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LATE

TESTIMONY OF RICKY R. WATANABE
COUNTY CLERK, COUNTY OF KAUA'I
TO THE HOUSE COMMITTEE ON JUDICIARY
ON SENATE BILL NO. 3, SD 1, HD 1
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS

March 28, 2013

Chair Rhoads and Committee Members:

Thank you for the opportunity to testify on Senate Bill No. 3, SD 1, HD 1. This Bill provides for the election of the Office of Hawaiian Affairs Board Members through a system of Nonpartisan Primary and General Elections to begin with the 2014 Elections.

Our office takes no position on the Bill but notes that it will probably increase the cost of running for office since candidates for the Board of Trustees for the Office of Hawaiian Affairs (OHA) may now need to conduct campaigns in two elections to be elected.

From an operational perspective, since the Bill establishes a Primary Election which will cut down the number of OHA candidates moving on to the General Election, OHA contests will require less space on the General Election ballot so the likelihood of a second ballot will be reduced.

Thank you for this opportunity to testify on Senate Bill No. 3 SD 1, HD 1.

RICKY R. WATANABE
County Clerk



SCOTT T. NAGO
CHIEF ELECTION OFFICER

**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE HOUSE COMMITTEE ON JUDICIARY
ON SENATE BILL NO. 3, SD 1, HD 1
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS

March 22, 2013

Chair Rhoads and members of the House Committee on Judiciary, thank you for the opportunity to provide comments on Senate Bill No. 3, SD 1, HD 1. The purpose of this bill is to provide for the election of Office of Hawaiian Affairs board members through a system of nonpartisan primary and general elections beginning in 2014.

The Office of Elections believes it can implement nonpartisan primary and general elections in 2014, if the issues raised in its testimony today are addressed.

We wish to note for your information that in Section 2 of the bill, the amendments to HRS § 13D-4(c) leaves in place the requirement that all names be arranged alphabetically. This is consistent with the current version of HRS § 11-115, which provides that names of candidates on a ballot shall be placed in alphabetical order. However, given pending legislation, in the form of House Bill No. 32, which proposes to amend HRS § 11-115 to provide a different manner of arranging candidate names, it may be advisable to amend HRS § 13D-4(c) to simply refer to arranging the names "as specified in HRS § 11-115" versus saying "alphabetically." Otherwise, there could be some ambiguity over whether the names of candidates for the Board of Trustees should still be arranged alphabetically, in the event that HRS § 11-115 is amended to reflect a non-alphabetical manner of arranging candidates.

In regard to proposed HRS § 13D-4(d), (f), and (g), we wish to confirm the manner in which we will implement these provisions, so as to avoid any subsequent misunderstandings from candidates.

As you are aware, the elections for the nine member Board of Trustees are staggered so three At-Large Trustees, the Oahu Resident Trustee, and the Maui Resident Trustee (i.e. five seats) are elected in one election year and the remaining At-Large Trustee, Hawaii Resident Trustee, Kauai Resident Trustee, and Molokai Resident Trustee (i.e. four seats) are elected in the next election year.

In terms of the seats requiring residency on a particular island, the proposed statute is relatively straightforward. Specifically, if there is only one candidate at the close of filing, the candidate is immediately deemed duly and legally elected. Proposed HRS § 13D-4(f). If there are only two candidates for a residency seat, at the close of filing, then they both automatically appear on the General Election ballot and do not need to appear on the Primary Election ballot. Proposed HRS § 13D-4(d). However, if there are three or more candidates for the seat, then they must appear on the Primary Election ballot. If this occurs, then the two candidates receiving the highest number of votes will be deemed nominated and move on to the General Election. The exception to this is that if a candidate in the Primary Election receives more than fifty percent of the votes cast then the person is deemed elected at that time and the contest will not need to appear on the General Election ballot.

In terms of the treatment of the candidates for the three At-Large Trustee positions in one election and the subsequent election year in which a single At-Large Trustee position is on the ballot, clarification in the bill or in the committee report may be beneficial.

In a year in which there is a single At-Large Trustee position on the ballot, if there is only one candidate, then the candidate will be deemed automatically elected at the close of filing. Proposed HRS § 13D-4(f). However, it appears that even if there are only two candidates, the two candidates must appear on the Primary Election ballot and then again on the General Election ballot, unless one of the two candidates receives over fifty percent of the total votes cast for the seat. Proposed HRS § 13D-4(d) & (g).

In a year in which the three At-Large Trustee positions are on the ballot, the form of the ballot is essentially a single contest in which all names are listed and the top three candidates are selected as At-Large Trustees. In practice, the bill appears to require that all candidates will appear on the Primary Election ballot, even if there are only three candidates. The top six candidates, if there are at least six candidates, move on to the General Election ballot, given the language in the bill which says "no more than twice the number of qualified candidates as seats available" and there will be three seats available. Proposed

HRS § 13D-4(g). However, if in the Primary Election, a candidate receives over fifty percent of the votes cast then it appears that person would be deemed automatically elected at that time. Proposed HRS § 13D-4(d). If so, then there would only be two remaining seats available for the General Election, meaning that only four candidates would move on to the General Election ballot.

Finally, in Section 4, regarding vacancies in HRS § 17-7(b), the Legislature may wish to clarify that, consistent with the manner in which vacancies in four-year term offices are typically filled, there will be a primary election and general election to fill the remainder of a term of office, depending on the date when the vacancy occurs in proximity to the Primary Election.

We would recommend in doing this that the reference to the vacancy occurring at least seventy-five days prior to the General Election be changed to ninety days prior to the Primary Election and that the candidate filing deadline be made to correspond to the regular candidate filing deadline in HRS § 12-6 (i.e. the first Tuesday in June), so as to ensure that we can continue to comply with the applicable time requirements for the mailing of ballots found in state and federal law.

Specifically, federal law requires that absentee ballots for military and overseas voters be mailed out at least forty five days prior to an election which involves a federal office. 42 USC § 1973ff-1 (Uniformed and Overseas Citizens Absentee Voting Act). Additionally, state law now similarly requires that ballots be mailed at least by the forty-fifth day prior to an election. HRS § 15D-9 (Uniform Military and Overseas Voters Act) (Act 226, SLH 2012). Making the statutory deadline to file nomination papers for filling a vacancy the same as the one for candidates in regularly scheduled elections will ensure that we continue to have enough time to design, print, and mail out ballots to our uniformed and overseas voters.

In order to accomplish the above referenced clarifications, we would propose the following changes to HRS § 17-7(b):

(b) In the case of a vacancy, the term of which does not end at the next succeeding [~~special election held in conjunction with the~~] general election:

(1) If it occurs not later than on the [~~seventy-fifth~~] ninetieth day prior to the next succeeding [~~special election held in conjunction with the general~~]-primary election, the vacancy shall be filled for the unexpired term at the next succeeding [~~special election~~]

~~held in conjunction with the]~~ general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall file nomination papers not later than ~~[4:30 p.m. on the sixtieth day prior to the special election (but if such day is a Saturday, Sunday, or holiday then not later than 4:30 p.m. on the first working day immediately preceding)]~~ the date and time specified in HRS § 12-6 and shall be nominated and elected in accordance with this title. Pending the election, the board or the governor shall make a temporary appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term and shall serve until the election of the person duly elected to fill such vacancy.

(2) If it occurs after the ~~[seventy-fifth]~~ ninetieth day prior to the next succeeding ~~[special election held in conjunction with the general]~~ primary election, the board or the governor shall make an appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term.

Thank you for the opportunity to testify on Senate Bill No. 3, SD 1, HD 1.



SB3 SD1 HD1
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS
House Committee on Judiciary

March 28, 2013

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment (BAE) Committee **OPPOSES** SB3 SD1 HD1, which proposes to repeal the special election process for the election of members of the OHA Board of Trustees and establish a system of nonpartisan primary and general elections to begin with the 2014 elections.

Section 1 of the bill states that a number of studies have shown that incumbent candidates for any political office hold a distinct advantage over challengers. Section 1 also asserts that under the existing system of OHA Trustee elections, incumbent candidates may hold an even greater advantage because of the larger number of candidates vying for a few open seats. In essence, the bill proposes that a primary election would give challengers a better chance by narrowing the field for the general election.

The BAE committee of OHA believes that this conclusion is speculative and that the existing well-established OHA election system should not be disrupted based on speculation. While one can argue that the proposed new system would enhance the prospects of challengers, one can just as easily argue that the new system would work against challengers, because non-incumbents who survive the primary election may be less likely than incumbents to have the resources to finance their participation in both the primary election and the general election.

The change proposed in SB3 SD1 HD1 would subject candidates for OHA Board of Trustees to additional costs. Unlike candidates for positions in the state Legislature, candidates for OHA trustee positions have to run in a statewide election that is more similar in cost and scope to the elections for governor and lieutenant governor. Requiring OHA candidates to run in a primary and general election would require even more costs.

We also point out that there may be additional costs to the Office of Elections in implementing a new system.

In light of all of the above, OHA's BAE committee respectfully requests that the committee **hold** this bill.

Mahalo for the opportunity to testify on this measure.

Hawaiian Affairs Caucus

Democratic Party of Hawaii

1050 Ala Moana Blvd D-2150, Honolulu, HI 96814

Legislative testimony

HOUSE COMMITTEE ON JUDICIARY
HEARING: RM.325 03/28/2013 2:00 PM

LATE

SB 3 - RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS POSITION: SUPPORT

The Hawaiian Affairs Caucus is submitting testimony in **STRONG SUPPORT** of **SB3**. The OHA election process has long been plagued by the current process, that severely undermines the democratic process. It is the only election in the State that does not have a primary election to narrow the field of candidates going into the general election.

The winning candidate in numerous OHA elections often wins by having the largest percentage of votes, but not the majority of votes. Because the number of candidates is so large, votes get dispersed amongst all the candidates and the majority of voters do not vote for the winner. This is a severely distorted election process and must be rectified.

It behooves the legislature to ensure that OHA elections adhere to the democratic process.

‘O ia ihola nō me ke aloha.



TESTIMONY IN SUPPORT OF SB3, SD1, HD1
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS
Providing for the election of the Office of Hawaiian Affairs board members through a
system of nonpartisan primary and general elections to begin with the 2014 elections.

Hearing, Wednesday, March 22, 2013, Conference Room 325, State Capitol

Representative Karl Rhoads, Chair
Representative Sharon Har, Vice Chair
Members, Committee on Judiciary

From: Kitty M. Simonds, President, Maunalua Hawaiian Civic Club

Aloha,

The Maunalua Hawaiian Civic Club (MHCC) supports SB3, SD1, HD1 and thanks the legislature for considering this measure. A primary and general election process will enhance our representative form of democracy. The MHCC submitted a resolution at the 2012 Association of Hawaiian Civic Clubs annual convention held in Washington DC. The resolution was not adopted. We attach that resolution as part of this testimony in support.

Maunalua Hawaiian Civic Club
P.O. Box 240388. Aina Haina Station
Honolulu, Hawai'i 96824

1 **ASSOCIATION OF HAWAIIAN CIVIC CLUBS**

2
3 **RESOLUTION NO. 12 - _____**
4

5 **URGING THE STATE OF HAWAII TO AMEND THE OFFICE OF HAWAIIAN**
6 **AFFAIRS (OHA) ELECTION PROCESS BY IMPLEMENTING A FIRST NON-**
7 **PARTISAN SPECIAL ELECTION IN CONJUNCTION WITH THE STATE PRIMARY**
8 **ELECTION AND A SECOND NON-PARTISAN SPECIAL ELECTION IN**
9 **CONJUNCTION WITH THE STATE GENERAL ELECTION FOR THE ELECTION**
10 **OF OHA TRUSTEES AND RESTRICT VOTING FOR THE ISLAND SEATS TO THAT**
11 **ISLAND’S VOTERS**
12

13 WHEREAS, there are nine Office of Hawaiian Affairs (OHA) trustee seats and six contests for
14 those seats, and
15

16 WHEREAS, five of the contests are for island seats restricted to candidates residing in and
17 representing the islands of Kaua`i, O`ahu, Moloka`i/Lana`i, Maui and Hawai`i, and
18

19 WHEREAS, one contest is for four at-large seats, and
20

21 WHEREAS, the OHA Special Election is held in conjunction with the General Election in every
22 even numbered year, and
23

24 WHEREAS, each board member’s term of office is four (4) years beginning on the day of the
25 special election held in conjunction with the general election of the year in which he or she was
26 elected and ending on the day of the special election held in conjunction with the second general
27 election after his or her election, and
28

29 WHEREAS, trustees may be re-elected without restriction as to the number of terms, and
30

31 WHEREAS, all of the citizens of the State of Hawai`i have the opportunity to vote in the OHA
32 contests to fill the nine trustee seats, and
33

34 WHEREAS, each island’s representative seat should be elected by that island’s voters, not the
35 State’s voters, for the island’s Hawaiian community to be properly represented on the Board of
36 Trustees, and
37

38 WHEREAS, in 2012 five of the nine seats are up for election in four contests, Kaua`i, Moloka`i,
39 Maui, Hawai`i, and at-large seats, and
40

41 WHEREAS, Maui’s OHA candidates to fill the term vacated by Boyd Mossman, for which
42 Carmen “Hulu” Lindsey was appointed, ending in 2012, will file to be included on the ballot on
43 August 28, 2012 with a filing deadline of September 7, 2012 and the winner will be determined
44 by a special election on November 6, 2012 in conjunction with the General Election, and
45

1 WHEREAS, the Kaua`i residential seat has 11 candidates, the Moloka`i incumbent is running
2 unopposed, the Hawai`i residential seat has three candidates and the at-large contest has six
3 candidates, and
4

5 WHEREAS, many voters are confused by the OHA elections in part because of the large number
6 of candidates running for OHA making it difficult for voters to make an informed choice, and
7

8 WHEREAS, a pre-selection process through a first non-partisan special election would reduce
9 the number of candidates running in the second non-partisan special election to a more
10 manageable number enabling the public to learn more about candidate qualifications and position
11 on issues, and
12

13 WHEREAS, the need to improve the process of selecting those most qualified, most able, most
14 representative of the majority of the Hawaii community and who are responsible for guiding
15 Hawaiian policy in the State outweighs the additional cost of a first non-partisan special election
16 in conjunction with the primary election, and
17

18 WHEREAS, a first non-partisan election would give the electorate to select
19 the candidates they want to see on the ballot of the second non-partisan election held in
20 conjunction with the General Election, and
21

22 WHEREAS, a two-election process would give the electorate an opportunity to have a more
23 meaningful interaction with candidates running for this office, and
24

25 WHEREAS, a two-election process would provide the electorate an opportunity to assist OHA
26 trustees and the community in the prioritization of issues for the community, and
27

28 WHEREAS, a two election process would better serve the Hawaii community in the democratic
29 process, and
30

31 WHEREAS, a candidate receiving the majority of the vote (50% + 1 vote) in any contest in the
32 first non-partisan election would be declared the winner, and
33

34 WHEREAS, in the case of the residential seats, if none of the candidates receives the majority of
35 the votes cast then the top two vote getters would have a run-off election in the second non-
36 partisan election, and
37

38 WHEREAS, in the case of the at large seats, if a candidate or candidates receive a majority of the
39 votes cast to fill the seat(s), then they would fill the seat or; if there is no clear majority in the
40 first non-partisan election then the top vote getters equal to twice the number of at-large seats
41 available will be elected in a run-off election in the second non-partisan special election held in
42 conjunction with the General Election,
43

44 NOW, THEREFORE BE IT RESOLVED by the Association of Hawaiian Civic Clubs at its 53rd
45 annual convention at the J.W. Marriott Resort, Washington, D.C., this ___ day of October 2012,
46 urges the State of Hawai`i to amend the OHA election process by implementing a first non-

1 partisan special election in conjunction with the State primary election and a second non-partisan
2 special election in conjunction with the State general election for the election of OHA trustees
3 and restrict voting for the island seats to that island's voters.
4

5 BE IT FURTHER RESOLVED that copies of this Resolution be transmitted to the Governor of
6 Hawai'i, President of the Hawai'i Senate, Speaker of the Hawai'i House of Representatives, Senate
7 Committee on Water, Land, Agriculture and Hawaiian Affairs Chair, House Committee on Hawaiian
8 Affairs Chair, and Office of Hawaiian Affairs Board of Trustees Chair.
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INTRODUCED BY: The Maunalua Hawaiian Civic Club and Kuini Pi`olani Hawaiian Civic Club

INTRODUCER'S CONTACT: Kitty Simonds, Pelekikena, kittysimonds@mac.com

AUTHOR(S): Daniel Nahoopii, Charles M. Kaaiyai,

AUTHOR'S CONTACT: cmkaaiyai@hawaiiantel.net, 808 291 5083

REFERRED TO:

ACTION: _____

SB3

Submitted on: 3/19/2013

Testimony for JUD on Mar 22, 2013 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Kealii Makekau | Individual | Support | Yes |

Comments: Seeing how S.B. No. 3, S.D. 1, H.D. 1, has cleared and been affirmed by all committees on both senate and house sides i move that this bill be passed as is.

Mahalo

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SB3

Submitted on: 3/22/2013

Testimony for JUD on Mar 28, 2013 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Troy Abraham | Individual | Support | No |

Comments: I support passage of this bill to fix the office of hawaiian affairs elections.

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LATE

SB3

Submitted on: 3/28/2013

Testimony for JUD on Mar 28, 2013 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------|--------------|--------------------|--------------------|
| Kama Hopkins | Individual | Support | No |

Comments: Aloha Chair Rhoads, Vice Chair Har and members of the committee, My name is Kama Hopkins and I want to share testimony in support of SB 3. This Bill provides the opportunity for our residents of the State of Hawaii voting for Trustees of the Office of Hawaiian Affairs to be able to nominate candidates thru a Primary Election and then elect a Trustee at the General Election. Our people who call Hawaii home can rest assured that their is no perceived notion of advantages given to the incumbent by this process as some believe this to be true in the current process which only allows for the Trustees to be elected in the General Election. Some elected Trustees may or may not say that this is unfair and that running in two elections may cost them more money to run. While this may or may not be true, the fact of the matter remains that if you are doing a job that is agreeable with those whom you serve, it is highly likely that you will be voted in. If they don't feel that way, then they may vote you out. Honorable Representatives, a suggestion on enhancement of the Bill is to allow it to pass but use the elections of 2014 and 2016 to be a "trial run" of sorts. Let us see if we have a greater percentage of voters turn out to trim down the field in the Primary and then elect Trustees in the General. If there is no change in voter percentage by 2016, then reverting back to the current system would seem to be reasonable. Mahalo for the opportunity to testify.

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SB3

Submitted on: 3/28/2013

Testimony for JUD on Mar 28, 2013 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Matthew LoPresti | Individual | Support | No |

Comments:

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