

STAND. COM. REP. NO.

19

Honolulu, Hawaii

FEB 05 2021

RE: S.B. No. 196  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-First State Legislature  
Regular Session of 2021  
State of Hawaii

Sir:

Your Committee on Hawaiian Affairs, to which was referred  
S.B. No. 196 entitled:

"A BILL FOR AN ACT PROPOSING AN AMENDMENT TO THE HAWAII STATE  
CONSTITUTION TO REQUIRE THE REAPPORTIONMENT COMMISSION TO  
ESTABLISH A REAPPORTIONMENT PLAN TO DRAW DISTRICT LINES FOR  
THE MEMBERS OF THE OFFICE OF HAWAIIAN AFFAIRS BOARD OF  
TRUSTEES,"

begs leave to report as follows:

The purpose and intent of this measure is to amend the State  
Constitution to require the Reapportionment Commission to  
establish a reapportionment plan to draw district lines for the  
total number of members of the Board of Trustees of the Office of  
Hawaiian Affairs.

Your Committee received testimony in opposition to this  
measure from the Center for Hawaiian Sovereignty Studies. Your  
Committee received comments on this measure from the Office of the  
Attorney General and Office of the Hawaiian Affairs.

Your Committee finds that members of the Board of Trustees of  
the Office of Hawaiian Affairs are elected during an at-large  
statewide election in which all registered voters are permitted to  
vote to elect all trustees. This measure provides for an election  
in which only qualified voters of a district within the State's  
four basic island units - Hawaii; Maui, Molokai, and Lanai; Oahu;



and Kauai and Niihau are permitted to elect one of the nine members of the Board of Trustees.

Your Committee further finds that the reapportionment of the nine-member Board of Trustees among the four basic island units may fall short of the one-person, one-vote standard established by the United States Supreme Court in *Reynolds v. Sims*, 377 U.S. 533 (1964). States must make honest and good faith efforts to construct districts with equal numbers of persons as practicable. Due to the significant disparities in population sizes among the basic island units, deviations from population equality in the reapportionment of the Board of Trustees of the Office of Hawaiian Affairs may be required.

Accordingly, your Committee notes the concerns expressed in the testimony of the Office of Hawaiian Affairs indicating that the Board of Trustees would likely lose the seat for the Trustee representing the islands of Molokai and Lanai, and that six of the nine trustee seats would likely be apportioned to Oahu, with one trustee seat for each of the remaining island units. These deviations and change in representation may raise concerns under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Your Committee finds that addressing these constitutional equal representation requirements, combined with the apportionment envisioned in this measure may require a significant increase in the number of trustees on the Board of Trustees, resulting in potential increases in trust fund spending and impacts to governance from an expanded Board of Trustees.

Moreover, your Committee finds that there is uncertainty as to how the current Board of Trustees will transition to the new configuration and how all members will serve concurrent four-year terms following reapportionment.

Your Committee has amended this measure by:

- (1) Inserting language to require that at the election immediately following the adoption of the apportionment plan:
  - (A) The term of office for all members of the Board of Trustees shall end;



- (B) The Reapportionment Commission shall assign two-year terms to a simple majority of the seats; and
  - (C) The remaining seats shall be assigned to four-year terms;
- (2) Updating the question to be printed on the ballot; and
  - (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 196, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 196, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committee on Hawaiian Affairs,



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MAILE S.L. SHIMABUKURO, Chair



The Senate  
Thirty-First Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Hawaiian Affairs**  
**HWN**

Bill / Resolution No.:* <b>SB 196</b>	Committee Referral: <b>HWN, JDC</b>	Date: <b>2/2/2021</b>		
<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
SHIMABUKURO, Maile S.L. (C)	x			
KEOHOKALOLE, Jarrett (VC)	x			
ACASIO, Laura		x		
IHARA, Jr., Les				x
FEVELLA, Kurt	x			
<b>TOTAL</b>	<b>3</b>	<b>1</b>		<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
<b>Distribution:</b> Original    Yellow    Pink    Goldenrod File with Committee Report    Clerk's Office    Drafting Agency    Committee File Copy				

\*Only one measure per Record of Votes