

STAND. COM. REP. NO. **636**

Honolulu, Hawaii

MAR 01 2013

RE: S.B. No. 286
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred S.B. No. 286 entitled:

"A BILL FOR AN ACT RELATING TO REAPPORTIONMENT,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require reapportionment to be based in part on population data of the total number of permanent residents in the State; and
- (2) Define "permanent resident" for legislative reapportionment purposes as any individual counted as a usual resident in the last preceding United States census within the State of Hawaii.

Your Committee received testimony in support of this measure from the Hawaii State Reapportionment Commission, Military Officers Association of Hawaii, and six individuals. Testimony in opposition to this measure was submitted by the Department of the Attorney General and one individual. One individual submitted comments on this measure.

Your Committee finds that article IV, sections 4 and 6, of the Hawaii State Constitution provide for the apportionment of the Hawaii State Legislature by using a permanent resident population base. However, the Hawaii State Constitution does not define "permanent resident". This measure defines "permanent resident"



for purposes of legislative reapportionment as any individual counted as a usual resident in the last preceding United States census within the State of Hawaii. The United States census defines "usual residence" as the place where a person lives and sleeps most of the time and is not the same as the person's voting residence or legal residence. Hawaii's 2010 census population was 1,360,301, including service members, their families, university students, federal civilian workers stationed in Hawaii, legal and illegal aliens, children, and prisoners incarcerated here.

Your Committee notes the concerns raised in the testimony submitted by the Department of the Attorney General that requiring the Hawaii State Reapportionment Commission to use the total permanent resident population and define that term to mean the last United States census population for the State is inconsistent with the intent of the 1992 amendment to article IV, section 4, of the Hawaii State Constitution. In *Solomon et al., v. Abercrombie, et al.*, 126 Haw. 283, 270 P.3d 1013 (2012), the Hawaii Supreme Court held that the permanent resident population base excluded nonresident military personnel and their dependents based on the 1991 Reapportionment Commission's final reapportionment plan.

Furthermore, the Department testified that a constitutional amendment is the appropriate legislative vehicle to amend the definition of "permanent resident". The Hawaii Supreme Court held in *State v. Kahlbaun*, 64 Haw. 197, 206, 638 P.2d 309, 317 (1981) that "a legislative construction implementing a constitutional amendment cannot produce an absurd result or be inconsistent with the purposes and policy of the amendment". Thus, a statute that defines permanent resident as an individual counted as a usual resident in the last preceding United States census within the State may not be implemented without a constitutional amendment.

Your Committee has amended this measure by:

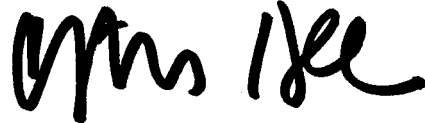
- (1) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (2) Making a technical, nonsubstantive amendment for the purposes of clarity and consistency.

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. 286, as amended herein, and recommends that it pass Second



Reading in the form attached hereto as S.B. No. 286, 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



