



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

ON THE FOLLOWING MEASURE:

S.B. NO. 478, PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO RESIDENCY REQUIREMENTS FOR MEMBERS OF THE LEGISLATURE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, February 26, 2013 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Robyn B. Chun, Deputy Attorney General

Chair Hee and Members of the Committee:

The Attorney General would like to make the following comments on this bill:

Article III, section 6, of the Hawaii State Constitution currently requires that candidates for the state Senate and House of Representatives have resided in the State for three years and to reside in the district they intend to represent prior to filing their nomination papers. Similarly, article V, section 1, of the State Constitution provides that “[n]o person shall be eligible for the office of governor unless the person shall be a qualified voter, have attained the age of thirty years and have been a resident of this State for five years immediately preceding the person’s election.”

This bill proposes that article III, section 6, of the State Constitution be amended to extend the duration of the state residency requirement for candidates for both the state Senate and the state House of Representatives from three years to five years. This bill also proposes an amendment to the district residency requirement to require that the candidate reside in the district he or she intends to represent for not less than twelve months before the general election, rather than residing in the district prior to filing nomination papers as is now required.

While jurisdictions are divided about the constitutionality of durational residency requirements for candidates for state elective office,¹ such requirements have been upheld by the

¹ See, e.g., Antonio v. Kirkpatrick, 579 F.2d 1147 (8th Cir. 1978) (court struck down ten-year residency requirement for state auditor on grounds that requirement was not rationally related to state’s objective); Howlett v. Salish and Kootenai, Tribes of Flathead Reservation, Montana, et

Hawaii Supreme Court and the U.S. District Court for the District of Hawaii. See Hayes v. Gill, 52 Haw. 251, 473 P.2d 872 (1970); Hankins v. State of Hawaii, 639 F. Supp. 1552 (D. Haw. 1986). Accordingly, the amendment proposed by this bill does not appear to be unconstitutional on its face and assuming there are state interests or objectives that justify an additional two years of state residency and one year of district residency, based on Hayes and Hankins, it is likely that the proposed amendments will be upheld by the Hawaii Supreme Court and the U.S. District Court for the District of Hawaii. As the bill is currently drafted, however, it is unclear why the state residency requirement should be increased and the district residency requirement should be imposed. We, therefore, strongly recommend that the legislature state its reasons for extending the state and district residency requirements.

Thank you for the opportunity to comment on this bill.

al., 529 F.2d 233 (9th Cir. 1976) (court applied strict scrutiny and upheld 1-year residency requirement for candidates for tribal council); Robertson v. Bartels, 150 F. Supp. 2d 691 (D. N.J. 2001) (court applied strict scrutiny to strike down one-year residency requirement for state senator and general assembly seats); Sununu v. Stark, 383 F. Supp. 1287 (D. N.H. 1974), aff'd 420 U.S. 958 (1975) (court applied strict scrutiny and upheld seven-year residency requirement for state senator).



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**TESTIMONY FOR SENATE BILL 478, PROPOSING AN AMENDMENT TO THE
CONSTITUTION OF THE STATE OF HAWAII RELATING TO RESIDENCY
REQUIREMENTS FOR MEMBERS OF THE LEGISLATURE**

**Senate Committee on Judiciary and Labor
Hon. Clayton Hee, Chair
Hon. Maile S.L. Shimabukuro, Vice Chair**

**Tuesday, February 26, 2013, 10:00 AM
State Capitol, Conference Room 016**

Honorable Chair Hee and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in opposition to SB 478, proposing an amendment to the Constitution of the State of Hawaii relating to residency requirements for the members of the legislature.

While we applaud attempts to guarantee legislative representation for Hawaii residents and safeguard the state's electoral processes, we are concerned that this amendment would have unintended consequences that undermine its purpose. In the 2012 general election, only 60 percent of the state's Senate races (15 out of 25) were contested, with a mere 62.7 percent House races (32 out of 51) being contested. Should the constitutional amendment proposed by this bill be effectuated, fewer people will be eligible to run for public office. We firmly believe that lawmakers should incentivize greater electoral participation, given the state's meager number of prospective candidates.

IMUAlliance boasts a significant number of college-age members, many of whom would like to enter public service at some point, or at least attempt to do so. For our outer-island members who attend UH-Manoa, however, a continuous twelve-month residency requirement prior to seeking public office would delay candidacy at a time when these individuals are eager to put their education and energy to use (or, conversely, necessitate that these students run for, and subsequently remain residents of, the greater Manoa community, since their residency often changes to Manoa as they complete their degrees). Since Hawaii's high cost of living necessitates a professional income (one might find it difficult to spend a year preparing for candidacy, sans full-time employment, and college graduates typically earn less than their tenured and vested

colleagues), we feel that this requirement disproportionately favors an older, more professionally established, and wealthier candidate pool.

Consider, as an example, the case of Rep. Kaniela Ing. Elected last year to represent District 11 in the State House, Ing grew up in and around Kihei, the heart of his constituency. After completing his B.A. in psychology, in 2010, and M.P.A., in 2012, from UH-Manoa, Ing opted to use his newly minted public administration skills to benefit the community in which he spent much of his youth. His election over Republican incumbent George Fontaine was largely seen as an improbable upset, especially for someone aged 23-years-old (at the time of the election). Since entering the State Legislature, Ing has co-sponsored dozens of measures relating to issues as varied as voter registration to vocational licensing for veterans to procurement savings. Yet, according to the terms of the proposed amendment, Ing's energy and ideas would have been put on pause for a year (and actually several years, when one considers the election cycle lag), denying his electorate the representation that, according to their votes, they clearly favor. Ing likely would have been forced to find another means of supporting himself during the interim, the responsibilities of which may have ultimately led him away from local politics.

Don't deny Hawaii's future leaders the opportunity to participate in our state's elections. We need to foster greater political action among Hawaii's younger generations, not stage barriers to their engagement. Mahalo for the opportunity to testify in opposition to this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance

IRONWORKERS STABILIZATION FUND

February 25, 2013

Clayton Hee, Chair
Committee on Judiciary and Labor
State Senate
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Hee and Members of the Committee on Judiciary and Labor:

Re: Support for SB478 –Proposing an Amendment to the Constitution of the State of Hawaii
Relating to Residency Requirements for Members of the Legislature

We wish to offer our support of SB 478, Relating to Proposing an Amendment to the Constitution of the State of Hawaii Relating to Residency Requirements for Members of the Legislature

We believe that this bill will ensure that the residents of an area will be represented by a person who knows and understands the issues of their location. Additionally, we would like to be represented by residents that live, shop and resides in their area. Not someone who only cares for themselves and not the people. As we seen in recent media articles the residents are upset at people who are not members of their community. We hope that you and your committee understand the needs of the people.

We support this very important measure. Thank you for your time and consideration