



**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 SENATE COMMITTEE ON GOVERNMENT OPERATIONS,
THE SENATE COMMITTEE ON WAYS AND MEANS, AND
THE SENATE COMMITTEE ON JUDICIARY
ON SENATE BILL NO. 1350, PROPOSED SD 1
RELATING TO STATE GOVERNMENT

March 4, 2021

Chair Morkiwaki, Chair Dela Cruz, Chair Rhoads, and members of the Senate Committees on Government Operations, Ways and Means, and Judiciary, thank you for the opportunity to provide comments on Senate Bill No. 1350, proposed SD 1. This bill defines “permanent resident” for legislative reapportionment purposes, as a person whose usual residence is in the State as defined by the US Census Bureau; establishes public notice requirements for short form public notices; and appropriates an unspecified amount to allow the Commission to obtain outside legal counsel with funds expended by the Office of Elections.

On February 12, 2021, we were notified by the US Census Bureau that the redistricting data to conduct the 2021 Reapportionment would be delayed until September 30, 2021 as a result of the COVID-19 pandemic. This delay impacts the Reapportionment Commission’s ability to conduct redistricting, which in the past receive the data by approximately April following the decennial census; and publish the final plan within 150 days of the Commission being constituted pursuant to the Hawaii State Constitution.

This delay may also impact the conduct of the 2022 Elections. Candidate filing statutorily begins on the first working day of February of the election year. The district lines for US Representative and the State Legislature should be in place before a candidate is issued a nomination paper ensuring the candidate meets the residency requirements as well as collects signatures from voters in the proper district.

As such, we would propose that this bill amend HRS §12-2.5 by delaying the start of candidate filing to the first working day in March, for the 2022 Election only, in anticipation of these delays. We would also like to 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 will 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, proposed SD 1.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
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To: Senate Committees on Government Operations, on Ways and Means,
and on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 4, 2021, 4:00pa.m.
Via Videoconference

Re: Testimony on S.B. No. 1350, proposed S.D. 1
Relating to State Government

Thank you for the opportunity to submit testimony on the S.D. 1 version of this bill, which would define "permanent resident" for legislative reapportionment purposes, establish reapportionment public notice requirements, and appropriate funds. The Office of Information Practices (OIP) had concerns about S.B. 1350 as introduced but has no position on the proposed S.D. 1.

Statement Before The
SENATE COMMITTEE ON GOVERNMENT OPERATIONS
and
SENATE COMMITTEE ON WAYS AND MEANS
and
SENATE COMMITTEE ON JUDICIARY
Thursday, March 4, 2021
4:00 PM
Conference Room 016 and Videoconference

SB 1350, PROPOSED SD1
RELATING TO STATE GOVERNMENT.

Chairs MORIWAKI, DELA CRUZ, and RHOADS, Vice Chairs DELA CRUZ, KEITH-AGARAN,
and KEOHOKALOLE, and Members of the Senate Government Operations,
Ways and Means, and Judiciary Committees

Common Cause Hawaii provides comments regarding SB 1350, proposed SD1.

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 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 and the Hawaii State Constitution mandates regarding reapportionment found in Article IV, Reapportionment.

Common Cause Hawaii comments that Section 2 of proposed SD1, at page 4, lines 15-21, and page 5, lines 1-5, 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 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 access.

Common Cause Hawaii comments that Section 3 of proposed SD1, at page 5, lines 15-18, provides that “permanent resident” is defined according to the U.S. Census’s usual residence concept. The Census’s usual residence appears to be more expansive than the Hawaii Supreme Court’s determination of “permanent resident”. Cf. <https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2020-Census-Residence-Criteria.pdf> #10 College Students and #13 U.S. Military Personnel versus Solomon v. Abercrombie, which states that “permanent resident” means that only “residents having their domiciliary in the State of Hawai‘i may be counted in the population base for the purpose of reapportioning legislative districts.” 126 Hawai‘i 283, 270 P.3d 1013, 1022 (2012) (citing Citizens for Equit. & Resp. Gov't v. County, 108 Hawai‘i 318, 322, 120 P.3d 217, 222 (2005) (Domicile means expressing a present intent to remain within Hawaii for more than a transitory period with an intent to establish an abode, make Hawaii the seat of his/her property, and exercise his/her civil and political rights in Hawaii)). Common Cause Hawaii concurs with the more expansive Census Bureau definition to ensure that everyone is fairly represented.

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>. It may be necessary to have court intervention to settle when maps are drawn.

Thank you for the opportunity to provide comments regarding SB 1350, proposed SD1. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



TESTIMONY IN SUPPORT OF SB1350 SD1, RELATING TO STATE GOVERNMENT
Hearing, March 4, 2021

Fully support SB1350, SD1 which adopts the recommendations of the 2011 Reapportionment Commission in their report, "State of Hawaii 2011 Reapportionment Commission Final Report and Reapportionment Plan, 2012 Supplement." The recommendations, if adopted, should help to make clear who, among our residents, are to be considered in calculation of the population of the State of Hawaii and also help to make the processes efficient utilizing modern technology for communications and posting of hearings and other information.

Regarding Section 4 of the bill that would provide appropriations to retain outside legal counsel, fully support, but recommend this section be amended to state the following to assure appropriations for the entire work of the Commission to include the outside legal counsel:
"SECTION 4. 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 Commission to support its expenses to include retaining ~~retain~~ outside legal counsel.

The expenditures as of March 19, 2012 reported by the Reapportionment Commission was \$970,246.12. With inflation of 1.51% per year between 2011 and today, producing a cumulative price increase of 16.29%, funding for the 2021 Reapportionment Commission should be at least \$982,000, plus funds for a private counsel. While I acknowledge that the state is short of funds, funding a private counsel is necessary for the reasons provided by the 2011 Commission:

"The timely and in-depth understanding of reapportionment issues is critical given the very short time frame in which the Commission operates, namely the Constitutional requirement that a proposed plan be adopted within 100 days of convening and that a final plan be adopted and filed within 150 days of convening. The Commission does not believe that an assigned deputy whose services are shared with other agencies and who has limited knowledge of reapportionment can provide appropriate representation during the compressed reapportionment schedule mandated by the Hawaii Constitution and statutes.

The Commission believes that the independence of its counsel is as important as counsel's expertise in the subject matter, particularly when litigation involving other State officials or entities creates the potential for a conflict of interest. The Commission recognizes that a government's legal department may represent more than one government agency in a lawsuit. However, in a case such as the Solomon lawsuit, the Governor was a named Respondent and concurrently was the appointing authority of the Attorney General, who in turn appointed deputies, including those assigned to the Reapportionment Commission. Although the Commission initially did not object to the Department's representation of two Respondents, the Commission's concern arose when the Governor's position was known to be adverse to the position and interests of the Commission.

The Commission believes that having counsel that is independent of other government entities is necessary to ensure counsel's appropriate focus and independence for the limited period of reapportionment."

Mahalo for the opportunity to comment on this measure.

SB-1350

Submitted on: 3/4/2021 7:55:09 AM

Testimony for GVO on 3/4/2021 4:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments:

Strongly Oppose

SB-1350

Submitted on: 3/3/2021 7:12:52 PM

Testimony for GVO on 3/4/2021 4:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Comments	No

Comments:

Comments

This bill seems to be appropriate considering the census delay. My concern is for any reapportionment that would be inequitable or provide a challenge for residents in any way.