

**SB2126**



**STATE OF HAWAII  
OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782  
[www.hawaii.gov/elections](http://www.hawaii.gov/elections)

SCOTT T. NAGO  
CHIEF ELECTION OFFICER

TESTIMONY OF THE  
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS  
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR  
ON SENATE BILL NO. 2126  
RELATING TO MEMBERS OF CONGRESS

January 24, 2014

Chair Hee and members of the Senate Committee on Judiciary and labor, thank you for the opportunity to provide comments on Senate Bill No. 2126. The purpose of this bill is to provide that if a candidate other than the incumbent is elected to Congress, and the incumbent vacates the office prior to the expiration of his or her term, then the Governor must appoint the member-elect to immediately fill the vacancy.

As it relates to the proposed amendments to HRS § 17-2, we question the constitutionality of the ability of the Governor to fill a vacancy by appointment. Specifically, Attorney General Opinion No. 83-5 (December 30, 1983) has stated that a prior version of HRS § 17-2, which provided for the Governor to fill a vacancy by appointment, was in conflict with Article I, § 2, cl. 4 of the United States Constitution, as all vacancies must be filled by election. Given this, the Legislature in 1986 amended HRS § 17-2 into its present form. Act 305, SLH 1986. There are no similar constitutional issues with HRS § 17-1, as it relates to appointments to fill vacancies in the U.S. Senate, as the Seventeenth Amendment to the U.S. Constitution specifically provides for temporary appointments to fill such vacancies.

Given that the bill addresses, in part, the timing of elections to fill vacancies, we would recommend that this committee consider amending the deadline HRS § 17-1, to ensure compliance with recent changes in state and federal law, requiring that ballots be printed and mailed to military and overseas voters significantly in advance of an election.

Specifically, on October 28, 2009, the Military and Overseas Voter Empowerment Act (MOVE Act) was signed into law. The MOVE Act amended various parts of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 USC §§ 1973ff et seq.). Among these amendments was a provision requiring states to transmit absentee ballots to uniformed and overseas voters no later than forty five days prior to a federal election. 42 USC § 1973ff-1(a)(8).

The aftermath of this change in federal law was that the Primary Election had to be moved to provide sufficient time between it and the General Election to permit legal challenges to the results of the Primary Election, proofing of the contents of the General Election ballot, printing the ballots, and finally mailing them out forty five days in advance of the election to military and overseas voters. HRS § 12-2 (Act 126, SLH 2012). Additionally, state law now similarly requires that ballots be mailed no later than forty five days prior to a state or county election. HRS § 15D-9 (Uniform Military and Overseas Voters Act) (Act 226, SLH 2012).

Another result of the MOVE Act was the need to build in longer lead times for elections that may result from vacancies, for similar administrative reasons related to nomination paper challenges, proofing of ballots, printing, and mailing out ballots forty five days in advance of the election. For example, even the amount of time to issue a proclamation for a vacancy election in newspapers statewide needs to be factored into the analysis of an appropriate lead time. HRS § 1-28.5. Currently, the state price list for statewide newspaper circulation, provides that the submission requirement for some papers is by noon four working days prior to the date of publication. SPO Price List Contract No. 10-06. In other words, if a vacancy occurs at 1:00 p.m. on a Friday, even if the proclamation is immediately drafted and submitted that same day, it might not be published until the following Friday.

As such, most recently, the vacancy law for the Office of Hawaiian Affairs, as part of a larger bill dealing with establishing a Primary Election, was amended to provide that vacancies, the term of which do not end at the upcoming General Election, must occur no later than the ninetieth day prior to the regularly scheduled Primary Election, in order for the nomination and election of trustee to occur concurrently with the regularly scheduled Primary Election and General Election. This included having the deadline to file nomination papers for such a vacancy coincide with the deadline for filing nomination papers for regularly scheduled elections. Vacancies occurring after the ninetieth day are to be filled by appointment for the remainder of the term. HRS § 17-7 (Act 287, SLH 2013).

Similarly, we would recommend that HRS § 17-1 be amended to provide for appropriate lead time between a vacancy and any election associated with filling the vacancy. Specifically, we would recommend the following changes:

**§17-1 United States senator.** When a vacancy occurs in the office of United States senator, the vacancy shall be filled for the unexpired term at the following state general election; provided that the vacancy occurs not later than 4:30 p.m. on the ~~[sixtieth]~~ fifteenth working day prior to the date specified in HRS § 12-6 for the close of filing nomination papers for regularly scheduled elections ~~[primary for nominating candidates to be voted for at the election]~~; otherwise at the state general election next following. 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 the date and time specified in HRS § 12-6 and shall be nominated and elected in accordance with this title. Pending the election, the governor shall make a temporary appointment to fill the vacancy by selecting a person from a list of three prospective appointees submitted by the same political party as the prior incumbent. The appointee shall serve until the election and qualification of the person duly elected to fill the vacancy and shall be, at the time of appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the same political party as the prior incumbent. The appointee shall be a resident of the State. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is not and has not been, for at least six months immediately prior to the appointment, a member of any political party. ~~[All candidates for the unexpired term shall be nominated and elected in accordance with this title.]~~

As for HRS § 17-2, we do not see a need to alter the current language, as it gives the Office of Elections the discretion to schedule the election at an appropriate time, after factoring in the various legal, administrative, and logistical matters associated with holding an election. It only requires that the proclamation of any election be issued at least sixty days in advance.

The Office of Elections recognizes that this is a matter for the Legislature, and as such has limited its testimony to the above noted technical comments.

Thank you for the opportunity to testify on Senate Bill No. 2126.



49 South Hotel Street, Room 314 | Honolulu, HI 96813  
www.lwv-hawaii.com | 808.531.7448 | voters@lwvhawaii.com

COMMITTEE ON JUDICIARY AND LABOR  
Friday, January 24, 2014, 10:00 a.m. Conference Room 106  
SB 2126 RELATING TO CONGRESSIONAL VACANCIES  
TESTIMONY  
Susan Irvine, Legislative Committee, League of Women Voters of Hawaii

Chair Clayton Hee, Vice-Chair Maile S.L. Shimabukuro, and Committee Members:

**The League of Women Voters of Hawaii offers comments only on SB 2126 that provides that when a candidate other than the incumbent is elected to Congress, and the incumbent vacates the office prior to the expiration of the incumbent's term, the Governor must appoint the member-elect to immediately fill the vacancy.**

This bill initially sounds like an easy way for Hawaii members of Congress to gain a slight seniority over congress people from states without such legislation. As the bill states, seniority can be a big advantage in Congress, which would be nice for our State. However, the League of Women Voters has some concerns about this bill.

The U.S. House and U.S. Senate are both elected bodies, but the way in which they are elected and the way vacancies in office are filled are not identical.

Individual states are responsible, within certain legal parameters, for how vacancies in their Federal Senate seats are filled. In Hawaii, the vacancy for the unexpired Senate term is filled at the following state general election; provided that the vacancy occurs not later than 4:30 p.m. on the sixtieth day prior to the primary for nominating candidates to be voted for at the election; otherwise the vacancy is filled at the next general election. Pending the election, the governor makes a temporary appointment to fill the vacancy by selecting a person from a list of three prospective appointees submitted by the same political party as the prior incumbent.

We think SB 2126 may make it possible for a Senator to gain a bit of seniority, but it could certainly put pressure on a legally elected Senator to leave office before their term ended.

In contrast to the Senate, vacancies in the U.S. House are filled according to Federal guidelines. The U.S. House is elected as set forth by Article I, Section 2, Clause 4 of the U.S. Constitution, which requires that all vacancies in the U.S. House of Representatives be filled **by election**. Yet SB 2126 provides for appointment of a Representative. The U.S. Constitution seems to preclude the Governor being able to appoint a Representative as outlined in SB 2126, even if the individual were elected to take office shortly.

The League of Women Voters believes in a representative democracy and in upholding the U.S. Constitution, thus we are voicing our concerns today.

Please consider these matters before voting on SB2126. Thank you for the opportunity to submit testimony.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [thirr33@gmail.com](mailto:thirr33@gmail.com)  
**Subject:** Submitted testimony for SB2126 on Jan 24, 2014 10:00AM  
**Date:** Tuesday, January 21, 2014 5:40:26 PM

---

**SB2126**

Submitted on: 1/21/2014

Testimony for JDL on Jan 24, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Arvid Tadao Youngquist	Individual	Support	Yes

Comments: Chair, Senate JUD Committee Right Honorable Members of Committee I support SB 2126 Relating to Members of Congress (regarding Governor appointing the elected member of Congress to succeed into a vacancy created in the event of unforeseeable circumstances). Please report this measure out without further consideration of amendments. Mahalo. Arvid Tadao Youngquist Registered Votr Kalihi Valley

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)