



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 3254, PROPOSING AMENDMENTS TO ARTICLE IV, SECTIONS 4 AND 6, OF THE HAWAII STATE CONSTITUTION REGARDING REAPPORTIONMENT.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, February 24, 2022 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 211, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Robyn Chun,
Deputy Attorney General, at 808-586-0618)

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of the bill is to propose amendments to article IV, sections 4 and 6, of the Hawai'i State Constitution to specify that reapportionment shall be based on the resident population, as counted in the most recent decennial United States Census.

Legislative reapportionment is a two-step process. In step one, the Reapportionment Commission is required to "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 basic island unit[.]" Haw. Const. art. IV, § 4. In step two:

[u]pon the determination of the total number of members of each house of the state legislature to which each basic island unit is entitled, the commission shall apportion the members among the districts therein and shall redraw district lines where necessary in such manner that for each house the average number of permanent residents per member in each district is as nearly equal to the average for the basic island unit as practicable.

Haw. Const. art. IV, § 6. Although separate processes, both steps require the Reapportionment Commission to identify a "permanent resident" population.

Section 25-2(a), Hawaii Revised Statutes (HRS), provides in relevant part,

In determining the total number of permanent residents for purposes of apportionment among the four basic island units, the commission shall only extract non-permanent residents from the total population of the State counted by the United States Census Bureau for the respective reapportionment year.

If the Committee decides to pass this bill, we recommend that the bill be amended to base legislative reapportionment on the federal decennial census "for the respective reapportionment year" rather than the "most recent." We are concerned that if the Reapportionment Commission is required to use the "most recent" decennial census and there is a delay in the delivery of the census data, then the "most recent" census could be interpreted to be the previous census. In order to eliminate any uncertainty as to which federal decennial census is to be used, we recommend that page 4, lines 1 to 12, of the bill be amended as follows:

Section 4. The commission shall allocate the total number of members of each house of the state legislature being reapportioned among the four basic island units, namely: (1) the island of Hawaii, (2) the islands of Maui, Lanai, Molokai and Kahoolawe, (3) the island of Oahu and all other islands not specifically enumerated, and (4) the islands of Kauai and Niihau, using the total number of residents, as reported by the [~~most recent~~] decennial census of the United States[;] for the respective reapportionment year, in each of the basic island units and computed by the method known as the method of equal proportions; except that no basic island unit shall receive less than one member in each house.

We further recommend that page 4, line 15, through page 5, line 2, of the bill be amended as follows:

Section 6. Upon the determination of the total number of members of each house of the state legislature to which each basic island unit is entitled, the commission shall apportion the members among the districts therein and shall redraw district lines where necessary in such manner that for each house the average number of residents, as reported by the [~~most recent~~] decennial census of the United States[;] for the respective reapportionment year, per member in each district is as nearly equal to the average for the basic island unit as practicable.

We further recommend that the ballot question in section 4 of the bill on page 6, lines 6 to 12, be amended to (1) incorporate the above change, (2) clarify that the

proposed amendments only affect legislative reapportionment, including redistricting, and (3) eliminate the reference to the extraction of non-permanent residents because that it is not a process currently specified in the State Constitution:

Shall the requirement that legislative reapportionment~~[, or dividing up, of state election districts]~~ and redistricting be based on the total number of permanent residents~~[,]~~ be eliminated and replaced with the requirement that it be based on the total number of residents, as ~~[determined]~~ reported by the ~~[most recent]~~ United States Census ~~[, instead of the current process that is based on the number of permanent residents, as determined after subtracting non-permanent military, military dependents, and college students?] for~~ the respective reapportionment year?

Thank you for the opportunity to provide these comments.



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
elections.hawaii.gov

SCOTT T. NAGO
CHIEF ELECTION OFFICER

TESTIMONY OF THE
REAPPORTIONMENT PROJECT MANAGER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON SENATE BILL NO. 3254
PROPOSING AMENDMENTS TO ARTICLE IV, SECTIONS 4 AND 6, OF THE
HAWAII STATE CONSTITUTION REGARDING REAPPORTIONMENT

February 24, 2022

Chair Dela Cruz and members of the Senate Committee on Ways and Means, thank you for the opportunity to provide comments regarding Senate Bill No. 3254. The purpose of this bill is to propose a constitutional amendment to specify that reapportionment shall be based on the resident population, as counted in the most recent decennial United States Census.

My name is David Rosenbrock and I have served as the reapportionment project manager for the last three reapportionment commissions. To be clear, I am not speaking on behalf of any of these reapportionment commissions. Instead, I am limiting myself to the topic of the data available to support these commissions and information that is already in the public record.

One of my duties and responsibilities was to provide technical support to each reapportionment commission to determine the "total population counted in the last preceding United States census" for congressional reapportionment purposes and the "permanent resident" base for state legislative reapportionment purposes. Article IV, Sections 4, 6, and 9, and HRS § 25-2.

Congressional reapportionment was straightforward as we would be directly provided the relevant census data from the U.S. Census Bureau and this data would be broken down to the census block level. This data would be loaded into a redistricting program that could be used by the Commissioners to produce the congressional plan.

In contrast, there was no already established data set that reflected the "permanent resident" population base. Specifically, the U.S. Census Bureau does not ask its respondents questions that could be used to determine "permanent residency." Instead, its focus is on counting "usual residents."

The state in which a person resides and the specific location within that state is determined in accordance with **the concept of "usual residence," which is defined by the Census Bureau as the place where a person lives and sleeps most of the time. This is not always the same as a person's legal residence, voting residence, or where they prefer to be counted.**

83 Fed. Reg. 5525 (Emphasis added).

In other words, "usual resident" is a broader term than "permanent resident," which has been defined in HRS § 25-2 as "a person having the person's domiciliary in the State." Consistent with this distinction between these two terms, the same statute provides that "[i]n determining the total number of permanent residents for purposes of apportionment among the four basic island units, the commission shall only extract non-permanent residents from the total population of the State counted by the United States Census Bureau for the respective reapportionment year."

However, as previously noted, the U.S. Census Bureau does not ask its respondents questions that could be used to determine "permanent residency." Additionally, due to privacy laws, the U.S. Census Bureau does not disclose the names of respondents.

Against this backdrop, we worked with the military and the local universities to determine who was associated with our state at the time of the U.S. Census and who appeared to be non-permanent residents. In the context of local universities, we asked for a list by ZIP+4 for those paying out-of-state tuition or other indicia that they are not permanent residents. The ZIP+4 is a mailing convention that provided us enough information to approximate which census block an individual may have been associated with in the U.S. Census. This was based on the premise that an individual's mailing location was the same or near where they physically resided.

Similarly, for the military we asked for the ZIP+4 for military personnel and their dependents who claim a state of legal residence for income tax purposes other than Hawaii. With this information, we extracted these individuals from the U.S. Census Bureau data we originally received for congressional purposes to generate a permanent resident population base for state legislative purposes.

To the extent there were more individuals to extract than were in a particular census block, then we would extract from adjoining census blocks, or neighboring census blocks. This situation was believed to have been generally related to ZIP+4s that were related to post office box addresses, in which the individual would not necessarily be expected to actually live in the census block that contained the post office.

As described publicly in the development of the last set of reapportionment plans, we faced various issues with changing numbers from the military. Essentially, the military organizes its data for its own purposes and the manner in which it organizes its data can change over the years. For example, the military has an Active Duty Master File and a separate Defense Enrollment Eligibility Reporting System (DEERS) database that is focused on information regarding military members, Department of Defense employees, and family members. While each database has helpful information, there is not necessarily a one-to-one correspondence between the two databases that allow them to be easily used together as they have different purposes. Given this, a significant amount of discussion with the military was necessary before it could generate its final dataset that it believed met our needs.

In the end, while I take no position on the merits of the proposed amendment, my testimony should be understood to reflect that the determination of the "permanent resident" base called for in the Hawaii State Constitution is not a simple matter. It requires coordination between different databases owned by different entities that were originally created for different purposes.

Thank you for the opportunity to testify on Senate Bill No. 3254.

Statement Before The
SENATE COMMITTEE ON WAYS AND MEANS
Thursday, February 24, 2022
10:00 AM
Conference Room 211 and Videoconference

in consideration of
SB 3254

**PROPOSING AMENDMENTS TO ARTICLE IV, SECTIONS 4 AND 6, OF THE HAWAII STATE
CONSTITUTION REGARDING REAPPORTIONMENT.**

Chairs DELA CRUZ, Vice Chair KEITH-AGARAN, and Members of the Senate Ways and Means Committee

Common Cause Hawaii supports SB 3254, which proposes a constitutional amendment to specify that reapportionment shall be based on the resident population, as counted in the most recent decennial United States Census.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through ensuring that everyone is represented in our representative democracy.

Common Cause Hawaii believes in a fair reapportionment and redistricting process and believes that all our voices must be heard in determining the future of our families and communities.

Currently, active-duty military members and their dependents, people from Hawaii who marry military members, and students studying in Hawaii are without voting rights – either in Hawaii or the state of their origin -- and are completely silenced in the redistricting process. This focus on military, their dependents and students creates a system where stricter rules are placed on military members and their dependents and students in terms of residency, while other populations, e.g., temporary and part-time residents, are not subject to the same definitions. Further, failure to include all residents as of Census Day for redistricting results in additional costs to Hawaii taxpayers.

Common Cause Hawaii also asserts that, along with using the total resident population as of Census Day for redistricting, prison gerrymandering must end. Hawaii counts incarcerated people where they are imprisoned as of Census Day rather than at their home addresses, even though known and reported to the U.S. Census. Including incarcerated persons in the population count for the district in which their facility is located alters representational proportions and, as a result, the voting power of residents. Counting Hawaii's incarcerated population according to their home addresses will ensure an accurate and true reapportionment of Hawaii's political districts. California, Colorado, Connecticut,

Delaware, Illinois, Maryland, Nevada, New Jersey, New York, Virginia, and Washington State, and more than 200 cities and counties have taken action to end prison gerrymandering.

Thank you for the opportunity to testify in support of SB 3254. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

SB-3254

Submitted on: 2/23/2022 1:44:13 AM

Testimony for WAM on 2/24/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Shannon Matson	Individual	Oppose	No

Comments:

Aloha Chair and Committee members,

I closely followed the Census, Reapportionment, and Redistricting process over the last 2 years. I am strongly opposed to this bill. While real reform is needed in this process, this bill neither goes to the heart of the matter, nor does it accurately address issues of fairness as it purports. This issue regarding non-permanent residents has already been decided in State and Federal supreme court in favor of our Constitutional language as written. I don't think it is your place as legislators to weigh in on this subject further as it is a clear conflict of interest. In passing this measure you will be clearly supporting consolidating your power center in O'ahu, at the continued expense of the other islands. In the opening sentence, this bill states that our State Constitution is unique by determining it's resident population for reapportionment based off of a non-permanent resident extraction process. What this bill fails to mention/address is that Hawai'i is also unique to other States as we are made up of vastly different islands, with diverse needs and demographics, and these islands are not easily or affordably transversed. Hence, why we have County governments seated on each island, and we do our best to divide up the population across the islands while avoiding canoe districts due to the practicalities they would result in for constituents and for elected officials. We are also unique in the large population of transient military service members that live here. We have the highest non-resident military population per captia, second only to South Carolina. Those two facts alone should be enough to realize that this proposed Constitutional Amendment is poorly written, based on false pretenses, and is an inappropriate attempt at reclaiming some of the seats lost by O'ahu legislators based on shifting population and growth on other islands. Please focus on where we really need reform and address some of the other urgent issues that came up during this reapportionment process, such as lack of transparency due to Sunshine Law violations, violations of the Constitutional criteria in map-drawing, including the possibility that gerrymandering occurred, and a highly confusing/inconsistent and repeatedly delayed report from the military on the numbers that were being asked of them to aid in this process.

Thank you for your time and consideration,

Shannon Matson