



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

ON THE FOLLOWING MEASURE:

S.B. NO. 982, PROPOSING AN AMENDMENT TO ARTICLE XVII, SECTION 3, OF THE CONSTITUTION OF THE STATE OF HAWAII.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, January 29, 2013 **TIME:** 9:30 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 supports passage of this bill because like S.B. No. 1024 (ATG-22(13)), which was included in the Administration's legislative package, this bill's primary purpose is to assure that legislatively proposed amendments to the Constitution of the State of Hawaii are ratified by counting only the Yes and No votes, after all blank and spoiled ballots are excluded.

S.B. No. 982 amends article XVII, section 3, of the State Constitution which sets forth the process by which amendments to the State Constitution may be proposed by the Legislature, and presented to the voters for ratification. Specifically, the bill (1) requires proposed amendments to be posted on the website of the Office of Elections, in addition to being published four times in a newspaper of general circulation in the two months immediately preceding the next general election; (2) lifts the requirement for a voter education program on proposed amendments; and (3) prescribes that only votes tallied and cast on the ratification question determine whether an amendment proposed by the Legislature has been ratified.

We apologize for requesting that the provisions set forth on page 2, lines 7-21 of this bill, which are almost the same as the provisions we included in the bill the Department drafted, be replaced by the underscored text below:

The full text of any proposed amendment shall be made available for inspection on the website of the office of elections at least _____ days before such general election.

Each amendment shall be submitted to the electorate in the form of a question

embracing but one subject; provided that each question shall have designated spaces to mark YES or NO votes on the amendment.

Amendments shall be effective only if approved at a general election by a majority of the votes tallied upon the question for each amendment. Only affirmative and negative votes shall be tallied upon each question. Votes on spoiled ballots shall not be tallied.

However, the Department believes these changes need to be made before the bill is considered by the Committee because whether the majority of the voters voting on each ratification question have approved the constitutional amendment proposed by the Legislature ought to be the sole basis for determining whether the amendment has been ratified.

Anticipating possible concerns that this change could result in constitutional amendments being ratified by a majority that is less than the majority of voters participating at a general election, the Department conducted two surveys to determine by what margins legislatively proposed amendments to the State Constitution have been ratified, and how other state constitutions determine whether proposed amendments to their constitutions have been ratified.

As shown on Exhibit A attached hereto, in all 14 instances that legislatively proposed amendments to the State Constitution were voted on at the last five general elections, at least 85 per cent of the total number of voters who voted in the election, voted Yes or No to approve or reject a legislatively proposed amendment to the State Constitution.

And, our survey of the constitutions of the other 49 states revealed that (1) Delaware's constitution allows the legislature to amend its constitution without ratification by the electorate; (2) under the constitution of New Hampshire, the ratification question must be approved by a majority of the total number of voters "participating," and this same majority is one of the two means specified for ratifying constitutional amendments under the constitution of Illinois; (3) under the constitutions of 7 other states, the ratification question must be approved by a majority of the votes cast on that question only; and (4) in the remaining 41 states, including Illinois and Hawaii, it is not clear on the face of the constitutions themselves whether the majority of votes cast, the majority of voters voting on the question, or the majority of the voters "voting thereon," includes or excludes blank or spoiled ballots.

To further allay concerns that amendments to the State Constitution might be ratified by a majority based on less than the total number of voters who participate in a general election, we should all be mindful that before a legislatively proposed amendment to the State Constitution is submitted to the electorate to approve or reject, it already has been heard and debated in at least two committees of each house, and approved by two-thirds of the members of both houses at one regular session of a legislature, or by a majority of the members of each house at both regular sessions of a legislature.

We respectfully request that the Committee pass out this measure with the amendment set out above.

Constitutional Amendments
2004 - 2012

		W/ Blank/Spoiled Ballots	W/O Blank/Spoiled Ballots	Turnout/% Turnout Voted
2012 GENERAL				
Relating to Dams and Reservoirs*				
YES	212,483	48.7%	54.7%	
NO	176,007	40.3%	45.3%	
Blank	47,995	11.0%		
Over	198	0.0%		436,683
				89.00%
Relating to Retired Judges*				
YES	216,734	49.6%	55.4%	
NO	174,250	39.9%	44.6%	
Blank	45,537	10.4%		
Over	162	0.0%		436,683
				89.50%
2010 GENERAL				
Relating to the Board of Education				
YES	221,390	57.4%	60.3%	
NO	145,818	37.8%	39.7%	
Blank	17,953	4.7%		
Over	224	0.1%		385,385
				95.30%
Relating to the Tax Rebate Requirement				
YES	227,457	59.0%	65.0%	
NO	122,672	31.8%	35.0%	
Blank	35,007	9.1%		
Over	249	0.1%		385,385
				90.90%
2008 GENERAL				
Age Qualification for Governor				
YES	75,782	16.6%	17.5%	
NO	356,983	78.4%	82.5%	
Blank	22,283	4.9%		
Over	189	0.0%		455,237
				95.10%
2006 GENERAL				
Board of Regents				
YES	195,909	56.2%	61.5%	
NO	122,454	35.1%	38.5%	
Blank	30,181	8.7%		
Over	207	0.1%		348,751
				91.30%
Salary Commission				
YES	184,101	52.8%	58.6%	
NO	129,806	37.2%	41.4%	
Blank	34,709	10.0%		
Over	135	0.0%		348,751
				90.00%
Justice and Judges Retirement Age				
YES	121,418	34.8%	37.6%	
NO	201,476	57.8%	62.4%	
Blank	25,329	7.3%		
Over	528	0.2%		348,751
				92.60%

Constitutional Amendments
2004 - 2012

		W/ Blank/Spoiled Ballots	W/O Blank/Spoiled Ballots	Turnout/% Turnout Voted
Sexual Assult Against Minors				
YES	240,789	69.0%	77.2%	
NO	71,306	20.4%	22.8%	
Blank	36,421	10.4%		
Over	235	0.1%		348,751
				89.50%
Agriculture Enterprise Revenue Bonds				
YES	222,072	63.7%	71.1%	
NO	90,319	25.9%	28.9%	
Blank	36,269	10.4%		
Over	91	0.0%		348,751
				89.60%
2004 GENERAL				
Sexual Assault				
YES	282,852	65.6%	73.2%	
NO	103,745	24.1%	26.8%	
Blank	44,407	10.3%		
Over	168	0.0%		431,172
				89.70%
Public Right to Information				
YES	309,415	71.8%	79.6%	
NO	79,321	18.4%	20.4%	
Blank	42,298	9.8%		
Over	132	0.0%		431,166
				90.20%
Rights of Accused Law				
YES	229,439	53.2%	60.9%	
NO	147,257	34.2%	39.1%	
Blank	54,259	12.6%		
Over	200	0.0%		431,155
				87.40%
Felony Prosecutions				
YES	241,658	56.0%	65.2%	
NO	129,103	29.9%	34.8%	
Blank	60,336	14.0%		
Over	93	0.0%		431,190
				85.90%
*Constitutional Amendments that would have passed without counting blanks and overvotes.				
The Department was unable to confirm the turnout total for the 2004 general election.				

**Testimony of the Office of the Public Defender, State of Hawaii,
to the Senate Committee on Judiciary and Labor**

January 29, 2013

**S.B. No. 982: PROPOSING AN AMENDMENT TO ARTICLE XVII OF
THE CONSTITUTION OF THE STATE OF HAWAII**

Chair Hee and Members of the Committee:

We oppose the passage of S.B. No. 982 which seeks to end the rule of counting blank ballots as “NO” votes on the issue of proposed amendments to the state constitution. Because Article XVII currently states that a constitutional amendment shall be effective only if approved by a majority of all votes tallied upon the question, “YES” votes must outnumber both “NO” votes and blank votes combined. S.B. No. 982 seeks to change this process by providing that votes tallied on the question shall only consist of ballots upon which either “YES” or “NO” are entered.

We believe that the current process for amending the constitution should remain in effect. Provisions of the state constitution deal with very important, fundamental rights which affect all citizens. The turnout of registered voters in the last general election was a little over 40%. Thus, it is unfortunate that a minority of the electorate is currently involving itself in our elections. The electorate itself only represents a small portion of our state’s population. If, in addition to this factor, some of those who actually vote are either indifferent toward proposed constitutional amendments or feel uninformed to the extent that they refrain from voting on these measures, their blank votes should weigh against the proposed amendment.

The current provisions of the constitution assure us that if our fundamental rights are to be changed, at least a majority of the electorate who cast ballots is in favor of the change. S.B. No. 982 would do away with that assurance and could allow interest groups to easily amend the constitution to suit their needs.

Thank for the opportunity to comment on this measure.