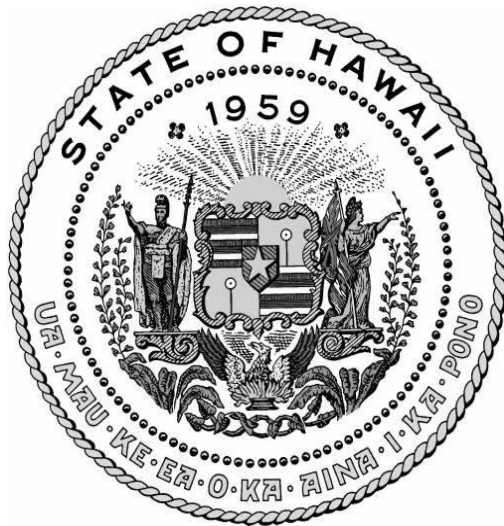


STATE OF HAWAII
2011 REAPPORTIONMENT COMMISSION
FINAL REPORT AND REAPPORTIONMENT PLAN

2012 SUPPLEMENT

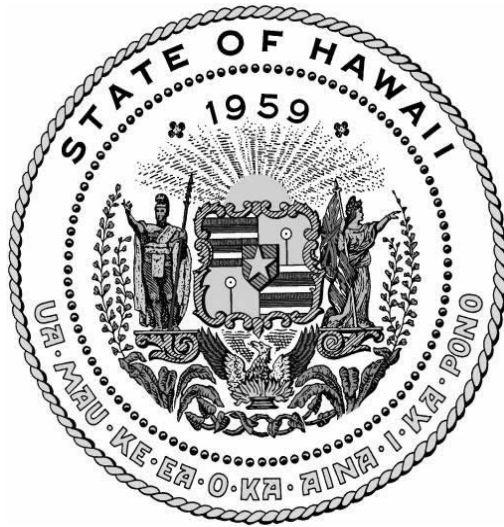


Submitted to
The Twenty-Sixth Legislature
Regular Session 2012

Submitted by
Office of Elections
March 30, 2012

STATE OF HAWAII
2011 REAPPORTIONMENT COMMISSION
FINAL REPORT AND REAPPORTIONMENT PLAN

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Submitted to
The Twenty-Sixth Legislature
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Submitted by
Office of Elections
March 30, 2012

Victoria S. Marks
Chair

Calvert Chipchase IV

Clarice Hashimoto

Harold Masumoto

Elizabeth Moore

Dylan Nonaka

Lorrie Lee Stone

Anthony Takitani

Terry Thomason



STATE OF HAWAII
2011 REAPPORTIONMENT COMMISSION

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782

March 30, 2012

The Honorable Shan S. Tsutsui, President, and Members of the Senate
The Honorable Calvin K.Y. Say, Speaker, and Members of the House of Representatives
Twenty-Sixth Legislature, State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say, and Members of the Twenty-Sixth Legislature:

The 2011 Reapportionment Commission submits the 2012 Supplement to its Final Report submitted to you pursuant to law on December 29, 2011. On that date, we advised you that the 2011 reapportionment plan was subject to action by the Hawaii Supreme Court in the *Solomon* and *Matsukawa* lawsuits.

The 2012 Supplement reports the Commission's work to comply with the Court's orders and a new legislative reapportionment plan to govern the election of the members of the next five legislatures of the State of Hawaii, commencing with the 2012 Elections. The 2011 Congressional reapportionment plan was not affected by the lawsuit and remains as reported to you in December 2011.

Very truly yours,

JUDGE VICTORIA S. MARKS (RET.),
Chair

CALVERT CHIPCHASE IV
CLARICE V. HASHIMOTO
HAROLD S. MASUMOTO
ELIZABETH N. MOORE
DYLAN W. NONAKA

/s/ Lorrie Lee Stone
LORRIE LEE STONE

ANTHONY P. TAKITANI
TERRY E. THOMASON

STATE OF HAWAII
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**STATE OF HAWAII
2011 REAPPORTIONMENT COMMISSION**

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EXECUTIVE SUMMARY

In October 2011, two lawsuits were filed against the Commission, *Malama Solomon, et al., vs. Neil Abercrombie, et al.*, No. SCWP-11-0000732 and *Michael J. Matsukawa vs. State of Hawai'i 2011 Reapportionment Commission, et al.*, No. SCWP-11-000741. Petitioners in both lawsuits alleged that the Commission improperly calculated the permanent resident population of the State of Hawaii and its basic island units by not extracting enough “non-permanent residents” when it reapportioned the State legislature.

On January 4, 2012, the Hawaii Supreme Court invalidated the 2011 legislative reapportionment plan reported to the Legislature on December 29, 2011, and ordered the Commission to prepare and file a new reapportionment plan for the State legislature based on a population base consisting of permanent residents only. See Appendix A. The Commission reconvened on January 20, 2012 to begin work on revising the population base for reapportionment and redistricting. The Congressional reapportionment plan adopted by the Commission on September 26, 2011 was not affected by the Hawaii Supreme Court lawsuits.

The Commission met eight times in 2012 including reconvened meetings and two public hearings, to approve a methodology for extracting non-permanent residents from the U.S. Census population, to receive public comments, and to consider recommendations of its Technical Committee. In addition to preparing new district maps and descriptions, the Commission also designated 12 of the 25 State Senate seats that will have two-year terms in the 2012 Elections. See Appendices B, C, and D.

This executive summary provides an overview of the above actions by the Commission and recommendations described more fully in the Supplement. Throughout the Commission’s deliberations in 2011-2012, all proposed maps, meeting information, resource materials and reports were posted online at the Reapportionment website. An updated list of reports and resources that can be viewed on the Reapportionment website is attached. Please visit the website at <http://hawaii.gov/elections/reapportionment>.

STATE LEGISLATIVE DISTRICTS

As ordered by the Court, the Commission revised its population base for legislative reapportionment as described in Appendices B, C, and D of this Supplement. On March 8, 2012, the Commission adopted a new 2011 legislative reapportionment plan. See Appendices G and H.

To revise the permanent resident population base for reapportionment, the Commission obtained additional information from military and university data agencies, including residence addresses or extended zip codes for non-permanent military and student residents. Names or other identifying information were not included in the data received by the Commission.

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The Commission determined the permanent resident population of the State of Hawaii and each basic island unit using a methodology approved by the Commission on January 30, 2012. Briefly, non-permanent military and student residents were extracted from the U.S. Census population of the census blocks of each basic island unit: (1) by residence address or extended zip code where sufficient data was provided by the military and university data agencies, and (2) by disaggregation where there was insufficient data to pinpoint the census block in which the non-permanent resident resided. The methodology is described in Appendix D.

Using the approved methodology, the permanent resident populations for the State of Hawaii and the basic island units were determined as follows:

Location	Census pop.	Less Non-Permanent Resident Population	Permanent Resident Population
Oahu	953,207	(106,618)	846,589
Hawaii	185,079	(1,483)	183,596
Maui	154,924	(380)	154,544
Kauai	67,091	(286)	66,805
State of Hawaii	1,360,301	(108,767)	1,251,534

Based on the permanent resident population figures above, and using the Huntington-Hill Method of Equal Proportions, the Commission allocated the 25 seats of the Senate and the 51 seats of the House of Representatives among the four basic island units as follows:

<u>Basic Island Unit</u>	<u>Senate</u>	<u>House</u>
Oahu	17 seats	35 seats
Hawaii	4 seats	7 seats
Maui	3 seats	6 seats
Kauai	1 seat	3 seats

After allocating the members of the State legislature among the four basic island units, the Commission redrew district boundaries in each of the four basic island units. The Commission considered the nature and extent of the population deviations among the districts in making its final legislative reapportionment plan, as discussed below.

Under the method of measuring legislative representation used in Burns v. Gill, 316 F. Supp. 1285, 1296 (D. Haw. 1970), the maximum statewide percentage deviation in the Commission's allocation is 5.62%. The basic island unit percentage deviations are: Oahu - 1.14%, Hawaii +2.52%, Maui +2.88%, and Kauai -2.74%.¹

¹ These percentages are the percentage deviations from the statewide average number of permanent residents per legislator (both senators and representatives combined) of each basic island unit's average number of permanent residents per legislator (both senators and representatives combined).

Deviations Within Basic Island Units

The deviations in population between districts within each basic island unit (“BIU”) were determined. For example, the difference between the largest and smallest Senate districts on Oahu was 9.53%, and the difference between the largest and smallest House districts on Hawaii was 7.21%. The largest deviation for Senate districts in a BIU is 9.90% (Maui), and the largest deviation for House districts in a BIU is 9.45% (Maui). More detail is shown in the Commission’s Principal Tasks section of this report.

For each basic island unit, the deviations are:

<u>Basic Island Unit</u>	<u>Senate</u>	<u>House</u>
Oahu	9.53%	8.89%
Hawaii	5.56%	7.21%
Maui	9.90%	9.45%
Kauai	0.0%	3.96%

Maximum Deviation Between Districts in Each House

The maximum statewide deviation among Senate Districts is 44.22%. Senate District 8 on Kauai is +33.44% and Senate District 1 on Hawaii is -10.78%.

The maximum statewide deviation among House Districts is 21.57%. House District 5 on Hawaii is underrepresented by +10.55% and House District 15 on Kauai is overrepresented by -11.02%.

Note that in reporting deviations, the plus sign (+) shows underrepresentation and the minus sign (-) shows overrepresentation by the percentage following the sign. More detail is shown in the Commission’s Principal Tasks section of the Supplement.

Staggering of Senate Seats

These twelve new Senate Districts were designated by the Commission to have two-year terms in the next election:

Hawaii:	Senate Districts 1, 3, and 4
Maui	Senate Districts 6 and 7
Oahu	Senate Districts 12, 16, 17, 18, 21, 23, and 24

The remaining Senate districts will have four-year terms in the 2012 election. More detail is provided in the Commission’s Principal Tasks section of the Supplement and Appendices B and C, portions dated March 8, 2012.

Recommendations for Future Reapportionment

The 2011 Reapportionment Commission offers the following recommendations based on its work in 2012, discussed further in the Recommendations section of this report:

1. *The 2011 Reapportionment Commission recommends that the legislature initiate changes in law to clarify the term “permanent residents” for reapportionment.*
2. *The 2011 Reapportionment Commission recommends that future Commissions obtain private outside counsel to be funded by the legislature.*
3. *The 2011 Reapportionment Commission recommends that the legislature initiate changes in law to clarify whether or not a state senate election held to fill a vacancy created when an incumbent resigns is a “regular election” for the purpose of computing Senate staggered terms.*
4. *The 2011 Reapportionment Commission recommends that the Legislature and Chief Election Officer consider methods to streamline public notice of the proposed and final plans to utilize advances in technology for viewing plans online and at public offices around the State in conjunction with publication.*

In addition, recommendations on reapportionment procedures submitted by the Kauai Advisory Council and Common Cause Hawaii are included in Appendix E. Recommendations from the Oahu and Maui Advisory Councils were included in the Final Report of the 2011 Reapportionment Commission published December 29, 2012.

REPORTS AND RESOURCES ON THE REAPPORTIONMENT WEBSITE

***Reports marked with an asterisk are included in this Supplement or in the Appendix section.**

All reports available at <http://hawaii.gov/elections/reapportionment>:

2011 Congressional Reapportionment Plan adopted by the 2011 Reapportionment Commission on September 26, 2011.

2011 Legislative Reapportionment Plan adopted by the 2011 Reapportionment Commission on March 8, 2012.*

2011 Reapportionment Commission Members*

2011 Advisory Councils*

Introduction Guide to Redistricting (04-11-11)

Criteria for Reapportionment

Rules of the 2011 Reapportionment Commission

Frequently Asked Questions

Reapportionment Timeline Revised

Reapportionment Online Maps - Population Changes 2000-2010

Census Block Maps with Population

Minutes of 2011 and 2012* Reapportionment Commission Meetings (agendas and other material available online)

Power Point presentations (slides):

Presentation of the Technical Committee (8-3-11)

Staff Presentation of Permanent Resident Population Adjustment (8-17-11)

Staff Presentation on Public Viewing of Proposed Plan (8-17-11)

Staff Presentation on Permanent Resident Population Adjustment – Alternative
Extraction Methods (9-6-11 & Updated 9-19-11)

Presentation of the Technical Committee – 2011 Legislative Reapportionment Plan
(9-23-11)

Presentation of the Technical Committee – 2011 Legislative Reapportionment Plan
Overview and Senate Staggered Terms (9-26-11)

Senate Staggered Terms – Proposed Correction (9-27-11)

Senate Staggered Terms – Proposed Correction Revised (9-30-11)

Staff Presentation of Revised Senate Staggered Terms (10-5-11)

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Power Point presentations, continued:

- Reapportionment Staff Presentation on Permanent Resident Population Adjustment Following Hawaii Supreme Court Decision (1-20-12)*
- Reapportionment Staff Presentation on Processing Student and Military Non-Permanent Resident (NPR) Data (1-30-12)*
- Reapportionment Staff Presentation on Permanent Resident Population Adjustment and Technical Committee Recommendation for Legislative Reapportionment Plan (2-15-12)*
- Presentation of the Technical Committee – Proposed Legislative Reapportionment Plan (2-27-12)*
- Presentation of the Technical Committee – 2011 Legislative Reapportionment Plan Overview and Senate Staggered Terms Calculations (3-8-12)*
- Senate Staggered Terms As Adopted (3-8-12)*

Reapportionment Staff Reports

- Glossary
- Summary-Proposed Congressional Plan (8-5-11)
- Summary-Proposed Senate Plan (8-5-11)
- Summary-Proposed House Plan (8-5-11)
- Non-Permanent Population Assessment (8-16-11)
- Permanent and Non-Permanent Military Residents (8-16-11)
- Military Contacts Report (8-17-11)
- Alternative Extraction Methods (9-6-11)
- Summary of Kansas Census Population Adjustment (9-12-11)
- Summary of Military Privatization Housing Initiative (MPHI) and Non-Military Residents Living on Military Installations (9-16-11)
- Assessment of Non-Permanent Population Adjustment - Final
- Summary of Congressional Plan Adopted by Commission (9-26-11)
- Summary of Senate Plan Adopted by Commission (9-26-11)
- Summary of House of Representatives Plan Adopted by Commission (9-26-11)
- Non-Permanent Population Extraction for 2011 Reapportionment and Redistricting - Addendum (3-00-12)*
- Summaries of Legislative Reapportionment Plan Adopted by Commission (3-8-12)*

Information - 1991 and 2001 Reapportionment Commissions

Federal, State and County Laws Governing Redistricting

[Link to U.S. Census Bureau](#)

[Link to Hawaii Statewide GIS Program](#)

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MEMBERSHIP OF THE COMMISSION AND THE ADVISORY COUNCILS

1. The Commission.

The 2011 Reapportionment Commission (Commission) was appointed as follows:

<i>Appointing Authority</i>	<i>Commission Members Appointed</i>
President of the Senate	Lorrie Lee Stone Anthony Takitani
Speaker of the House of Representatives	Clarice Y. Hashimoto Harold S. Masumoto
Minority party leader, the Senate	Calvert Chipchase IV Elizabeth Moore
Minority party leader, the House of Representatives	Dylan W. Nonaka Terry E. Thomason

All of the above members were appointed on or about May 1, 2011. On May 1, 2011, the Hawaii Supreme Court selected the Honorable Victoria S. Marks (Ret.) as the ninth member and chairperson of the Commission. Scott T. Nago, Chief Election Officer of the State of Hawaii, served as non-voting secretary to the Commission.

2. The Advisory Councils.

In 2011, the appointing authorities also appointed one member to each of the basic island unit's apportionment advisory councils, as follows:

<i>Appointing Authority</i>	<i>Advisory Council Members Appointed</i>
President of the Senate	Ka'aina Hull – Kauai Richard Ha – Hawaii Nathaniel Kinney – Oahu Christopher Chang – Maui
Speaker of the House of Representatives	Randall Nishimura – Kauai Glenn Ida – Oahu Mark Andrews – Maui James Arakaki – Hawaii
Minority party leader, the Senate	Michael Palcic – Oahu Joanne Georgi – Kauai Fred Rohlring – Maui Barry Lamb – Hawaii

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Minority party leader,
the House of Representatives

David Ross – Hawaii
Madge Schaefer – Maui
Cynthia Vallaincourt *– Oahu
Laurie Yoshida – Kauai
*appointed 1/12/12 to fill vacancy upon
resignation of Linda L. Smith

ACKNOWLEDGMENTS

Throughout their reapportionment and redistricting tasks, the members of the Commission have been reminded of the great magnitude of their responsibilities. The Commission could not have discharged these responsibilities but for the encouragement and assistance of many people. The Commission owes a debt of gratitude to each of them. In addition to those previously recognized in the 2011 Final Report, the Commission wishes to acknowledge with heartfelt thanks the assistance of the following:

1. The Public.

During the course of its deliberations, the Commission had the opportunity to hear from and discuss with members of the public the many aspects of reapportionment and redistricting. To name all such persons individually would result in an exhaustive list. A limited listing of these people is contained in those sections of this report dealing with the Commission's public hearings. The Commission would like to thank all members of the public who participated in the Commission's public hearings and meetings or who provided written testimony, comments, and recommendations to the Commission.

2. The Advisory Councils.

Under the State Constitution, the advisory councils of each basic island unit were vested with the responsibility of advising the Commission with respect to reapportionment and redistricting within that basic island unit. The Commission is grateful for the work of the councils in recommending changes to the plans for their respective island units. A portion of the final reapportionment plan for the State legislative districts reflects the views and recommendations of the advisory councils.

3. The Project Office Staff.

The project office staff was responsible for technical, logistical, and support services to the Commission including the day-to-day operations of the Commission's office. The Office of Elections provided the project office staff. The Commission is very appreciative of the work performed by the project office staff. Without the project office staff's great and diligent efforts, the Commission could not have completed its work in the limited time provided. The project office staff included:

David J. Rosenbrock, Project Manager
Caryn M. Moran, Administrative Assistant

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Charles C. Wong, Geographic Information System Technician
Karen M. Tam, Secretary

4. Office of Elections.

The Office of Elections staff provided additional logistical and support services to the Commission and the project office:

Scott T. Nago, Chief Election Officer
Anthony Akamine, Election Information Specialist
Noe De Leon, Voter Services Specialist
Judy Gold, Precinct Operations Specialist
Wendy Green, Election Support Services Specialist
Wayne Hirayama, Warehouse Supervisor
Rex Quidilla, Voter Services Section Head
Holly-Ann Kiaaina, Election Support Services Specialist
Kristen Oka, Voter Services Specialist
Carolyn Roldan, Secretary
Rhowell Ruiz, Election Support Services Section Head
Aaron H. Schulaner, General Counsel
Edward Tamura, Computer Services Acting Section Head
Lori Tomczyk, Ballot Operations Section Head

5. Professionals.

The Commission relied on a team of professionals from the Department of the Attorney General and technical specialists to aid them both in understanding the problems related to reapportionment and in performing the Commission's various tasks. These individuals were consulted by the Commission to provide legal, statistical and logistical services:

Russell A. Suzuki, First Deputy Attorney General
Brian P. Aburano, Deputy Attorney General
Robyn B. Chun, Deputy Attorney General
Diane Erickson, Deputy Attorney General
Sarah R. Hiramami, Deputy Attorney General
Royce A. Jones, Hawaii Region Manager, Environmental Systems Research Institute, Inc. (Esri)
Rodman Low, GIS Analyst, Environmental Systems Research Institute, Inc. (Esri)
Mirjam Stadelman, Project Manager, Environmental Systems Research Institute, Inc. (Esri)

6. Data Sources.

Throughout the Commission's deliberations, these data professionals worked diligently with the Commission staff to provide data used to develop Hawaii's population base for reapportionment and redistricting:

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Col. Christopher S. Wilson, U.S. Pacific Command
Lt. Cmdr. Mark W. Haney, USN, U.S. Pacific Command, Liaison to Defense Manpower
Data Center West
Pearl Imada Iboshi, Ph.D., University of Hawaii Institutional Research & Analysis Office
Henry Sakata, Information Analyst, University of Hawaii Institutional Research &
Analysis Office
John H. Morris, Registrar, Chaminade University
Daryl Marie Whitford, Registrar, Brigham Young University-Hawaii
Richard Yount, Registrar, Hawaii Pacific University

7. Public Meeting and Public Hearing Facilities.

The Commission expresses its appreciation for the use of office space and meeting facilities/services in the State Capitol for the 2011 Reapportionment Project and on the Neighbor Islands for public hearings.

The Honorable Calvin K. Y. Say, Speaker of the House of Representatives
Calvin Azama, Office of the Speaker, House of Representatives
Kevin Kuroda, Sergeant At Arms & Staff, House of Representatives
Jamae K. Kawachi, County Clerk & Staff, County of Hawaii
Peter A. Nakamura, County Clerk (2011) & Staff, County of Kauai
Ricky Watanabe, County Clerk (2012) & Staff, County of Kauai
Jeffrey T. Kuwada, County Clerk & Staff, County of Maui
'Olelo Community Media

PROCEDURE FOLLOWED

In the development of its final plan for the reapportionment and redistricting of State legislative districts, the Commission proceeded as follows:

1. Legal and statistical background.

As reported in the 2011 Final Report and Reapportionment Plan, two lawsuits were filed in the Hawaii Supreme Court challenging the validity of the Commission's 2011 legislative reapportionment plan. On January 4, 2012, the Court heard oral arguments in the two lawsuits.

On January 4, 2012, the Hawaii Supreme Court issued an Order that invalidated the Commission's 2011 legislative reapportionment plan due to its inclusion of non-permanent residents in the population base used to reapportion the State's legislature. The Court ordered the Commission to prepare and file a new reapportionment plan for the State legislature that used a population base of permanent residents only. The Court also ordered the Chief Election Officer to rescind publication of the 2011 legislative reapportionment plan and a notice of rescission was published in five newspapers throughout the State of Hawaii on January 11, 2012.

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On January 6, 2012, the Hawaii Supreme Court filed an Opinion setting forth its reasoning in more detail. The Hawaii Supreme Court's Order and Opinion appear in this Supplement as Appendix A.

The Commission's first meeting after the Hawaii Supreme Court's Order and Opinion was on January 20, 2012. At that time, the Commission's new counsel, Brian P. Aburano, Deputy Attorney General, briefed the Commission and the public on the Commission's Motion for Clarification and/or Reconsideration that was filed in the two lawsuits on January 13, 2012. He also reported to the Commission that the Court had denied the Commission's Motion earlier that day.

In subsequent meetings, Deputy Attorneys General Aburano and Hirakami advised the Commission regarding legal questions and issues that arose regarding implementation of the Hawaii Supreme Court's Order and Opinion and the preparation and filing of the court-ordered new reapportionment plan. The Commission was advised that the Court's Order and Opinion, the State Constitution and Chapter 25 of the Hawaii Revised Statutes did not prescribe or provide specific procedures to be followed by the Commission in preparing and filing the new court-ordered reapportionment plan.

2. *2012 Meetings of the 2011 Reapportionment Commission.*

Following the Hawaii Supreme Court's decision, Chairperson Marks presided over meetings held at the State Capitol on:

January 20 and 30, 2012

February 15, 27, and 29,* 2012

March 8, 2012

*The February 29, 2012 meeting was recessed and reconvened on March 2 and 6, 2012.

Minutes of 2012 Commission meetings appear as Appendix B in this Supplement. Agendas, minutes and materials from the Commission's meetings were posted on the Reapportionment website. The Commission also broadcasted meetings on 'Olelo public access stations.

3. *Advisory Council Meetings.*

During 2012, public meetings of the Advisory Councils were held were as follows:

<i>Date</i>	<i>Council</i>	<i>Place</i>
1/20/12	Oahu	State Capitol, Honolulu
1/25/12	Kauai	Historic County Annex Building Basement, Lihue
2/13/12	Hawaii	Hawai'i County Council Chambers, Hilo Kona Council Office, Kona

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4. *Criteria development.*

In addition to the Hawaii Supreme Court’s Order and Opinion, the Commission again reviewed the reapportionment and redistricting criteria set forth in the State Constitution and Hawaii Revised Statutes, as well as its adopted standards and criteria and technical requirements.

On January 30, 2012, the Commission approved a proposal for processing data from military and educational institutions to determine a permanent resident population base. Following the process approved by the Commission, 108,767 non-permanent residents were extracted from Hawaii’s U.S. Census population of 1,360,301 people. See Minutes of the Commission meeting at Appendix B and PowerPoint presentation at Appendix C, both dated January 30, 2012, and Appendix D, “Non-Permanent Population Extraction for 2011 Reapportionment and Redistricting-Addendum” prepared by the Commission’s consultant, Esri. The remaining 1,251,534 people formed the permanent resident population base that the Commission used for the new reapportionment plan. The permanent resident population base for the four basic island units (sometimes referred to individually as “BIU” and collectively as “BIUs”) was determined to be as follows:

BIU Oahu	846,589
BIU Hawaii	183,596
BIU Maui	154,544
BIU Kauai	66,805

The Chief Election Officer of the State of Hawaii, Scott T. Nago, testified on behalf of the Office of Elections and county clerks and election officials at the Commission’s January 30, 2012 meeting. Chief Election Officer Nago stated that if the Commission did not adopt a final plan by February 29, 2012, the delay was likely to create a risk in election officials’ ability to securely and properly implement election procedures in 2012. He noted that by law, candidate filing was to open on February 1, 2012 and that he was required to locate over 240 polling places, to be published by May 26, 2012 or 10 days prior to the close of candidate filing. He also explained the time required to establish precincts on every island; assign and notify 600,000 Hawaii voters of their 2012 voting location; recruit and train precinct workers, and other requirements necessary to serve the public, candidates for office and other election stakeholders. Mr. Nago also emphasized that the 2012 Primary Election date was changed to August from September, due to requirements under federal law.

5. *Proposed reapportionment plans.*

The Commission’s Technical Committee, a permitted interaction group, recommended a proposed reapportionment plan for the State legislature on February 15, 2012, based on the above permanent resident population base for each of the BIUs. Due to the new permanent resident population base, one Senate seat was transferred from the Oahu BIU to the Hawaii BIU. Although the new permanent resident population base did not change the apportionment of House seats among the BIUs, it did cause shifts in the House district boundaries in the proposed plan for Oahu due to the revised distribution of population growth around that island.

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6. *Public hearings.*

The Commission was advised by its counsel at public meetings that the State Constitution and statutes did not address public hearings, notice, or other procedures for a court-ordered plan that was the result of a successful legal challenge. Nonetheless, the Commission held public hearings on the proposed plan dated February 15, 2012 as follows:

February 21, 2012

County Council Chambers

Hilo, Hawaii

Video conference with Kona, Pahoa, and Waimea Council offices

Witnesses

Jeff Melrose, Luana Neff, Arthur Roberts, Cheryl King, Brenda Ford, Margaret Willie, Rene Siracusa, Jon Olson, Joyce Alena, Greg Smith, Dwayne Yoshina, Janet Snyder, Nancy Cook Lauer, Dave Smith, Don Anderson, Robert Petricci, Clyde Hayashi, Kerri Marks, Steve Sparks, Barry Mark, Marlene Hopei, Donald Ikeda, Ian Takashiba

February 22, 2012

State Capitol, Room 329

Honolulu

Witnesses

Ed Gayagas, Kathleen Ebey, Norman Funamura, Shizuko Hanaumi, Margaret R. Davis, K. Mark Takai, Shannon Wood, John Kato, Donald E. Devaney, Michael Palcic, Janet Mason, Juanita Kawamoto Brown, Kathleen Pahinui, Kymberly Pine, Neal Milner, John Kane Gollner, Stewart Ring, Clifton Takamura, Barbara Polk, Nikki Love, Bart Dame, Della Au Belatti, Alani Apio, Roy Takumi, Blake Goodman, Matt Lo Presti, Les Ihara, Kevin Rathbun, Carlton Saito, Ernest Hanaumi, Ginny Sato, Lillian Funamura, Tom Brower

7. *Adjustment to proposed reapportionment plan dated February 15, 2012.*

As early as February 15, 2012, the Commission authorized the Technical Committee to continue working to address areas of concern that were being raised by the public, particularly concerns regarding preserving the integrity of neighborhoods and communities.

After two public hearings on February 21 and 22, 2012, the Technical Committee met again to address concerns expressed in or raised by testimony at the hearings. The Commission received extensive testimony on the plan for House districts on Oahu at the public hearing on February 22, 2012 at the State Capitol. Although mindful of the urging of the Chief Election Officer to complete a plan by February 29, 2012, the Commission gave considerable weight to public testimony on areas including:

- a. Newtown communities
- b. Makakilo/North Shore
- c. Kahaluu/Waikane

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- d. Ewa/Ewa Beach/OceanPointe
- e. Moiliili/Makiki/Tantalus
- f. Kailua/Maunawili/Olomana

At the Commission's meeting on February 27, 2012, the Technical Committee presented further revisions to its proposed plan for Oahu House districts. At that meeting and at the Commission's meeting of February 29, 2012, certain members of the House of Representatives, describing themselves as a dissident faction, presented testimony alleging that the Commission's proposed plan for Oahu House districts unduly disfavored them. They said that House members who did not support the Speaker of the House were disproportionately placed in districts with a higher percentage of voters in a new district. At the February 29, 2012 meeting, State Representatives Chris Lee and Sylvia Luke submitted an alternate proposed plan for Oahu House districts ("the Lee-Luke plan") and urged the Commission to consider adopting it instead of the plan proposed by the Technical Committee. In order to allow the Technical Committee to review the Lee-Luke plan to determine if some or all of its provisions could be incorporated into the Commission's legislative reapportionment plan, the Commission recessed its February 29 meeting to March 2, 2012.

On March 2, 2012, the Technical Committee reported that based on its review, it did not recommend that the Commission adopt the Lee-Luke plan. See Appendix B, Minutes of February 29, 2012 (reconvene of meeting March 2, 2012 portion). However, the Technical Committee asked the Commission for additional time to see whether it could make changes to improve its proposed plan for Oahu House districts. The Commission authorized the Technical Committee to take an additional four days to complete its review and make final recommendations.

On March 6, 2012, the Commission reconvened after the second recess of its February 29, 2012 meeting. The Technical Committee presented its final recommendations, which were accepted by the Commission and placed on the agenda for the March 8, 2012 meeting for final approval.

8. *Decision.*

Based on public comments received at the public hearings as well as at its public meetings and via correspondence, the Commission in 2012 accepted numerous revisions developed by the Technical Committee and vetted through public testimony on January 20 and 30; February 15, 27, and 29; and March 2 and 6, 2012. Some of the primary reasons for the changes made were to maintain the integrity of communities and to maintain deviations at permissible levels within each BIU.

Although not every suggested change was implemented, the Technical Committee presented its revised plans on March 6, 2012. The Commission gave its final approval to the 2011 legislative reapportionment plan on March 8, 2012 by a unanimous vote of 8 to 0, with one member absent.

Also on March 8, 2012, the Commission approved a plan for Senate staggered terms. This plan designated 12 Senate districts that will have two-year terms in the 2012 Election. The

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remaining 13 Senate districts will have four-year terms in the 2012 Elections. The length of term is based on the population in each new district that held a Senate election in 2010.

Commissioner Elizabeth N. Moore was not present at the March 8, 2012 meeting of the Commission when its reapportionment plan for the State legislature was adopted. Her remarks in opposition to the extraction of military personnel and their dependents and the resulting plan were placed on the record of the February 29, 2012 meeting, see Appendix B (reconvened portion dated March 6, 2012).

COMMISSION'S PRINCIPAL TASKS

The Commission was ordered by the Hawaii Supreme Court to reapportion legislative seats and redistrict BIUs using the permanent resident population of the State of Hawaii and each BIU. In addition, after approving a plan for Senate seats, the Commission was to designate 12 of the 25 State Senate district seats that would have two-year terms in the election immediately following the 2011 reapportionment.

LEGAL CONSIDERATIONS AND DISTRICTING CRITERIA

In the performance of its tasks, the Commission was guided by certain criteria and legal requirements. Among them are federal constitutional standards and state constitutional requirements.

1. Federal Constitutional Issues - Legislative Districts.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires that both houses of a bicameral state legislature be apportioned substantially on a population basis. In Reynolds v. Sims, 377 U.S. 533, 577 (1964), the United States Supreme Court stated:

[W]e mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement.

The U.S. Supreme Court has allowed more flexibility in population deviations with respect to state legislative reapportionment than for federal congressional redistricting. Mahan v. Howell, 410 U.S. 315, 321-322 (1977). As a general matter, the U.S. Supreme Court has held that state legislative reapportionment plans with a maximum population deviation under 10 % are *prima facie* constitutional while those above 10 % are *prima facie* discriminatory and must be justified by the state. Brown v. Thomson, 462 U.S. 835, 842-843 (1983). It has also held that state legislative plans with a maximum population deviation in excess of 10 % can be justified by a state policy that seeks to preserve the integrity of political subdivisions. Brown, 462 U.S. at 843-844 and Voinovich v. Quilter, 507 U.S. 146, 161-162 (1993). To date, the U.S. Supreme

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Court has not expressly stated how much of a maximum population deviation may be permitted in order to preserve the integrity of state political subdivisions. Cf. Gorin v. Karpan, 775 F. Supp. 1430, 1438, (D. Wyo. 1991).

The U.S. Supreme Court has held that in reapportioning state legislative districts, a slight overrepresentation of a particular area in one house could be balanced with minor underrepresentation of that area in the other house. Lucas v. Forty-Fourth General Assembly of State of Colo., 377 U.S. 713, 735, fn. 27 (1964); Reynolds, 377 U.S. at 577.

The United States Supreme Court has not specified what population base must be used to reapportion and redistrict state legislative districts. In Davis v. Mann, 377 U.S. 678, 691-692 (1964), the United States Supreme Court held that a state could not exclude from the reapportionment population base, a class of persons (military and military related personnel) based solely on the nature of their employment. However, the Court later stated that nothing in its prior decisions was meant to require the states to include in their reapportionment population base, “aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of a crime”. Burns v. Richardson, 384 U.S. 73, 92 (1966). Further, with respect to its decision in Davis v. Mann, the Court said:

Discrimination against a class of individuals, merely because of the nature of their employment, without more being shown, is constitutionally impermissible. [citation omitted]. Where the exclusion is of those not meeting a State’s residence requirements, however, different principles apply. The difference between exclusion of all military and military-related personnel, and exclusion of those not meeting a State’s residence requirements is a difference between an arbitrary and a constitutionally permissible classification.

(Burns, 384 U.S. at 92, fn.21.)

2. State Constitution and Laws - Legislative Districts.

Article IV of the State Constitution provides for reapportionment of State legislative districts to be performed using the following steps. First, the Commission is to allocate the total number of members of each house of the State legislature among the four basic island units, using the total number of permanent residents in each of the basic island units (Hawaii, Maui, Kauai and Oahu), and computed using the Huntington-Hill Method of Equal Proportions. Second, the Commission is to draw the district lines within each basic island unit so that for each house the average number of permanent residents per member is as nearly equal to the average for the basic island unit as practicable. In redistricting, the Commission is to be guided by certain specified criteria, including the following:

- (1) No district shall extend beyond the boundaries of any basic island unit;
- (2) No district shall be drawn so as to unduly favor a person or political faction;
- (3) Except in the case of districts encompassing more than one island, districts shall be contiguous;

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- (4) Insofar as practicable, districts shall be compact;
- (5) Where possible, district lines shall follow permanent and easily recognized features, and where practicable, shall coincide with census tract boundaries; and
- (6) Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided.

In Blair v. Ariyoshi, 515 P.2d 1253 (Haw. 1973), the Hawaii Supreme Court upheld the 1973 Reapportionment Commission's action in assigning seats in the State legislature so as to balance the overrepresentation of the basic island unit of Kauai in the House of Representatives (-0.98 %) with underrepresentation of that basic island unit in the Senate (+16.19 %). The Court said it was satisfied that the allocation in question was an eminently reasonable one, and that the Commission had made a good faith effort to achieve statewide voter equality.

3. *Other Standards and Criteria.*

In performing its reapportionment and redistricting responsibilities, the Commission also adopted other standards and criteria in 2011 including the following: (1) no splitting of census blocks; (2) attempting to maintain the integrity of communities; and (3) within each basic island unit, trying to keep the population deviations of all districts within plus or minus five percent of the ideal district size for that basic island unit.

The technical staff and consultants advised the Commission to avoid splitting census blocks, as that would require staff to go to the blocks that were split and attempt to ascertain the number of permanent residents in each portion of the split block.

Maintaining the integrity of communities was complicated by the shift in population, particularly on Oahu, that occurred between the 2000 U.S. Census and 2010 U.S. Census. On Oahu, this shift was embodied by the rapid growth of West Oahu, site of the "Second City" of Kapolei, and the lower or negative growth of population in Windward Oahu and urban Honolulu. This contrasting growth pattern resulted in population equal to one House seat essentially shifting from Windward Oahu and urban Honolulu to the fast-growing West Oahu communities. Accordingly, House district boundaries on Oahu had to be shifted and redrawn by the Commission's Technical Committee to accommodate the population shift. For example, the Windward Oahu's legislative districts consisting of less densely populated census blocks had to grow in land area to take in more population to keep up with growth in other parts of Oahu.

As recommended by the Technical Committee, the Commission tried to maintain the integrity of communities and their traditional or historical neighboring areas to the extent practicable. In this respect, the Technical Committee started with existing district lines which represented the work of prior reapportionment commissions that had attempted to align districts with geographic features and communities of interest. However, boundaries had to be adjusted in almost every region of the Oahu BIU, particularly after the extraction of over 106,000 non-permanent residents from Oahu's permanent resident population.

The Commission attempted to keep population deviations within each basic island unit within plus or minus five percent of the average population of districts in that basic island unit in

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order to comply with Article IV, Section 6 of the Hawaii Constitution. This standard for deviations was based on analogous case law that deviations up to 10 percent are generally constitutional on their face for state legislative reapportionment and redistricting.

The Commission found nothing in the record to support the claim or suggestion that House districts had been drawn to target a group of “dissident” legislators or to make it more difficult for certain incumbents to be reelected.

THE LEGISLATIVE REAPPORTIONMENT PLAN

Note: Tables shown in this Report are lettered A-F for comparison among basic island units. Tables are numbered 1-10 for comparison among districts.

1. A general description of the reapportionment plans.

(a) The reapportionment population base.

Pursuant to the Hawaii Supreme Court’s Order and Opinion in the *Solomon and Matsukawa* lawsuits, the Commission approved a permanent resident reapportionment population base that extracted 108,767 people from the U.S. Census population of the State of Hawaii. This number of non-permanent residents was based on data the Commission received from the U.S. military and Hawaii educational institutions. Table A shows extractions made from the Census population of the four basic island units:

Table A -Extraction to Revise Reapportionment Population Base

Location	Census pop.	Less Non-Permanent Resident Population	Perm. Resident Population
Oahu	953,207	(106,618)	846,589
Hawaii	185,079	(1,483)	183,596
Maui	154,924	(380)	154,544
Kauai	67,091	(286)	66,805
State of Hawaii	1,360,301	(108,767)	1,251,534

Based on the foregoing extractions, the population base used to apportion the State legislature was 1,251,534 permanent residents. For a more complete description of the extraction process, refer to Appendix D, “Non-Permanent Population Extraction for 2011 Reapportionment and Redistricting-Addendum” prepared by the Commission’s consultant, Esri.

(b) Apportionment among basic island units.

In reapportioning and redistricting the State legislative districts, the Commission followed the two-step process set out in Sections 4 and 6 of Article IV of the State Constitution. The first step in that process is the apportionment of the total number of members of each house of the State legislature among the four basic island units, using the total number of permanent

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residents in each of the BIUs and computed by the Huntington-Hill Method of Equal Proportions.

For a more complete description of the reapportionment of legislative seats to the BIUs, please refer to Appendix D, “Non-Permanent Population Extraction for 2011 Reapportionment and Redistricting-Addendum” prepared by the Commission’s consultant, Esri.

The legislative reapportionment plan adopted by the Commission allocated the total number of members of the State Senate and the House of Representatives among the four BIUs as shown in Table B below:

Table B – Allocation of State Senate and House Members to Basic Island Units

Basic Island Unit	Senators	Representatives
Island of Hawaii	4	7
Islands of Maui, Lanai, Molokai, and Kahoolawe	3	6
Island of Oahu and all other islands not specifically enumerated	17	35
Islands of Kauai and Niihau	1	3
Total	25	51

In the legislative reapportionment plan adopted by the Commission on March 8, 2012, there was no change in the apportionment of House seats from the 2001 reapportionment plan. One Senate seat was reapportioned from the Oahu BIU to the Hawaii BIU.

(3) Apportionment within basic island units.

The second step in the process of reapportioning and redistricting the State legislature is apportioning the members allocated to each basic island unit among districts within that basic island unit and redrawing district lines where necessary in such a manner that for each house, the average number of permanent residents per member is as nearly equal to the average for the basic island unit as is practicable.

The Commission’s final legislative reapportionment and redistricting plan shows how the Commission accomplished this part of its task. There was no change to the number of House districts and seats per basic island unit from the 2001 reapportionment plan. In the Senate, one district was moved from Oahu and reapportioned to the Hawaii BIU after extraction of 106,618 non-permanent residents from Oahu (by far the largest portion of the statewide extraction of non-permanent residents).

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House Targets by Basic Island Unit

The table below illustrates this step in the process. Kauai has 66,805 permanent residents and is entitled to three House members. Therefore the average or target population is 22,268 permanent residents per House member, see Table C. Remaining House seats for each basic island unit are calculated in the same fashion.

Table C - Average Population per House Member by BIU

BIU	State base population	House seats	Target pop. per seat - House
Oahu	846,589	35	24,188
Hawaii	183,596	7	26,228
Maui	154,544	6	25,757
Kauai	66,805	3	22,268
Total	1,251,534	51	24,540

Senate Targets by Basic Island Unit

Redistricting the Senate assumes the same methodology, see Table D below.

Table D - Average Population per Senate Member by BIU

BIU	State base population	Senate seats	Target pop. per seat - Senate
Oahu	846,589	17	49,799
Hawaii	183,596	4	45,899
Maui	154,544	3	51,515
Kauai	66,805	1	66,805
Total	1,251,534	25	50,061

Again using Kauai as an example, it has 66,805 permanent residents and one apportioned Senate district (66,805 divided by 1 = 66,805). The Senate district on Kauai equals the total population of 66,805. Remaining Senate seats within the other basic island units are calculated in the same fashion.

(a) Basic Island Unit of Oahu.

The final plan allocates 35 House seats to Oahu in House Districts 17 through 51. The final plan allocates 17 Senate seats to Oahu in Senate Districts 9 through 25; no change from existing number of House seats; loss of one Senate seat to Hawaii BIU.

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(b) Basic Island Unit of Hawaii.

The final plan allocates seven (7) House seats to Hawaii in House Districts 1 through 7. The final plan allocates four (4) Senate seats to Hawaii in Senate Districts 1 through 4; no change from existing number of House seats; one additional Senate seat from Oahu BIU.

(c) Basic Island Unit of Maui.

The final plan allocates six (6) House seats to Maui in House Districts 8 through 13. The final plan allocates three (3) Senate seats to Maui in Senate Districts 5 through 7; no change from existing number of House and Senate seats.

(d) Basic Island Unit of Kauai.

The final plan allocates three (3) House seats to Kauai in House Districts 14, 15 and 16. The final plan allocates one (1) Senate seat to Kauai in Senate District 8; no change from existing number of House and Senate seats.

(4) Deviations within each basic island unit.

With respect to the Commission’s apportionment within basic island units, the deviations among the districts in each basic island unit shown for each house of the legislature are as follows:

Table 1 – Oahu Basic Island Unit Targets and Deviations (House Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
House 17	24,188	23,468	-720	-2.98%
House 18	24,188	23,382	-806	-3.33%
House 19	24,188	23,221	-967	-4.00%
House 20	24,188	23,798	-390	-1.61%
House 21	24,188	23,451	-737	-3.05%
House 22	24,188	23,395	-793	-3.28%
House 23	24,188	23,259	-929	-3.84%
House 24	24,188	23,524	-664	-2.75%
House 25	24,188	23,134	-1,054	-4.36%
House 26	24,188	23,209	-979	-4.05%
House 27	24,188	23,129	-1,059	-4.38%
House 28	24,188	23,277	-911	-3.77%
House 29	24,188	23,178	-1,010	-4.18%
House 30	24,188	23,625	-563	-2.33%
House 31	24,188	23,507	-681	-2.82%

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House 32	24,188	23,261	-927	-3.83%
House 33	24,188	23,495	-693	-2.87%
House 34	24,188	24,101	-87	-0.36%
House 35	24,188	24,076	-112	-0.46%
House 36	24,188	25,209	1,021	4.22%
House 37	24,188	25,128	940	3.89%
House 38	24,188	25,190	1,002	4.14%
House 39	24,188	25,272	1,084	4.48%
House 40	24,188	25,239	1,051	4.35%
House 41	24,188	25,127	939	3.88%
House 42	24,188	25,280	1,092	4.51%
House 43	24,188	25,076	888	3.67%
House 44	24,188	25,219	1,031	4.26%
House 45	24,188	24,133	-55	-0.23%
House 46	24,188	25,037	849	3.51%
House 47	24,188	25,175	987	4.08%
House 48	24,188	25,238	1,050	4.34%
House 49	24,188	25,206	1,018	4.21%
House 50	24,188	24,498	310	1.28%
House 51	24,188	23,982	-206	-0.85%
Oahu BIU Deviation		846,589		8.89%

Table 2 – Oahu Basic Island Unit Targets and Deviations (Senate Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
Senate 9	49,799	51,322	1,523	3.06%
Senate 10	49,799	51,745	1,946	3.91%
Senate 11	49,799	51,900	2,101	4.22%
Senate 12	49,799	52,195	2,396	4.81%
Senate 13	49,799	51,206	1,407	2.83%
Senate 14	49,799	48,386	-1,413	-2.84%
Senate 15	49,799	52,090	2,291	4.60%
Senate 16	49,799	48,778	-1,021	-2.05%
Senate 17	49,799	47,729	-2,070	-4.16%
Senate 18	49,799	51,689	1,890	3.80%
Senate 19	49,799	47,450	-2,349	-4.72%
Senate 20	49,799	47,556	-2,243	-4.50%
Senate 21	49,799	48,311	-1,488	-2.99%

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Senate 22	49,799	47,729	-2,070	-4.16%
Senate 23	49,799	47,993	-1,806	-3.63%
Senate 24	49,799	51,053	1,254	2.52%
Senate 25	49,799	49,457	-342	-0.69%
Oahu BIU Deviation		846,589		9.53%

Table 3 – Hawaii Basic Island Unit Targets and Deviations (House Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
House 1	26,228	26,553	325	1.24%
House 2	26,228	25,652	-576	-2.20%
House 3	26,228	25,935	-293	-1.12%
House 4	26,228	26,990	762	2.91%
House 5	26,228	27,129	901	3.44%
House 6	26,228	25,239	-989	-3.77%
House 7	26,228	26,098	-130	-0.50%
Hawaii BIU Deviation		183,596		7.21%

Table 4 – Hawaii Basic Island Unit Targets and Deviations (Senate Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
Senate 1	45,899	44,666	-1,233	-2.69%
Senate 2	45,899	46,808	909	1.98%
Senate 3	45,899	47,218	1,319	2.87%
Senate 4	45,899	44,904	-995	-2.17%
Hawaii BIU Deviation		183,596		5.56%

Table 5 – Maui Basic Island Unit Targets and Deviations (House Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
House 8	25,757	26,857	1,100	4.27%
House 9	25,757	26,976	1,219	4.73%

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House 10	25,757	24,541	-1,216	-4.72%
House 11	25,757	24,705	-1,052	-4.08%
House 12	25,757	25,509	-248	-0.96%
House 13	25,757	25,956	199	0.77%
Maui BIU Deviation		154,544		9.45%

Table 6 – Maui Basic Island Unit Targets and Deviations (Senate Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
Senate 5	51,515	53,833	2,318	4.50%
Senate 6	51,515	49,246	-2,269	-4.40%
Senate 7	51,515	51,465	-50	-0.10%
Maui BIU Deviation		154,544		9.90%

Table 7 – Kauai Basic Island Unit Targets and Deviations (House Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
House 14	22,268	22,718	450	2.02%
House 15	22,268	21,835	-433	-1.94%
House 16	22,268	22,252	-16	-0.07%
Kauai BIU Deviation		66,805		3.96%

Table 8 – Kauai Basic Island Unit Targets and Deviations (Senate Districts)

DISTRICT	BIU TARGET POPULATION	TOTAL_POP	DEVIATION FROM BIU TARGET	% DEVIATION FROM BIU TARGET
Senate 8	66,805	66,805	0	0.00%
Kauai BIU Deviation				0.00%

Statewide Deviation

The Commission is aware that federal courts generally review reapportionment and redistricting plans under a different methodology than set forth above. The federal courts generally seek to determine the maximum deviation percentage between the largest and smallest district in each house of the state legislature statewide. Under this methodology, the deviation

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percentages in the Commission’s final reapportionment plan are as follows, as shown below in Table 9 for the House of Representatives and Table 10 for the Senate:

Table 9 – House Statewide Targets and Deviations

HOUSE DISTRICT	STATEWIDE TARGET POPULATION	DISTRICT POPULATION	DEVIATION FROM STATE TARGET POPULATION	DEVIATION % FR STATE TARGET POPULATION
House 1	24,540	26,553	2013	8.20%
House 2	24,540	25,652	1112	4.53%
House 3	24,540	25,935	1395	5.68%
House 4	24,540	26,990	2450	9.98%
House 5	24,540	27,129	2589	10.55%
House 6	24,540	25,239	699	2.85%
House 7	24,540	26,098	1558	6.35%
House 8	24,540	26,857	2317	9.44%
House 9	24,540	26,976	2436	9.93%
House 10	24,540	24,541	1	0.00%
House 11	24,540	24,705	165	0.67%
House 12	24,540	25,509	969	3.95%
House 13	24,540	25,956	1416	5.77%
House 14	24,540	22,718	-1822	-7.42%
House 15	24,540	21,835	-2705	-11.02%
House 16	24,540	22,252	-2288	-9.32%
House 17	24,540	23,468	-1072	-4.37%
House 18	24,540	23,382	-1158	-4.72%
House 19	24,540	23,221	-1319	-5.37%
House 20	24,540	23,798	-742	-3.02%
House 21	24,540	23,451	-1089	-4.44%
House 22	24,540	23,395	-1145	-4.67%
House 23	24,540	23,259	-1281	-5.22%
House 24	24,540	23,524	-1016	-4.14%
House 25	24,540	23,134	-1406	-5.73%
House 26	24,540	23,209	-1331	-5.42%
House 27	24,540	23,129	-1411	-5.75%
House 28	24,540	23,277	-1263	-5.15%
House 29	24,540	23,178	-1362	-5.55%
House 30	24,540	23,625	-915	-3.73%
House 31	24,540	23,507	-1033	-4.21%

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House 32	24,540	23,261	-1279	-5.21%
House 33	24,540	23,495	-1045	-4.26%
House 34	24,540	25,101	561	2.29%
House 35	24,540	24,076	-464	-1.89%
House 36	24,540	25,209	669	2.73%
House 37	24,540	25,128	588	2.40%
House 38	24,540	25,190	650	2.65%
House 39	24,540	25,272	732	2.98%
House 40	24,540	25,239	699	2.85%
House 41	24,540	25,217	677	2.76%
House 42	24,540	25,280	740	3.02%
House 43	24,540	25,076	536	2.18%
House 44	24,540	25,219	679	2.77%
House 45	24,540	24,133	-407	-1.66%
House 46	24,540	25,037	497	2.03%
House 47	24,540	25,175	635	2.59%
House 48	24,540	25,238	698	2.84%
House 49	24,540	25,206	666	2.71%
House 50	24,540	24,498	-42	-0.17%
House 51	24,540	23,982	-558	-2.27%
Total		1,251,534		
Statewide Deviation House-All				21.57%

Table 10 – Senate Statewide Targets and Deviations

DISTRICT	STATEWIDE TARGET POP	DISTRICT POPULATION	DEVIATION FROM TARGET POP	DEVIATION % FROM TARGET
Senate 1	50,061	44,666	-5,395	-10.78%
Senate 2	50,061	46,808	-3,253	-6.50%
Senate 3	50,061	47,218	-2,843	-5.68%
Senate 4	50,061	44,904	-5,157	-10.30%
Senate 5	50,061	53,833	3,772	7.53%
Senate 6	50,061	49,246	-815	-1.63%
Senate 7	50,061	51,465	1,404	2.80%
Senate 8	50,061	66,805	16,744	33.44%
Senate 9	50,061	51,322	1,261	2.52%
Senate 10	50,061	51,745	1,684	3.36%
Senate 11	50,061	51,900	1,839	3.67%
Senate 12	50,061	52,195	2,134	4.26%

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Senate 13	50,061	51,206	1,145	2.29%
Senate 14	50,061	48,386	-1,675	-3.35%
Senate 15	50,061	52,090	2,029	4.05%
Senate 16	50,061	48,778	-1,283	-2.56%
Senate 17	50,061	47,729	-2,332	-4.66%
Senate 18	50,061	51,689	1,628	3.25%
Senate 19	50,061	47,450	-2,611	-5.22%
Senate 20	50,061	47,556	-2,505	-5.00%
Senate 21	50,061	48,311	-1,750	-3.50%
Senate 22	50,061	47,729	-2,332	-4.66%
Senate 23	50,061	47,993	-2,068	-4.13%
Senate 24	50,061	51,053	992	1.98%
Senate 25	50,061	49,457	-604	-1.21%
Total		1,251,534		
Statewide Deviation Senate-All				44.23%

(5) Explanation and justification for deviations among districts.

One of the criteria for redistricting under Article IV, Section 6 of the State Constitution is that “[n]o district shall extend beyond the boundaries of any basic island unit.” The Commission decided not to use “canoe districts” because of the State of Hawaii’s long-standing policy of protecting the integrity of basic island units and the overwhelming public sentiment voiced against the use of “canoe districts” at the Commission’s public hearings and meetings. The State’s policy of protecting the integrity of basic island units is evidenced by Article IV, Section 6 of the State Constitution, the proceedings of the Hawaii Constitutional Conventions, the work of prior reapportionment commissions, and the general history of reapportionment in the State. Based on universal dissatisfaction with canoe districts and in the absence of any supporting testimony, the 2011 Reapportionment Commission voted against the use of canoe districts.

When comparing maximum deviations among State and House districts statewide, the elimination of “canoe districts” resulted in substantial deviations particularly regarding the basic island unit of Kauai. Given the size of Kauai’s population, providing Kauai with two Senate seats would result in Kauai being overrepresented in the Senate by -33.28%, and providing Kauai with one Senate seat would result in Kauai being underrepresented in the Senate by +33.44%. Following the U.S. Supreme Court’s statements that underrepresentation of an area in one house can be balanced with overrepresentation of that area in the other house, the 2011 Commission again assigned three House of Representative seats to Kauai, which resulted in Kauai being overrepresented in the House of Representatives by -10.20%, balanced with underrepresentation in the Senate by +33.44%.

In previous court cases, equality of representation as it related to reapportionment among the basic island units has been measured by determining whether the total number of legislators (both House and Senate) representing each basic island unit is fair from the standpoint of

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population represented per legislator. Burns v. Gill, 316 F.Supp. 1285 (D. Haw. 1970); Blair v. Ariyoshi, *supra*; see also Report and Reapportionment Plan of the 1973 Legislative Reapportionment Commission at page 26, and Report and Reapportionment Plan of the 1981 Reapportionment Commission, at page 31. This was done as shown in Table E below: (a) combining the number of state legislators in both the Senate and House of Representatives to determine the total number of legislators statewide; (b) determining the average number of persons that each legislator represents on a statewide basis by dividing the State’s total reapportionment population base by the total number of state legislators; (c) determining the average number of persons within each basic island unit that the state legislators apportioned to that basic island unit represent by dividing the reapportionment population base of that basic island unit by the number of state legislators allocated; and (d) comparing the average number of persons represented by the state legislators on each basic island unit to the average number of persons represented by each state legislator on a statewide basis. Based on this methodology, the maximum deviation in the allocation of legislative representation under the Commission’s final reapportionment plan is 5.62%.

Apportionment among basic island units

The following table shows the average number of permanent residents represented per legislator statewide and by basic island unit. This number is derived by dividing the State’s base population of permanent residents by the total number of legislators apportioned in each basic island unit. As shown in Table E below, 1,251,534 permanent residents divided by 76 seats equals the statewide average population per seat of 16,468.

Table E - Apportionment Among Basic Island Units - Average Pop. Represented

	State base population	Senate seats	House seats	Total seats both houses	Average population per seat
State of Hawaii	1,251,534	25	51	76	16,468
Oahu	846,589	17	35	52	16,281
Hawaii	183,596	4	7	11	16,691
Maui	154,544	3	6	9	17,172
Kauai	66,805	1	3	4	16,701

Under the method of measuring legislative representation used in Burns v. Gill, 316 F. Supp. 1285, 1296 (D. Haw. 1970), the maximum statewide percentage deviation in the Commission’s apportionment among basic island units is 5.62%. The basic island unit percentage deviations are: Oahu -1.14%, Hawaii 2.52%, Maui 2.88% and Kauai -2.74%.

Method used to calculate deviation in Burns v. Gill (1970)

Table F, below, shows the deviation between the basic island units using the average permanent resident population base for each legislator. For example, Kauai has four legislators:

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one (1) Senator and three (3) Representatives. Kauai’s population of 66,805 divided by four (4) legislators equals an average population per legislator of 16,701.

Deviation is the difference between the statewide average population and the basic island unit population as a percentage of the statewide average population.

Each basic island unit will have a different deviation based on its population and the total number of legislators assigned to it. Using Kauai as an example: 16,468 minus 16,701 equals negative (-) 233, then -233 divided by 16,468 equals -2.74% deviation, see Table F below.

Table F - Apportionment Among Basic Island Units - Average Pop. Represented (Deviation)

	State base population	Senate seats	House seats	Total seats	Average population per seat	Deviation among BIUs
State of Hawaii	1,251,534	25	51	76	16,468	
Oahu	846,589	17	35	52	16,281	-1.14%
Hawaii	183,596	4	7	11	16,691	2.52%
Maui	154,544	3	6	9	17,172	2.88%
Kauai	66,805	1	3	4	16,701	-2.74%

The statewide deviation of 5.62% is determined by adding the largest positive deviation, 2.88% on Maui, to the largest negative deviation, -2.74%, on Kauai.

This method serves a rational state policy articulated in the Hawaii Constitution, which recognizes the geographic insularity and unique political and socio-economic identities of the basic island units.

As noted previously, the Commission also considered the size of deviations in its final reapportionment plan under other methodologies. Under the methodology generally used by federal courts, the size of the deviations, particularly as they relate to the basic island unit of Kauai, is substantial. However, the Commission still felt that its final reapportionment plan is justified by the State’s policy of protecting the integrity of political subdivisions (basic island units), the concerns of the public who historically have opposed canoe districts, the overall fairness in representation of each basic island unit when measured by the Huntington-Hill Method of Equal Proportions, and the nature of U.S. Supreme Court decisions to date.

STAGGERING OF STATE SENATE DISTRICT SEATS

1. Description of the methodology used.

The Commission’s staff identified each census block in which a regular election for State Senator was held in the year 2010. After the Commission approved its final reapportionment plan for the state legislative districts, the Commission’s staff: (a) determined the population in each new Senate district that had a regular Senate election in the year 2010, and (b) identified the twelve new Senate district seats that had the smallest populations that had a regular Senate

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election in the year 2010. These 12 new Senate districts were designated by the Commission to have two-year terms in the 2012 election.

For the purpose of identifying the term “regular Senate election” as used in Article IV, Section 8 of the Hawaii Constitution, the Commission included elections held to fill vacancies in conjunction with the regular 2010 Primary and General Elections.

2. Designation of Senate district seats.

The 12 new Senate districts that will have two-year Senate terms in the 2012 election are:

Hawaii: Senate Districts 1, 3, and 4

Maui: Senate Districts 6 and 7

Oahu: Senate Districts 12, 16, 17, 18, 21, 23 and 24

The remaining Senate districts will have four-year terms in the 2012 election.

REAPPORTIONMENT LAWSUITS

On October 10, 2011, the Commission was named as a Respondent in the lawsuit *Malama Solomon, Ph.D., et al. vs. Neil Abercrombie in his capacity as the Chief Executive Officer of the State of Hawaii, et al.*, No. SCWP-11-0000732. The Petitioners asked the Hawaii Supreme Court to invalidate the Commission’s 2011 reapportionment plan because it violated Article IV, Section 4, of the State Constitution by failing to exclude all non-permanent residents from the permanent resident population base used to apportion the State legislature, and to prepare or order the Commission to prepare a new legislative reapportionment plan.

On October 11, 2011, the Commission was named as a Respondent in the lawsuit *Michael J. Matsukawa vs. State of Hawaii 2011 Reapportionment Commission, et al.*, No. SCWP-11-0000741. The Petitioner asked the Hawaii Supreme Court for relief similar to that requested by the Petitioners in the *Solomon* lawsuit.

On November 18, 2011, the Commission’s attorneys filed an Answer in both lawsuits, denying Petitioners’ allegations and asserting that the Commission complied with the State Constitution. On November 23, 2011, the Commission’s attorneys filed a Motion for Summary Judgment in both lawsuits, asserting that there was no dispute as to the facts in each case and that summary judgment should be entered in favor of the Commission. Petitioners filed their responses and on December 22, 2011, the Hawaii Supreme Court granted the Petitioners’ Motion to Strike the Commission’s Motion for Summary Judgment and accompanying record.

The Hawaii Supreme Court heard oral arguments on January 4, 2012 in Honolulu, Hawaii. As discussed above, the Court invalidated the Commission’s 2011 legislative reapportionment plan, ordered the Chief Election Officer to rescind publication of the 2011 plan,

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and ordered the Commission to prepare and file a new plan. The Court's Order and Opinion are included as Appendix A.

RECOMMENDATIONS FOR FUTURE REAPPORTIONMENT

The Commission submits the following recommendations for legislative consideration. Recommendations previously included in the 2011 Final Report are not included here except as related to the Commission's actions following the Hawaii Supreme Court's Order and Opinion filed in January 2012.

1. Clarify "permanent residents" as used in the Constitution of the State of Hawaii, Article IV, Section 4.

The methodology and population base used by the 2011 Reapportionment Commission were successfully challenged in the *Solomon vs. Abercrombie* and *Matsukawa vs. Reapportionment Commission* lawsuits in the Hawaii Supreme Court. As noted earlier in this Supplement and in Appendix A, the Hawaii Supreme Court invalidated the 2011 legislative reapportionment plan adopted by the Commission on September 26, 2011 and ordered the Commission to prepare and file a new plan based on the permanent population base.

As noted throughout the proceedings of the 2011 Commission and its predecessors, no definition of "permanent resident" is provided in the State Constitution, Hawaii Revised Statutes or case law. This lack of clarity was the cause of "dissension ...and much delay" in 2011 reapportionment, as also reported a decade earlier by the 2001 Commission.

The Commission notes that Senate Bill 212, Senate Draft 1, passed second reading in the Senate on March 2, 2012. This bill as amended defines permanent residents as those counted in the U.S. Census for Hawaii and states that legislative reapportionment shall be based on permanent residents, with an effective date in 2050, indicating additional discussion was needed. The bill was reported out of the Senate Committee on Judiciary and Labor but was recommitted to the Committee on March 6, 2012.

House Concurrent Resolution (HCR) 60 was introduced on March 1, 2012, requesting the Legislative Reference Bureau to study and report back to the 2013 Legislature on a method to fairly and equitably include military personnel and dependents for reapportionment calculations, and to consider options for defining the permanent resident population of Hawaii. HCR 60 was referred to the House Committees on Public Safety & Military Affairs/Judiciary and the Committee on Legislative Management.

Recommendation.

The Commission again recommends that the Legislature initiate changes in the Hawaii Constitution and statutes to clarify the definition of permanent residents for the reapportionment population base.

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2. Provide private outside counsel for the Commission.

The 2011 Reapportionment Commission recognizes and thanks Attorney General David M. Louie and assigned Deputy Attorneys General Russell A. Suzuki and Robyn B. Chun (2011), and Brian P. Aburano and Sarah R. Hirakami (2012) for their assistance during the Commission's deliberations. Notwithstanding the efforts of the Department of the Attorney General ("Department"), the Commission recommends that future Commissions obtain private outside counsel.

The Commission finds that the 10-year interval between reapportionment years makes it difficult to develop staff expertise in the Department. From a management standpoint, this is understandable; once a final plan is adopted and litigation, if any, is completed, there is no activity in the subject area until the next reapportionment. As deputies are reassigned to other agencies, there is no opportunity for individuals to develop and maintain expertise in reapportionment issues, and there is no guarantee that they will still be employed in the Department for the next reapportionment.

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.

Recommendation.

The 2011 Reapportionment Commission recommends that future Commissions obtain outside private counsel. The Commission recommends that funding for this purpose be included in its appropriation request submitted to the Legislature by the Office of Elections prior to convening of the Commission in 2021. The Commission recommends that the legislature provide funding for independent legal services.

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3. Clarify the term “regular election” as used to determine staggering of Senate terms, Article IV, Section 8 of the Constitution.

Article IV, Section 8 of the Hawaii Constitution states that after reapportionment and redistricting, the Commission “shall assign the two-year terms to senate seats so that the resident population of each senate district shall have no more than two regular senate elections for a particular senate seat within the six-year period beginning in the even-numbered year prior to the reapportionment year...”

Article II, Section 7 of the Hawaii Constitution requires a state or county elected official to resign before seeking another state or county office if the term of the current office ends after the new office begins. In 2010, two members of the State Senate resigned prior to the end of their terms to run for lieutenant governor, leaving these two Senate seats vacant. Elections to fill the vacancies were held in conjunction with the regular 2010 primary and general elections in accordance with HRS, Section 17-3.

Both in 2011 and 2012, the Commission questioned whether the elections to fill Senate vacancies were regular elections for the purpose of calculating population to determine staggered terms. In 2011, the Commission determined these vacancy elections *were not* regular elections for this purpose. In 2012, the Commission determined that these vacancy elections *were* regular elections for this purpose.

The designation of vacancy elections as regular elections is not expressly addressed in the Constitution or HRS Chapter 11-Elections or Chapter 17-Vacancies.

Recommendation.

The 2011 Reapportionment Commission again recommends that the legislature initiate changes in the law to clarify whether or not a state senate election held to fill a vacancy created when an incumbent resigns is to be counted as a “regular election” for the purpose of computing staggering of State Senate terms pursuant to Article IV, Section 8 of the Constitution.

4. Consider modifying public notice requirements for the plan to utilize current technology and contain project costs.

Within fourteen days after the Commission files the final reapportionment plan with the Chief Election Officer, Hawaii laws require publication of the plan which upon public notice becomes effective as of the date of filing and governs the next five succeeding elections. See HRS, Section 25-2. Procedures for such public notice required by law appear in HRS, Section 1-28.5. The Commission supports a public notice requirement and does not dispute the Chief Election Officer’s statutory duty and authority to publish notice of reapportionment plans once they are filed with his office.

However, for the 2011 reapportionment project, the Commission and Office of Elections will incur publication costs exceeding \$150,000 for publishing the notices of legal descriptions in newspapers in every county of the proposed, 2011 final, and 2012 revised plans. The legal notice in five major newspapers consists of four to five pages of legal descriptions without maps.

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Immediately after adoption of plans in 2011 and 2012, the Commission posted all maps and legal descriptions online and provided copies for public inspection to State and County Election Offices. Shortly thereafter, maps and legal descriptions were provided to regional libraries in every county. Commission maps were also available before and after adoption at the Reapportionment Project Office and at meetings and public hearings.

The Commission suggests that the public notice be permitted in a “short form” public notice stating that the plan has been proposed or adopted and that maps and legal descriptions can be viewed online, or in hard copies at selected public offices listed, along with public hearing dates and other required information. The printed text of the plan and maps would continue to be available to the public. This streamlined form of notice is projected to save significant costs while providing notice to the public of Commission actions and availability of documents.

As a practical and cost containment consideration, the Commission recommends that the Legislature consider amending current public notice statutes to allow short form public notices to utilize advances in technology in conjunction with publication.

Recommendation.

The 2011 Reapportionment Commission recommends that the Legislature and Chief Election Officer consider methods to streamline public notice of the proposed and final plans to utilize advances in technology for viewing plans online and at public offices around the State in conjunction with publication.

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CONCLUSION

The 2011 Reapportionment Commission believes that the legislative reapportionment plan adopted on March 8, 2012 is fair and equitable, provides meaningful representation for the people of Hawaii, and has met the requirements of the Hawaii Supreme Court. Members further believe that the recommendations made in this report, if adopted, will assist future reapportionment commissions. Although the tasks of reapportionment and redistricting were demanding, the members of the Commission are gratified for the opportunity to participate in this meaningful endeavor.

Respectfully submitted,



JUDGE VICTORIA S. MARKS (RET.), Chair



CALVERT CHIPCHASE IV



CLARICE V. HASHIMOTO



HAROLD S. MASUMOTO



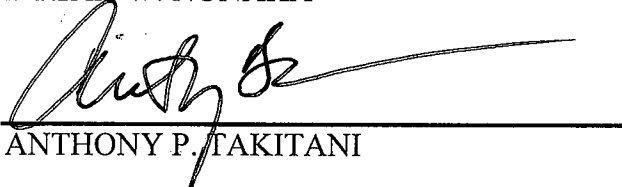
ELIZABETH N. MOORE

I stand by my testimony on March 6, 2012

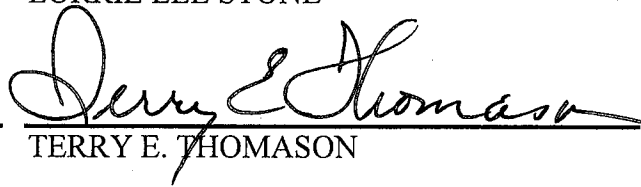


DYLAN W. NONAKA

/s/ Lorrie Lee Stone
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