



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

ON THE FOLLOWING MEASURE:

S.B. NO. 858, RELATING TO BOARDS AND COMMISSIONS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, February 20, 2013 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016

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

Chair Hee and Members of the Committee:

The Department of the Attorney General testifies only to suggest that this bill be revised as specified below, if the Committee intends to approve its passage.

This bill amends subsection (a) of section 26-34, Hawaii Revised Statutes (HRS), to prohibit a holdover member of a board whose reappointment to that board is not confirmed by the Senate, from continuing to serve as a holdover member.

Because article V, section 6 of the State Constitution precludes interim appointments being made while the Senate is in session, we recommend that the prohibition this bill adds to subsection (a) of section 26-34 be re-worded as follows, to avoid leaving a board without its full complement of members for the balance of the session during which a holdover member's confirmation is rejected:

A person whose reappointment to a second consecutive term fails to receive the consent of the senate may continue in office as a holdover member only until the senate adjourns sine die.

Again, however, the Department takes no position on amending section 26-34(a), HRS, as this bill proposes.



Sierra Club Hawai'i Chapter

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LATE TESTIMONY

SENATE COMMITTEE ON JUDICIARY AND LABOR

February 20, 2013, 10:00 A.M.
(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SB 858

Aloha Chair Hee and Members of the Committee:

The Sierra Club, Hawai'i Chapter, with 10,000 dues-paying members and supporters, **supports** SB 858. This measure corrects a mistaken decision made by the Intermediate Court of Appeals by clarifying that individual who is rejected to a second term by the Senate is "disqualified" under section 26-34 from serving up to two years as a holdover member.¹

On August 24, 2012, the Intermediate Court of Appeals mistakenly held that Hawaii Revised Statutes § 26-34 is "clear that the sole disqualification is that '[n] person shall be appointed consecutively to more than two terms as a member of the same board or commission; provided that membership on any board or commission shall not exceed eight consecutive years.'" *Sierra Club v Castle & Cooke Homes Hawai'i, Inc.*, Civ. No. 10-1-2424 (August 24, 2012).

This Legislature deliberately choose to use the broad term "disqualify" in section 26-34 rather than a more narrow or restrictive phrase. Plainly, the failure to receive advice and consent by the Senate for a second term is a rationale basis for being disqualified from serving as a holdover member. The Senate had the opportunity to review the applicant's record of service, interview the applicant, and consider public input. After going through this process, the Senate is in the best position to determine whether an individual is qualified or not to serve. Any other interpretation would allow an individual -- found not qualified to serve by the Senate -- to continue to serve regardless. This flouts the importance of Senate's advice and consent obligations and calls into question the checks and balances established in our Constitution.

The Sierra Club respectfully asks that this committee advance this measure. Mahalo for the opportunity to testify.

¹ This matter is currently under review by the Hawaii Supreme Court. The Sierra Club maintains that the ICA gravely erred in interpreting section 26-34.