

STAND. COM. REP. NO.

618

Honolulu, Hawaii

MAR 04 2011

RE: S.B. No. 1187

S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 1187 entitled:

"A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE V,
SECTION 6, OF THE HAWAII STATE CONSTITUTION, TO PROVIDE FOR
THE ELECTION OF THE ATTORNEY GENERAL,"

begs leave to report as follows:

The purpose and intent of this measure is to propose a
constitutional amendment to article V, section 6, of the Hawaii
State Constitution to provide for the election of the Attorney
General.

Your Committee received testimony in support of this measure
from The League of Women Voters of Hawaii and one individual.
Your Committee received testimony in opposition to this measure
from the Department of the Attorney General and two individuals.

Your Committee finds that the Attorney General fulfills a
broader role than merely the Chief Law Enforcement Officer of the
State and Administrator of the Department of the Attorney General.
In fact, the Attorney General is the counsel for the state
government. Pursuant to section 26-7, Hawaii Revised Statutes,
the Department of the Attorney General performs the following
functions:

"The department shall administer and render state
legal services, including furnishing of written legal
opinions to the governor, legislature, and such state



departments and officers as the governor may direct; represent the State in all civil actions in which the State is a party; approve as to legality and form all documents relating to the acquisition of any land or interest in lands by the State; and, unless otherwise provided by law, prosecute cases involving violations of state laws and cases involving agreements, uniform laws, or other matters which are enforceable in the courts of the State."

Some of these functions require independence from the Governor. However, when the Governor has the power to appoint the Attorney General, whether it is true in practice or not, the perception that the Attorney General is solely the Governor's counsel persists. An Attorney General may feel that his or her role is to champion the positions and decisions of the Governor, at the expense of the duties owed to other agencies and branches of the state government.

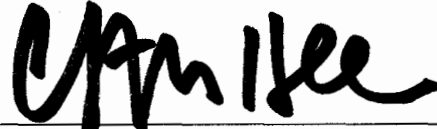
Your Committee acknowledges that the election of the Attorney General may expose the office and the Department of the Attorney General to the increased risk of becoming politicized. However, your Committee believes that this concern must be balanced with the need for an independent Attorney General who is accountable to the public. An elected Attorney General may actually reduce the politicization of the office, by shifting the focus of the Department of the Attorney General from potentially appeasing the political agenda of the Governor toward public preferences. Your Committee believes that further discussion regarding the comparative advantages and disadvantages of an elected Attorney General would be beneficial.

Your Committee has amended this measure by making technical, nonsubstantive changes for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1187, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1187, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 1187	Committee Referral: JDL	Date: 3/3/11		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike				✓
IHARA, Jr., Les	✓			
SLOM, Sam	✓			
TOTAL	4	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes