

Testimony on Bill 100 (2007)
Relating to Temporary Vacancies on Boards, Commissions or Committees

January 9, 2008

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Madam Chair and Members of the
Committee on Executive Matters:

My name is Henry H. C. Lau and I am testifying on behalf of a group of residents of Niu Valley who have appealed the decision of the Director, Department of Planning and Permitting to allow the Honolulu Waldorf School to build a high school in a residential neighborhood in Niu Valley.

The Zoning Board of Appeals (ZBA), which is to conduct a contested case hearing on our petition, consists of five members. Three of the members have recused themselves from the hearing, leaving the ZBA without a quorum. Bill No. 100 would authorize the Mayor to appoint temporary replacements.

There are several concerns about the bill that we wish to bring to your attention. They are as follows:

1. Sub-paragraph (b) of the proposed new Section 3-1.3 limits the number of temporary vacancies to "...the minimum number of members necessary to constitute a quorum to adjudicate a contested case."

In the case of the ZBA, this would authorize the Mayor to appoint only one member. This limitation would be of a severe disadvantage to the petitioners. It would mean that the petitioners must obtain a unanimous decision from the quorum of three members in order to prevail. Furthermore, Section 21-6 of the ZBA Administrative Rules provides that an appeal would be denied if no decision is reached at two separate meetings for which a quorum is present.

We suggest that sub-paragraph (b) be deleted and the number of vacancies to be filled be left to the discretion of the Mayor, as provided by sub-paragraph c. Fairness would dictate that the appellants be allowed to present arguments before a full board of five members.

2. We are concerned over what appears to be a conflict of interests if the bill is passed without amendment. Our concern stems from the fact that the appellee, the DPP Director, is a member of the Mayor's cabinet, and the temporary members, if appointed solely by the Mayor, could result in appointees who will support the Administration's views.

We believe the Mayor should be kept at arm's length in making appointments for contested case hearings involving a cabinet member. This can be achieved by amending the bill to require the Mayor to make appointments from a list of names provided by the City Council. That would give the Mayor a choice and avoid any appearance of a conflict of interests.

We suggest the following language be added as a new subparagraph:

"In any contested case hearing involving a member of the mayor's cabinet the mayor shall fill temporary vacancies from a list of names provided by the city council. The list shall consist of at least five names for each vacancy."

We would like to emphasize that this suggested amendment should in no way reflect upon the present Mayor as we have faith that his appointees would be able to serve fairly and impartially. However, because the proposed procedure will be incorporated as an ordinance and will apply to future Mayors, a check and balance mechanism is needed to ensure that any person appealing a decision of a City agency would not be put at a disadvantage .

Thank you for the opportunity to offer this testimony.



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