would be responsible for any voter education or similar matters that were specific for their county (e.g., radio or print advertisements that spoke only of their county). Additionally, we made sure to have the counties review our materials to make sure that our statewide messaging included correct information about their counties (e.g., days and hours of operation of voter service centers and places of deposit) and to ensure uniformity in how we described the voting process (e.g., how to mark and return your ballot).

We also coordinated with the counties to send out election postcards that could serve the dual purpose of voter education on a statewide basis and voter registration list

maintenance that would facilitate the mailing of ballots and the verification of the signatures of voters when they returned their ballots.

Specifically, the National Voter Registration Act of 1993 permits election officials to use the non-delivery of an election mailing as a trigger for sending a subsequent mailing by forwardable mail. The voter is told in the mailing that their record is not up to date and that they will be designated inactive and eventually removed from the voter registration rolls if they fail to update their registration within the next two election cycles. These voters designated inactive will not be mailed a ballot for the election until they update their registration. Those who do not update their registration prior to election day will still have the ability to update their registration on election day and vote at a voter service center.

With the above in mind, the first part of this program occurred in August 2019, when all voters were mailed a statewide notification card. This card served the dual purpose of notifying the voter of the transition to elections by mail beginning with the 2020 Elections and NVRA list maintenance (i.e., voters whose cards were returned as undeliverable or as having a forwarding order were flagged as having a questionable address and scheduled to be mailed a follow-up NVRA mailing informing the voter of an issue with their voter registration).

In January 2020, a second postcard with important dates and deadlines for the 2020 Elections was sent. By late March 2020, an optional signature capture card was sent to all voters. These cards helped to further maintain the voter registration lists by informing us of questionable addresses for voters that had occurred since the mailing in 2019. Additionally, the signature capture card served as a tool to obtain a current sample of a voter's signature to be used to validate their ballots when they were returned during the 2020 Elections. The signature card was not required to be returned as election officials would continue to use the signature already on file for the voter. The voter's signature was obtained from their voter registration application or any associated Driver License or State ID application.

As voters continued to register for the first time or update their registration throughout the year, these postcards continued to be mailed as needed during the election cycle.

Likewise, we have scheduled additional mailings in December 2020 as part of the post-election maintenance of the lists (e.g., consideration of ballots that were returned as undeliverable and similar matters that could impact the status of one's voter registration).

## **MAILING AND RECEIPT OF BALLOTS**

The topic of the mailing of ballots is a significant and detailed topic. Building off of the previous experience of election officials with the mailing of ballots, the Office of Elections and counties had extensive discussions about mailing house services. While similar in many ways to absentee mail voting and elections by mail for stand-alone special elections, election officials had to address two main issues.

First, there was the critical nature of ongoing list maintenance, as voters no longer would be submitting a direct request for their ballot (i.e., an absentee ballot request in the past was by its nature current, while an election by mail ballot might involve it being mailed to a voter who may not have interacted with election officials since the last election or possibly longer if they had not voted). Essentially, it was critical to ensure that the universe of voters eligible to receive a ballot was current and up to date and the use of frequent election mailing was an important tool to accomplish that. As such, the Office of Elections and counties worked out a schedule of various election mailings to send out that could serve to update the voter registration lists, while serving a voter education purpose.

Second, there were the logistics involved in the sheer volume of voting by mail, which would involve nearly twice as many ballots being mailed out as compared to previous elections. For example, election officials discussed how they would address the following: (1) the delivery of envelope supplies to the mailing house vendor; (2) delivery of the various ballot types to the mailing house vendor; (3) initial provision of voter registration data and subsequent data to reflect new voters and updates to existing voters; (d) mailing house vendor addressing of envelopes and insertion process; (4) sorting by zip code; and (5) delivery to USPS in conformance with its postal requirements.

After the mailing of blank ballots is the eventual receipt of those now voted ballots when they are returned. As previously noted, the receipt of ballots relies on the unique barcode on the return envelope that corresponds to the voter's record to determine if the voter has already voted, and the signature reference image in the record for signature comparison purposes that is used by the counties. A county user of the statewide voter registration system could read the barcode with a traditional handheld barcode reader for these purposes.

However, as the volume of ballots increases, counties typically look to see if they can utilize a ballot sorting machine with a built-in scanner to reduce the workload. Specifically, a ballot sorting machine scans each return envelope, displays an image of the signature on the envelope, and utilizes the barcode to interact with the statewide voter registration system. With this in mind, the City and County of Honolulu migrated to a ballot sorting machine in 2014. This has required ongoing coordination between the Office of Elections and the City to ensure that the statewide voter registration system could be accessed for the City to determine if the voter had already voted and to treat the ballot as received in the statewide voter registration system.

The Office of Elections and neighbor island counties had discussions about how the counties could purchase similar ballot sorting machines and the Office of Elections could work with them to integrate the machines into the statewide voter registration system. Eventually, the counties arranged for the ballot sorting machines to be delivered in 2020. At that time, the Office of Elections worked with the counties and their vendor to complete the integration.

The Office of Elections and counties also discussed the physical transfer of ballots from the counties to the counting centers and how the time involved for the receipt of ballots would have a direct impact on the timeliness of the counting of ballots. As such, they coordinated how to make the best use of the 10 days prior to each election that election officials could preprocess ballots. Additionally, they discussed the volume of ballots expected on election day and how they could best stagger the delivery of received ballots from the counties to the counting centers throughout election day to best make



use of the resources available at the counting centers to have timely results for the public after the close of voting and throughout the night.

## EXPENSES AND RESOURCES

As discussed in prior reports, see Implementing Elections by Mail (November 6, 2019) and Implementing Elections by Mail, Cost Comparison (December 31, 2019), the implementation of elections has involved extensive cost sharing between the Office of Elections and counties. The movement to elections by mail results in our projections being significantly impacted by our estimate of the number of active registered voters, and the number of those voters who will choose to return their ballot, including by what means.

Additionally, we have had to revisit the proration of costs with the counties to include mailing house and voter service center costs. These costs used to be considered absentee voting costs that the counties never had to segregate out from their other operational costs, such as voter registration.

The table below reflects the expenditures to conduct elections prior to the enactment of elections by mail, our previous estimate of the cost of the 2020 Elections, and the actual cost of the 2020 Elections, which included CARES Act funding.

	<b>2018 Elections Actual Expense</b>	<b>2020 Election Projected Expense</b>	<b>2020 Elections Actual Expense</b>
<b>Early Voting</b>	219,072	212,898	269,306
<b>Election Day Officials</b>	527,510	95,680	179,958
<b>Facilities</b>	59,640	45,300	1,110,330
<b>Mailing Services &amp; Envelopes</b>	143,349	500,000	479,670

<b>Places of Deposit</b>	0	4,200	228,754
<b>Postage</b>	415,662	845,617	1,615,429
<b>Proclamations</b>	70,200	60,000	20,475
<b>Shipping &amp; Delivery</b>	225,657	78,000	10,429
<b>Staffing</b>	1,414,838	1,525,036	1,398,838
<b>Supplies &amp; Equipment</b>	192,549	44,800	168,363
<b>Voting &amp; Vote Counting System Contract</b>	3,209,000	3,009,000	2,990,000
<b>Total</b>	<b>\$6,477,477</b>	<b>\$6,420,531</b>	<b>\$8,471,552</b>

### CARES ACT EXPENDITURES

As indicated previously, the Office of Elections was able to obtain \$3,295,842 in HAVA funds through the CARES Act to prevent, prepare for, and respond to the coronavirus for purposes of the 2020 Elections. The table below reflects, as of November 20, 2020, how the federal funds were used and how we expended the required state matching funds. Election officials have until December 31, 2020 to submit additional expenditures related to conducting the 2020 Elections, including the post-election process.

<b>PANDEMIC GRANT COST CATEGORIES</b>	<b>Federal</b>	<b>Match</b>
Voting Processes, including additional costs for printing and mailing ballots, ballot tracking software, high speed scanners and letter opening equipment, mail drop boxes, hardware and software associated with signature comparison of returned ballots		
Staffing: Additional poll workers, election office staff diverted to pandemic response, temporary staff		

Security and Training: Security for additional absentee or mail drop-boxes, pre- and post-election cleaning of polling places, staff and poll worker training on prevention processes	\$37,740.00	
Communications: Notifying public of changes in registration, ballot request options, precautions or voting procedures	\$1,414,591.35	
Supplies: Additional laptops, mobile IT equipment, cleaning supplies, masks	\$101,453.45	\$159,663.61
Facilities	\$610,330.20	\$500,000.00
Services	\$98,904.83	
Total	\$2,263,019.83	\$659,663.61

### **ADDITIONAL RESOURCES**

As it relates to implementing this Act, the Office of Elections and the county clerks required no additional resources beyond their current operating budgets, as supplemented by the Legislature through the appropriations in Sections 57 and 58 of the Act, and the federal CARES Act grant to address the coronavirus.

### **ASSISTIVE TECHNOLOGY**

As indicated in our prior report, see Implementing Elections by Mail (November 6, 2019) at page 11, election officials have been utilizing an alternate format ballot (AFB) HTML ballot since 2018. This ballot is used by UOCAVA voters and voters with special needs. It can be marked by any compatible electronic device and meets various assistive technology standards. The cost of this assistive technology was \$34,985 for the 2020 Elections. We have incorporated this technology into our voting system contract for the 2022 to 2026 election cycles. Additionally, we will continue to work with the disability and technology communities to learn of any new forms of assistive technology that could assist in the voting process.

## **CHALLENGES AND RECOMMENDATIONS**

Other than the late closing of voter service centers on election day, we have not encountered any significant difficulties in the implementation of this Act beyond the normal start up issues that occur when migrating from one election model to another. With every election completed, we will continue to address and further refine the implementation of elections by mail.

As indicated in our prior report, see *Implementing Elections by Mail* (November 6, 2019) at pages 12 through 14, preventing fraud and ensuring the integrity of the election process involves various forms of security and the execution of established procedures (e.g., list maintenance to ensure the integrity of our voter registration rolls, tracking of the issuance and return of ballots, signature validation, notice of criminal sanctions for election offenses, working with the Hawaii State Fusion Center and Office of Enterprise Technology Services to address cybersecurity, and monitoring by voter service center watchers and official observers at our counting centers). We believe these procedures were executed for the 2020 Elections. Going forward, we will continue to work with interested stakeholders to further improve the execution of the security in place and to explore new forms of security to prevent fraud and ensure the integrity of the election process.

As for the issue of the load capacity of the voter service centers and how best to address it, we are in discussions with the counties as to how to best provide them any support they might need. Additionally, we will be renewing our advocacy for prior proposed legislation, see below, that would have given the county clerks the flexibility to better address the needs of their counties in relation to voter service centers.

Our initial review of the matter reflects the following factors: (1) unlike polling places, one cannot assign voters to particular voter service centers for load management purposes, as voters have various reasons, such as work or home reasons for why they vote in a certain location or at a certain time; (2) similarly, one cannot force voters to equally distribute their utilization of a voter service center over a 10 business day period; (3) the availability of physically secure and technologically secure locations, along with the election workers to staff them, over a 10 business day period is limited, as compared to

a single day in the context of a polling place; and (4) same day voter registration creates the possibility of an unknown amount of individuals seeking to use a voter service center on any particular day, beyond simply the amount of registered voters that have not yet returned their mail ballot.

The above issues have been touched on in different ways over the years in testimony by election officials in response to proposed legislation in relation to same day voter registration and elections by mail. The prior system was more controlled in the sense that there was a fixed deadline for registration purposes, creating a fixed universe of voters. Load management existed in the form of polling places restricting voters to certain locations on election day. Having said that, these properly yielded to the need to encourage participation in the electoral process. However, the logistical planning for an election became more dynamic as election administrators had less load management aspects structurally built into the system (i.e., the universe of voters could increase at any time up until the closing moments of the election, and voters could vote anywhere and at any time over a 10 business day period).

Despite the issues that arose with voter service centers on election day, the answer is not to go back to a more restrictive election model. We have come too far with one of the largest voter turnouts in our history and it is our responsibility to service the public. With that in mind, while the county clerks are the subject matter experts on their counties and will revisit the establishment and operation of their voter service centers, we feel that the law needs to provide the county clerks more flexibility to address this now more dynamic issue of load management.

### **PROPOSED LEGISLATION**

While the Act in its present form has been implemented, there are a variety of matters that the Legislature may wish to consider in amending our laws for consistency and administrative purposes. These were reflected in the bill we included in our prior report to the Legislature, see *Implementing Elections by Mail* (November 6, 2019) at pages 23 to 56.

The bill focused on the following: (1) addressing county logistical challenges regarding the establishment of voter service centers and places of deposit; (2) re-establishing the term “precinct” for administrative and reporting purposes; (3) clarifying the method for voters to return their ballots; and (4) making non-substantive changes for clarity, consistency, and style.

A version of the bill, SB 2794, SD 1, HD 2, made significant progress through the last legislative session, and we are hopeful that we will be able to address any questions that the Legislature may have in the upcoming session if it considers similar bills.

As for the topic of voter service centers, we testified as follows, regarding the importance of providing the county clerks flexibility to establish voter service centers.

#### Voter Service Centers

Currently, HRS §§ 11-109 and 11-131 provide for a voter service center in each county that will be open during regular business hours statewide from the tenth business day preceding the election going forward until the day of the election on which it will operate from 7:00 a.m. to 7:00 p.m. Additionally, voter service centers "may be established at additional locations within a county as may be designated by a clerk to service the particular needs of a county's voters."

This bill amends HRS § 11-109(b) to authorize election officials to have the ability to establish additional voter service centers, by permitting those additional voter service centers to operate during different days and time. For example, a lack of available personnel or a shortage of facilities that can be used for ten business days may prevent voters of a particular area from being provided a voter service center. While these voters could still avail themselves of the main voter service center in their county or mail back the ballot they have been provided, we would prefer to ensure that election officials would have the ability to provide a closer place for voting for these individuals.

Allowing additional voter service centers to operate on election day, or a similar shorter period, opens up the availability of private facilities and state and county buildings that have previously been available to serve as locations for voting. Additionally, opening voter service centers for a limited period provides services such as in-person voting and same day registration that voters would not otherwise have readily available.

Testimony to Senate Committee on Judiciary on Senate Bill No. 2794 – Relating to Elections (February 20, 2020).

In reflecting on the last election cycle, we do have four additional recommendations that are not included in our prior proposed legislation. These recommendations relate to the following: (1) recounts; (2) a uniform deadline for the validation of ballots; (3) the mailing of ballots; and (4) the opening of places of deposit.

### Recounts

In regard to recounts, we administered 3 recounts after the Primary Election. The present law required that the recounts be completed within 3 days of the election, while the deadline for voters to cure their ballots was 5 business days. HRS §§ 11-106 & 11-158. While we were able to perform the recounts we had this last election cycle in the time provided, we must prepare ourselves for the possibility that the initial counting of ballots may take longer as the number of ballots cast increases and that this will impact the availability of time to conduct any recounts. As such, we would recommend the deadline for the recount to be completed to be 5 business days after the election.

Additionally, the Legislature may wish to consider revisiting the recount triggers in the statute (i.e., "equal to or less than one hundred votes or one-quarter of one per cent of the total number of votes cast for the contest, whichever is greater"). HRS § 11-158.

For example, the law's reliance on a minimum trigger of 100 votes for any contest, regardless of how small the contest, could have unintended consequences. Specifically, there are 7 recognized political parties, and each is entitled to a political party primary for every state and federal office. One of these parties had a single candidate in the Primary

Election that received 19 votes in a state representative contest. If there had been a second candidate who received 1 vote, arguably the trigger would have been met and a recounted conducted.

As for the other trigger of "one-quarter of one per cent of the total number of votes cast for the contest" we do not take a position on it, other than to note that the trigger in relation to multimember contests, such as for the Office of Hawaiian Affairs or the county council for the County of Kauai, could result in statewide or countywide recounts impacting more than one office.

#### Validation of Ballots

In regard to the validation of ballots, the law provides that the county clerks are expected to "make reasonable efforts to determine validity of ballots within seven days following an election." HRS § 11-108(c). Separately, voters "have five business days after the date of the election to cure the deficiency" they may have regarding their ballot, such as a signature not matching what is on file, or the envelope not being signed at all. HRS § 11-106(3). While 7 calendar days and 5 business days are usually synonymous, as the Primary Election is held on a Saturday, the deadline for voters to cure deficiencies is the Friday following the election and the county clerks have until Saturday to complete the validation process. As such, it may be advisable to have both deadlines be 5 business days after the election.

#### The Mailing of Ballots

The law provides that ballots are "[t]o the extent practicable" to be mailed so they can be received "approximately eighteen days before the election." HRS § 11-102(b). In working with our mailing house vendor and USPS, it was confirmed that there were factors outside of the control of election officials that would impact when ballots were delivered. For example, USPS recommended mailing ballots 7 days prior to when they were intended to be received by voters, but many voters informed us that they received their ballot 2 days after its mailing. Additionally, there was a preference that we not submit over 700,000 ballots at one point in time into the system, but that we instead stagger the submission. Given this, it would be preferable to change the requirement to be that



ballots are to be received "not later than eighteen days prior to the election" as it is not feasible to ensure that all ballots arrive on the same day across the state.

### Opening of Places of Deposit

In the lead up to the General Election and concerns over the recommendation by USPS that ballots be mailed back at least 7 days prior to the election, questions arose as to when places of deposit would open. Specifically, the law provided that "[t]he clerks may designate and provide for places of deposit to be open five business days before the election until 7:00 p.m. on the day of 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." HRS § 11-109(d).

This language was interpreted as requiring that places of deposit be opened at least 5 business days before the election and that the county clerks had the discretion to open earlier to correspond when voters would first be receiving their ballots by mail.

Ultimately, the places of deposit served as an important option for voters to confidently know that their ballot had been received, as opposed to the concerns that some voters had about using the postal system or having to travel to the county clerk's office to deliver their ballot.

We would propose removing any ambiguity in the statute by explicitly stating the following: "The clerks may designate and provide for places of deposit to be open ~~[five business days before the election until 7:00 p.m. on the day of the election]~~ as early as the mailing of ballots by the clerks; 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." HRS § 11-109(d).

## **CONCLUSION**

As indicated above, while the migration to elections by mail was a significant undertaking, the election community benefitted from its previous experience with absentee voting and its discussions concerning migration over the last several years. We believe with the continued assistance of all interested stakeholders we will be able to

continue improving the administration of the elections by mail model in 2022 and beyond.