



**STATE OF HAWAII  
OFFICE OF ELECTIONS**

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SCOTT T. NAGO  
CHIEF ELECTION OFFICER

TESTIMONY OF THE  
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS  
TO THE HOUSE COMMITTEE ON FINANCE  
ON SENATE BILL NO. 1350, SD 1, HD 1  
RELATING TO STATE GOVERNMENT

April 7, 2021

Chair Luke and members of the House Committee on Finance, thank you for the opportunity to provide comments on Senate Bill No. 1350, SD 1, HD 1. This bill establishes public notice requirements for short form public notices of reapportionment plans; temporarily amends the start of candidate filing for the 2022 Elections; defines “permanent resident” for legislative reapportionment purposes; and authorizes and appropriates funds for the reapportionment commission to retain outside counsel.

As of March 15, 2021, the U.S. Census Bureau has indicated that data would be available no sooner than mid-August. This delay impacts the Reapportionment Commission’s ability to conduct redistricting, which in the past received the data by approximately April following the decennial census, and published the final plan within 150 days of the Commission being constituted, pursuant to the Hawaii State Constitution.

This delay may cause the district lines for U.S. Representative and the State Legislature and the subsequent work necessary to update the statewide voter registration system to not be completed by the first working day of February of the election year when the candidate filing period is scheduled to begin pursuant to HRS § 12-2.5. We would also note that the candidate filing deadline, on the first Tuesday in June, cannot be extended because of the federal 45-day deadline to mail uniformed and overseas voters their ballot. At the close of candidate filing, election officials proof, print, and prepare the ballots for mailing prior to the 45th day.

Thank you for the opportunity to provide comments on Senate Bill No. 1350, SD 1, HD 1.



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1350, S.D. 1, H.D. 1, RELATING TO STATE GOVERNMENT.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Wednesday, April 7, 2021

**TIME:** 1:30 p.m.

**LOCATION:** State Capitol, Room 308, Via Videoconference

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Lori N. Tanigawa, Deputy Attorney General

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Chair Luke and Members of the Committee:

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

The purposes of this bill are to (1) establish public notice requirements for short form public notices of reapportionment plans; (2) temporarily amend the start of filing nomination papers for the 2022 election; (3) define “permanent resident” for legislative reapportionment purposes; and (4) authorize and appropriate funds for the Reapportionment Commission to retain outside legal counsel.

Page 6, lines 9-12 of the bill provides that, “[f]or purposes of legislative reapportionment, in determining the permanent resident population, a ‘permanent resident’ is as defined by *Solomon v. Abercrombie*, 126 Haw. 283, 270 P.3d 1013 (2012).” However, *Solomon* did not define the term “permanent resident”; rather, it determined that non-permanent residents should be excluded from the permanent resident population base. In *Solomon*, the Hawai‘i Supreme Court entertained two challenges to the validity of the 2011 Final Reapportionment Plan, both of which contended the plan was invalid because the population base used by the Reapportionment Commission excluded some, but not all of the nonresident college students and nonresident military personnel and their dependents. 126 Haw. 283, 293, 270 P.3d 1013, 1023. Reaffirming that the Hawai‘i State Constitution mandates “only residents having their domiciliary in the State of Hawai‘i may be counted in the population base for the purpose of reapportioning the legislative districts,” the Court

concluded that the failure to exclude non-permanent residents from the population base was an error that rendered the reapportionment plan constitutionally invalid. *Id.* at 292-293, 270 P.3d at 1022-1023. The Department therefore recommends the bill be amended by either deleting the proposed definition or by deleting the reference to *Solomon* and clarifying the definition of the term “permanent resident.”

Section 5 of the bill proposes to amend section 28-8.3, HRS, to allow the Reapportionment Commission to hire its own attorneys without the approval or participation of the Attorney General or the Governor, and section 6 of the bill appropriates funds from the general revenues of the State of Hawai‘i for the Reapportionment Commission to support its expenses, including the retention of outside legal counsel. The Attorney General serves as legal counsel to the State of Hawai‘i, which legal obligation includes providing legal services to state entities. Because it is the largest legal institution in the State, with a number of diverse divisions, the Attorney General is best suited to provide legal advice to its state clients on a broad array of matters, and in a cost effective and conflict-free manner. Therefore, as a general matter, state entities should be advised by deputy attorneys general.

By contrast, private attorneys retained by the Reapportionment Commission would not possess the necessary breadth of knowledge and experience available within the Department. Additionally, because state entities are regulated by a variety of laws not applicable in private practice – including the Procurement Code, the Sunshine Law, and the Uniform Information Practices Act – the Attorney General’s expertise in these areas would be difficult for private attorneys to duplicate, and certainly not without additional expense. Finally, because deputy attorneys general are separate and apart from the entities they represent, they are insulated from political issues that may arise. This insulation permits the Department to provide objective, conflict-free and high-quality legal counsel.

The Department is also unique in its ability under the law to undertake concurrent representation of multiple state entities that may have conflicting interests as long as it establishes appropriate firewalls between those attorneys and takes steps to ensure that no prejudice is suffered by the clients, something private attorneys are not able to

do under the Hawaii Rules of Professional Conduct. The Department has done this in past cases to ensure all clients are vigorously, and separately, represented. We have provided, and will continue to provide, vigorous and objective legal representation to the Reapportionment Commission.

Notwithstanding the prohibition against employing or retaining private attorneys, state entities may submit a waiver request to the Attorney General pursuant to section 28-8.3, HRS. Under this provision, the Attorney General may determine that circumstances exist whereby representation by private attorneys is appropriate. In such circumstances, an entity may retain or employ its own attorney, provided that the Governor also waives section 28-8.3, HRS.

For the foregoing reasons, the Department respectfully requests that the bill be amended to delete Section 5 in its entirety. The Department further requests that page 10, lines 14-18, of the bill be amended as follows:

“SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$            or so much thereof as may be necessary for fiscal year 2021-2022 for the reapportionment commission to support its expenses~~[, including the retention of outside legal counsel].~~”

Thank you for the opportunity to provide comments.

Statement Before The  
**HOUSE COMMITTEE ON FINANCE**

Wednesday, April 7, 2021

1:30 PM

Via Video Conference, Conference Room 308

In consideration of  
**SB 1350, SD1, HD1**  
**RELATING TO STATE GOVERNMENT.**

Chair LUKE, Vice Chair CULLEN, and Members of the Finance Committee

Common Cause Hawaii provides comments regarding SB 1350, SD1, HD1, which (1) establishes public notice requirements for short form public notices of reapportionment plans, (2) temporarily amends the start of filing nomination papers for the 2022 election, (3) defines "permanent resident" for legislative reapportionment purposes, and (4) authorizes and appropriates funds for the reapportionment commission to retain outside legal counsel.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. We work to promote transparency in our legislative processes and reforms for a more fair and transparent redistricting process.

Common Cause Hawaii has grave concerns over the process by which proposed SD1 of SB 1350 was introduced. It is an entirely different bill from the original SB 1350. The public notice for the hearing on the proposed SD1 of SB 1350 in the joint Senate Government Operations, Ways and Means, and Judiciary Committees was also less than 24 hours. Further, the title of the bill "Relating to State Government" is so vague as not to give a person notice that the proposed SD1 will be addressing reapportionment. In sum, these raise issues of constitutionally questionable gut and replace. With this being stated, Common Cause Hawaii recognizes the need to address the concerns caused by delays in the U.S. Census data being related to the states and the Hawaii State Constitution mandates regarding reapportionment found in Article IV, Reapportionment.

Common Cause Hawaii comments that Section 2 of SB 1350, SD1, HD1 at page 4, lines 20-21, and page 5, lines 1-11, provides that notices of the final reapportionment plan, pursuant to Hawaii Revised Statutes § 25-2, may be by short-form with online and physical viewing locations. Common Cause Hawaii notes that the 2011 Reapportionment Commission's final plan provided comprehensive notice to the public with "four to five pages of legal descriptions without maps" in major newspapers. See [https://elections.hawaii.gov/wp-content/uploads/2015/03/2012ReapportionmentFinalReport\\_2012\\_03\\_30.pdf](https://elections.hawaii.gov/wp-content/uploads/2015/03/2012ReapportionmentFinalReport_2012_03_30.pdf) at pages 27-28. All maps and legal descriptions were then posted on-line and copies of maps were made available for public inspection at State and County Election Offices and every regional library in every county. *Id.*

Common Cause Hawaii supports the public notice that was provided in 2011, as it allows people without access to computers or who do not have broadband to review the legal descriptions of the maps from newspapers to determine if they should proceed to a government facility to view them. However, Common Cause Hawaii recommends that the public notice provided by the 2021 commission include the reapportionment maps

themselves instead of the legal descriptions of the maps so that the public may decide if they want to view larger maps in more prominent detail on-line or physically at libraries or government facilities, given that not everyone has a computer or broadband.

This recommendation was accepted in [Standing Committee Report No. 762](#) for proposed SD1, “[a]llowing public notice in a short form for proposed, revised, and final versions of the reapportionment plan and reapportionment maps”. Therefore, Common Cause requests that SB 1350, SD1, HD1 be amended to specifically include that the maps themselves be published in the short form notice in newspapers.

Common Cause Hawaii further notes that Hawaii State Constitution, Article IV, Section 2 (Reapportionment Commission) provides that:

A reapportionment commission shall be constituted on or before May 1 of each reapportionment year [2021] and whenever reapportionment is required by court order. . . .

Not more than one hundred fifty days from the date on which its members are certified, the commission shall file with the chief elections officer a reapportionment plan for the state legislature and a reapportionment plan for the United States congressional districts which shall become law after publication as provided by law. . . .

Given that the U.S. Census data will not be available to states until September 30, 2021, this 150-day requirement after the certification of the reapportionment commission to have reapportionment maps will be difficult to timely satisfy, as the commission will initially be constituted on May 1, 2021. [See https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html](https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html). It may be necessary to have court intervention to settle when maps are drawn.

Thank you for the opportunity to provide comments on SB 1350, SD1, HD1. If you have further questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii