



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2021**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 890, RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

**BEFORE THE:**

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

**DATE:** Thursday, February 4, 2021 **TIME:** 1:00 p.m.

**LOCATION:** State Capitol, Via Videoconference

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**  
(For more information, contact Lori N. Tanigawa,  
Deputy Attorney General, at 586-0618)

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Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purposes of the bill are to (1) require that, beginning on January 1, 2024, of the four seats on the Board of Trustees of the Office of Hawaiian Affairs (OHA) without an island residency requirement, two shall require residency in an urban district and two shall require residency in a rural district; (2) require one urban district candidate and one rural district candidate to be elected in any election cycle; (3) limit voting for board of trustee seats with a residency requirement to voters who have residency on the same island or in the same district; and (4) change the term of the member who receives the lowest number of votes in the 2022 general election to serve a term of two years and a term of four years after the general election of 2024.

Instead of members being elected during an at-large statewide election in which all registered voters are permitted to vote to fill all of the seats on the OHA ballot, the bill would provide for an election in which voters may only vote for the OHA candidates running in the rural or urban district and on the islands of Hawaii, Maui, Oahu, Maui or Lanai, and Kauai or Niihau, in which the voter claims residency. The Department is concerned that this process may fall short of the one-person, one-vote standard established by the U.S. Supreme Court in *Reynolds v. Sims*, 377 U.S. 533 (1964),

which requires that states make honest and good faith efforts to construct voting districts with equal numbers of persons, as practicable. Due to disparities in population sizes among the islands and congressional districts, we believe that the resulting deviations from population equality will likely result in a violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

If the Legislature decides to proceed with this bill, the Department recommends that the bill be amended to address the Department's additional concerns, as follows:

Section 3 of the bill would change the island residency requirements for the islands of Molokai and Kauai. Instead of requiring that a member reside on the island of Molokai, the bill provides that a member may reside on Molokai or Lanai; and instead of requiring that a member reside on the island of Kauai, the bill provides that a member may reside on Kauai or Niihau. The bill then provides that, of the remaining four members, two shall be residents of an urban district, which generally consists of urban Oahu, and two shall be residents of a rural district, which consists of the rest of Oahu and the remaining islands. Because the bill eliminates the guarantee that the islands of Molokai and Kauai have a member, the Department is concerned that the bill violates article XII, section 5 of the Hawaii Constitution, which provides in part that, "[t]here shall be not less than nine members of the board of trustees; provided that each of the following Islands have one representative: Oahu, Kauai, Maui, Molokai and Hawaii." The Department therefore recommends that the bill be amended to ensure that the islands of Oahu, Kauai, Maui, Molokai and Hawaii each have at least one member.

The Department notes that the bill does not address how the nine-member OHA board will transition to the new board after part I of the bill goes into effect on January 1, 2024. For example, it is unclear when the terms of all four of the urban and rural district members will commence and which ones will be staggered. Nor is it clear when the terms of the then-current members whose terms extend beyond the 2024 general election will end. Lastly, we note that the intent of the bill on page 11, lines 3 to 8, is unclear and requires further clarification.

Even with the amendments, the Department is concerned that only allowing voters to vote for the OHA candidates running in the rural or urban district and on the

islands of Hawaii, Maui, Oahu, Maui or Lanai, and Kauai or Niihau, in which the voter claims residency, will likely fall short of the one person, one vote standard, and therefore, the Department respectfully asks the Committee to hold this bill.

**SB-890**

Submitted on: 2/3/2021 3:12:20 AM

Testimony for HWN on 2/4/2021 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Juanita Brown Kawamoto	Individual	Support	No

Comments:

Aloha mai kakou,

I support this bill and the intent to better qualify representation of candidates in their respective counties and districts, inclusive of those residents who vote for candidates from their respective counties and districts.

Me ka mana'o nui,

Juanita Mahienaena Brown Kawamoto