

SB 212

From: [Madge](#)
To: [JDLTestimony](#)
Subject: SD212,SB1
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February 24, 2012

Senate Judiciary Committee
Hawaii State Senate
Honolulu, HI

VIA email

RE: SB212 SB1 related to Reapportionment--Oppose

Honorable Chair and Committee Members;

SB212 SB1 addresses a question with the wrong answer and should be amended to provide the right answers. The issue of permanent resident was determined by a Hawaii State Constitution amendment which clearly delineated that the count would exclude non-resident military.

After recommendations from the 1991 Reapportionment Commission, The Hawaii legislature put four amendments to the state constitution regarding reapportionment on the 1992 General Election ballot. One of those four questions was ***"Shall the reapportionment commission use the total number of permanent residents instead of the number of registered voters as the reapportionment base?"*** A fact sheet, provided by the Office of Elections at every polling place and with every absentee ballot contained the following information on this question:

"During 1991, the Commission held public hearings and it was recommended that the legislature apportionment base be changed from registered voters to permanent residents. Initially, the Commission had intended that the population base would consist of permanent residents, derived from subtracting minors and nonresident military and their dependents from the total population figures provided in the 1990 census. However, overwhelming testimony persuaded the Commission to include minors in the count."

Two Hundred and Ten Thousand(210,00) Hawaii voters voted YES and the amendment became law.

Only 120,029 voted no.

The current Reapportionment Commission attempted to ignore the amendment and their actions were struck down by the Hawaii Supreme Court. The people prevailed. The Governor has spoken out in support of the amendment.

The truth is that there needs to be a definition of permanent resident using the context of the language in the Constitutional amendment and the Fact Sheet, not in the purely political context of the proposed definition. Since this amendment was adopted, each Reapportionment Commission has asked that permanent resident be defined by the Legislature. The questions raised issues regarding the count of convicted felons incarcerated in Hawaii, out of state students, and aliens for example.

Today you will receive testimony from folks who will drape themselves in the American flag, claiming that our troops should have a right to be counted even though they have chosen to be voting residents in another place and anyone who disagrees is simply unpatriotic. Those who take this position can only be doing so to protect, not our military personnel, but the turf of the legislators who may have to run in a newly formed District. It's insulting to those who believe the amendment should be upheld and it really disrespects our military, not to mention the democratic process that adopted this amendment--government by the people.

I have been very involved in this issue having served on the Maui Reapportionment Advisory Council in 2001 and again in 2011. Our Advisory Council has been unanimous in support of the constitutional amendment which excludes nonresident military and their dependents. Unfortunately, because of the notice requirements of the Sunshine Law, and the hearing date, we are unable to call a meeting to once again formally reiterate our position to the Judicial Committee.

Many citizens have spoken out with erudite and rational arguments supporting exclusion of nonresident military and their nonresident dependents. Please listen to those voices. I respectfully ask you to not adopt the current language which counts everyone in the census as permanent residents. I urge you to address the permanent resident issue within the context of the Constitutional amendment and the official fact sheet.

Thank you.

Madge Schaefer

Dear Mr. Chairman and Members of the Judiciary and Labor Committee,

During the course of my service on the Oahu Apportionment Advisory Council (OAAC) I have become intimately aware, as I am sure you are as well, of a perplexing and difficult challenge that has plagued the Hawai'i Reapportionment Commission (HRC). This problem has prevented the timely completion of the reapportionment plan necessary to the electoral process in Hawai'i. This complication has tormented not just the current HRC, but others dating back at least 20 years.

I speak of the phrase embodied in the Hawai'i State Constitution, Article IV. Section 4, which states, in relevant part:

“The commission shall allocate the total number of members of each house of the state legislature being reapportioned among the four basic island units ... using the total number of permanent residents in each of the basic island units ...”

The great difficulty in achieving an acceptable reapportionment plan is that the crucial term “permanent residents,” remains undefined. This has led to a great deal of misunderstanding and confusion on the part of HRC members, legislators and other government officials as well as the public at large.

In 1991 the HRC deviated from the U. S Supreme Court approved method of apportionment of using registered voters as a basis for reapportionment. On their own authority they adopted a plan based on their idea of “permanent residents” by extracting certain groups, but not others, from the official U. S. Census totals.

In 1992 the use of the term “permanent residents” was enshrined in law through the adoption of an amendment to the Hawai'i State Constitution.

In 2001 the HRC faced more difficulty in devising a plan because of this imprecise standard and begged the legislature to enact a law defining the term. In the intervening decade no action was taken.

Now, the 2011 HRC is bogged down in lawsuits at the Hawaii Supreme Court, the first of which resulted in the vacating of the reapportionment plan for our legislature. All of this lack of precision, uncertainty, commotion and delay is caused because no competent authority has taken the crucial step of defining, for the purpose of reapportionment, the exact meaning of “permanent resident.”

The Supreme Court, in its recent decision, did not do it. The Legislature has not done it. Even the HRC itself has constructed reapportionment plans utilizing three arbitrary “extractions” without itself defining the term.

On June 15, 2011, the OAAC unanimously recommended that the HRC adopt the standard accepted by 48 other states that for the purpose of reapportionment:

“OAAC recommends to the 2011 Hawaii Reapportionment Commission that population counts to be used in redistricting the Hawaii State House and Senate be set to match exactly the enumeration for redistricting the United States House of Representatives (1,360,301 persons).”

On June 28, 2011, the HRC did indeed adopt, by 8-1 vote, the population base of the United States Census Bureau as the basis for fulfilling the required reapportionment of our state legislature and thereby equating the Hawai‘i constitutional requirement of “permanent resident” with the U.S. Census Bureau’s concept of “usual resident.”

The official census counts all of Hawaii’s “usual residents” based upon extensively and clearly defined criteria detailed in the U. S. Census Bureau document entitled “Residence Rule and Residence Situations for the 2010 Census.”

The concept of “usual residence,” guiding census counts since the founding of the nation, states, “Usual residence is defined as the place where a person lives and sleeps most of the time. This place is not necessarily the same as the person’s voting residence or legal residence.” The guiding principle, succinctly stated, therefore is as follows:

For the purpose of the 2011 reapportionment within the State of Hawaii, “permanent resident,” as expressed in Article IV of the Hawaii Constitution, means any person counted as a usual resident of the state of Hawaii in the last preceding United States census.

If, due to threats of legal action and considerable political pressure, the HRC had not strayed from its adopted position by working to develop three arbitrary “extractions” from the U.S. Census and instead constructed a solid plan based upon this principle, a legally, morally and logically defensible plan would have been developed. As matters stand, the Hawai‘i Supreme Court was certainly correct to throw out the plan submitted by the HRC.

Mr. Chairman and members, you have before you now Senate Bill 212 SD1 which will rectify this situation by defining in law the meaning of “permanent resident” for the purposes of reapportionment.

I would urge its passage. This act will permit the most fair and equitable apportionment possible without the State developing it’s own complete set of criteria for someone to be considered a permanent resident and conducting its own surveys to determine the counts.

The enactment of this legislation will avoid the many pitfalls and essential unfairness of the methods employed in the past. It will set Hawai'i on the same course as 48 other states.

In this "snapshot" of our population, one was counted as living here if one was sleeping here, working here, stationed here, going to school here, retired here, imprisoned here, etc.; if one displayed some permanence of residence and was not just "visiting." The census clearly and exhaustively defines who gets counted and transient populations are extracted from its counts.

The census has specific rules for dealing with people away from their usual residence on census day, people who live in more than one place, people without a usual residence, students, movers on census day, people who are born or die on census day, nonrelatives of the householder, United States military or merchant marine personnel, foreign citizens in the U. S., U. S. citizens living outside the U. S., incarcerated persons, people in group homes or residential treatment centers, people in health care facilities, people in juvenile or residential school facilities, people in shelters or transitory locations, people in religious-related or workers' residential facilities.

The census counts all qualifying persons, not just those from "statistically significant" groups. The census refrains from using vague or undefined terms such as "home state," "nonresident," or the more convoluted "less certain non-permanent resident status."

Most people instinctively respond that everyone should be counted. It's a natural reaction emanating from a basic sense of fairness and without political calculation.

The census, being a snapshot of our population at a particular point in time, recognizes that populations are always in flux, so a new count is taken every 10 years. It serves Hawaii and the nation well enough in determining congressional apportionment, despite whatever anomalies occur. It serves equally well for state legislatures, councils, boards and the like.

Those who desire a specific result are not persuasive and are transparently in favor of helping a particular constituency. People who live here should be apportioned to our legislature and councils regardless of political consequences.

Please also consider:

- If Hawaii excludes its military and dependents from apportionment, these persons would be disenfranchised from apportionment to state legislatures, county and city councils, boards of supervisors and virtually all other locally elected lawmaking bodies in the country. Forty-eight states use the census counts for apportionment and the census reports these individuals as residing in Hawaii.

- If one lives here, whether stationed, schooled or jailed, one is affected by laws enacted here. If a proposed law affects a "disenfranchised" community, that group

can safely be ignored if it lacks representation. Individuals counted as living here for the census are not counted as living elsewhere. They are entitled to apportionment to our legislature and councils.

- They pay taxes here. They attend schools here. They travel the roads, enjoy the parks, beaches and other recreational facilities. They dine out. They go to libraries and movie theaters. They participate in civic life and community events.
- It is said that many do not vote here. Well, many born, raised, schooled, and employed here have never registered to vote, have never voted and never will vote. Some never vote for philosophical reasons; some to escape tax authorities; some from pure apathy; some to escape jury service. These individuals are counted.
- Furthermore, the “extraction” of certain groups from the census block counts is an uncertain proposition and leads to arbitrary and inexact results. The Census counts are based upon individuals in the first place, not upon groups.
- There is even a racial bias in these group extractions in that many of these groups are more heavily weighted with minorities than the general population.

For these reasons I submit that passage of Senate Bill 212 SD1 is the proper course to follow for determining the population base of the State of Hawai‘i for the purpose of reapportionment.

Aloha, Michael G. Palcic



Hawaii State Chapter Military Officers Association of America

Testimony of Thomas Smyth

**Before the Committee on Judiciary And Labor
Monday, February 27, 2012, 9:35 a.m., Room 016
On**

SB 212, Proposed SD 1, Relating to Legislative Reapportionment

Our Chapter of more than 400 retired and currently serving officers of the Uniformed Services, including the Coast Guard and commissioned members of NOAA, and the Public Health Service strongly supports SB 212, Proposed SD 1, which defines the constitutional term “permanent resident” to mean any individual in Hawaii in their usual residential location on the day the federal census is taken. This is the same population base used for apportionment of Hawaii’s Congressional Districts.

We understand that this is a very challenging issue for many Hawaii residents as it could affect the apportionment and districting of legislative seats among the various islands in our unusual state.

We note Hawaii is presently not intending to count most military personnel and their family members as “permanent residents”, even though that phrase has not been defined statutorily or legally. Somewhat ironically members of the Coast Guard in the Department of Homeland Security; NOAA in the Department of Commerce and the Public Health Service in the Department of Health and Human Services will have their members and families counted as permanent residents, even though they are here for the same three to six years.

We believe it is well known to most residents that Hawaii has the largest percentage of active duty personnel per capita of any state. That ranking will soon increase as we see many more soldiers, sailors and Marines coming to Hawaii as part of our nation’s Asia-Pacific focus.



Hawaii State Chapter Military Officers Association of America

Other states will be losing military personnel as bases and units are downsized across the Mainland. All those states count military family members in their legislative apportionment; only Kansas does not count active duty sponsors.

Military personnel and their families play a more significant economic role in Hawaii than they do in other states. All other states primarily fund public schools through property taxes. Hawaii uses state general fund revenue for the DOE. This means military personnel in government quarters in other states do not contribute to funding of most of the schools their children attend.

We also note that only about half of military personnel live in government quarters. The others live in houses they buy or rent and thus pay some GET which goes to our economy. Some on-base purchases are also GET taxed. All military construction in Hawaii is GET taxed, unlike any other state. And many military personnel and their family members have local jobs and often pay local income tax.

Almost all of our military bases are located in what most would call “urban” areas. They are more likely to purchase food, clothing and other everyday items in the many stores just outside their base. They shop alongside all of us and contribute to our economy in major ways. So our troops and their families are certainly contributing a greater share of our economy than anywhere else.

Members of this committee likely aware that military personnel and their families are strongly motivated as community volunteers. Units adopt schools where they help with routine repair and maintenance and read to kids in classrooms. They are often the coaches, scout leaders and environmental cleanup activists that are right beside us as we work together to make our communities quality places to live, work and play.

Please let us truly express “Military Appreciation”, not just for a month, but all the time. This bill will do that. Thank you.