



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 5, S.D. 1, RELATING TO LEGISLATIVE VACANCIES.

BEFORE THE:

HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT

DATE: Wednesday, March 19, 2025 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 430

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Reese Nakamura, Deputy Attorney General

Chair Holt and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill.

The purpose of the bill is to establish that, if a state legislative vacancy occurs due to the death or permanent incapacitation of the prior incumbent before a primary election, but after the close of filing for that election, and the prior incumbent was the only person whose name appeared on any ballot for that seat for that election, the Governor's appointment of a replacement shall be valid for both the unexpired term and the next succeeding term.

The bill would allow the Governor to make a single appointment under limited circumstances that would cover both the unexpired term up to a general election date, and the next succeeding term following that general election.

This bill is in conflict with the legislative term requirements under article III, section 4, of the State Constitution. We further believe that a constitutional amendment would be required to achieve the situational outcome contemplated by this bill.

We acknowledge that the vacancy provision in article III, section 5, of the State Constitution defers to state law by providing that "[a]ny vacancy in the legislature shall be filled for the unexpired term in such manner as may be provided by law, or, if no provision be made by law, by appointment by the governor for the unexpired term." However, article III, section 5, applies to filling vacancies for an *unexpired* term. In

contrast, article III, section 4, establishes that a vacancy for a *new* term does not begin until an unexpired term ends on a general election day as follows:

The term of a member of the legislature shall *begin* on the day of the general election at which elected or if elected at a primary election, on the day of the general election immediately following the primary election at which elected. For a member of the house of representatives, the term shall *end* on the day of the general election immediately following the day the member's term commences. For a member of the senate, the term shall *end* on the day of the second general election immediately following the day the member's term commences. [Italics added.]

Therefore, in accordance with article III, section 4, the process to fill a vacancy cannot begin before the vacancy occurs and the vacancy for a new term cannot occur before the current term ends on a general election day. In other words, the vacancy cannot occur until the new term begins simultaneously on a general election day. Because a vacancy only starts when a new term of office begins, the Governor cannot make a vacancy appointment where no vacancy exists. Such appointment would be premature and outside of the term provisions under the State Constitution.

Finally, any change in these requirements would require a constitutional amendment in accordance with the procedures set forth in article XVII of the State Constitution.

Thank you for the opportunity to provide this testimony.

SB-5-SD-1

Submitted on: 3/17/2025 6:02:06 PM

Testimony for LMG on 3/19/2025 2:45:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacob Wiencek	Individual	Support	Written Testimony Only

Comments:

Aloha Committee Members,

I am glad to see this crucial bill continue to advance. I believe this bill will address a critical shortcoming in our elections system. Communities without legislative representation are unable to have their concerns properly addressed. We must minimize disruption to the legislative process as much as we can.

I strongly urge this Committee to SUPPORT this bill!

SB-5-SD-1

Submitted on: 3/18/2025 10:24:12 AM

Testimony for LMG on 3/19/2025 2:45:00 PM

Submitted By	Organization	Testifier Position	Testify
Gregory Misakian	Individual	Oppose	Remotely Via Zoom

Comments:

I do not support SB5 SD1.

Elections of our representatives should be by the people, not one person.

In the past, a long time ago, Hawaii had a special election to replace an empty seat, which is what many states do throughout the U.S. Then, when those in power realized they could influence elections or legislative seats, and do it right in front of the public as they watched, the laws were changed and then changed again.

I urge the Committee to not pass SB5 SD1, and ensure that we have a fair and honest democracy.

Another bill needs to be introduced in 2026 to address the need for "special elections."

Gregory Misakian

LATE

SB-5-SD-1

Submitted on: 3/18/2025 3:08:15 PM

Testimony for LMG on 3/19/2025 2:45:00 PM

Submitted By	Organization	Testifier Position	Testify
Frank Schultz	Individual	Oppose	Written Testimony Only

Comments:

I oppose this initiative, a special election should be held.