



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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SCOTT T. NAGO
CHIEF ELECTION OFFICER

**TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE HOUSE COMMITTEE ON WATER & LAND
AND
THE HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN
AFFAIRS
ON HOUSE BILL NO. 1088
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS**

February 1, 2013

Chair Evans and Chair Hanohano and members of the House Committee on Water & Land and the House Committee on Ocean, Marine Resources, & Hawaiian Affairs, thank you for the opportunity to provide comments on House Bill No. 1088. The purpose of this bill is to limit voting for seats that have a residency requirement on a particular island to voters, who reside on that island.

We would recommend that the advice of the Attorney General be sought as to whether the proposed bill would be constitutional. Specifically, the total amount of voters who would be eligible to vote for each of the seats that has a residency requirement would vary significantly, given the significant differences in population between our islands.

The Office of Elections sees no administrative problems that would interfere with our ability to implement House Bill No. 1088 in 2014.

Thank you for the opportunity to testify on House Bill No. 1088.



HB1088
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS

House Committee on Ocean, Marine Resources, & Hawaiian Affairs

February 1, 2013 8:00 a.m. Room 325

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment (BAE) offers the following comments on HB1088, which proposes to limit voting for OHA Board of Trustees seats that have a residency requirement on a particular island to voters who reside on that island.

We would simply point out that this voting system would likely run afoul of the principle established under the U.S. Constitution that one person's voting power should be roughly equivalent to another person's within the state.

Mahalo for the opportunity to testify on this measure.

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From: omhtestimony
Sent: Thursday, January 31, 2013 4:53 PM
To: waltestimony
Subject: FW: Submitted testimony for HB1088 on Feb 1, 2013 08:00AM
Attachments: HB1088_ATG_2-1-13_OMH.pdf

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]
Sent: Thursday, January 31, 2013 4:53 PM
To: omhtestimony
Cc: anne.e.lopez@hawaii.gov
Subject: Submitted testimony for HB1088 on Feb 1, 2013 08:00AM

HB1088

Submitted on: 1/31/2013

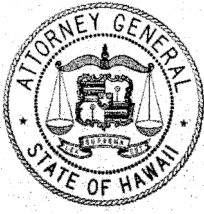
Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Anne	Department of Attorney General	Comments Only	Yes

Comments: Charleen M. Aina, Deputy Attorney General, will be present to testify on HB1088.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 1088, RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

BEFORE THE:

HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

DATE: Friday, February 1, 2013 **TIME:** 8:00 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Charleen M. Aina, Deputy Attorney General

Chair Hanohano and Members of the Committee:

The Department of the Attorney General submits this testimony to recommend that the bill be held because the amendment it makes to the statute that prescribes how the trustees of the Office of Hawaiian Affairs (OHA) are to be elected is unlikely to withstand a challenge that it violates the Fourteenth Amendment's Equal Protection Clause and the "one-person, one-vote" rule of Reynolds v. Sims, 377 U.S. 533 (1964), and the United States Supreme Court decisions that continue to uphold the rule.

H.B. No. 1088 amends section 13D-4, Hawaii Revised Statutes, to limit who may vote to fill the seats of OHA's Board of Trustees that are assigned by island, to only the voters who are residents of the island or islands to which a seat is assigned. If this limitation were adopted, the island-assigned trustees would not be elected by all of the voters voting in the OHA election, the trustees elected to the island assigned seats would be elected by different numbers of voters. Most significantly trustees elected to all of the island seats other than Oahu's would be elected by fewer voters than the trustee elected to the seat assigned to Oahu.

The United States Supreme Court has consistently held that the Fourteenth Amendment guarantees each voter "the same power in an election open to all If one person's vote is given less weight through unequal apportionment, his right to equal voting participation is impaired ." Hadley v. Junior College District of Metropolitan Kansas City, Missouri, 397 U.S. 50, 54 (1970).

[W]henver a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials. It is of course possible that there might be some case in which a State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with Reynolds, supra, might not be required, but certainly we see nothing in the present case that indicates that the activities of these trustees fit in that category.

Id. 397 U.S. at 56.

Thank you for the opportunity to bring this concern to the attention of the Committee.